# 2012 Supplement

**to the**

# Kansas Administrative Regulations

VOLUMES 1 THROUGH 5
AGENCIES 1 THROUGH 131

*Compiled and Published by the Office of the Secretary of State of Kansas*
KRIS W. KOBACH, *Secretary of State*

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

The 2012 Supplement to the Kansas Administrative Regulations contains rules and regulations filed after December 31, 2008 and before January 1, 2012.

The 2009 Volumes of the Kansas Administrative Regulations contain regulations filed before January 1, 2009.

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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 Kris W. Kobach, Secretary of State of and for the State of Kansas, pursuant to K.S.A. 77-429 have examined and compared this 2012 Supplement to the Kansas Administrative Regulations; and do hereby certify that this publication of rules and regulations contains all rules and regulations for agencies 1 through 131 approved for printing by the State Rules and Regulations Board subsequent to the publication of the corresponding bound volumes of the 2009 Kansas Administrative Regulations and otherwise complies with K.S.A. 77-415 *et seq.* and acts amendatory thereof.

Done at Topeka, Kansas, this 1st day of September, 2012.

DEREK SCHMIDT,
*Attorney General*

[SEAL]

KRIS W. KOBACH,
*Secretary of State*

# 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

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KRIS W. KOBACH, *Secretary of State*

## COMMENTARY

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

The 2012 Supplement contains rules and regulations filed after Dec. 31, 2008 and before Jan. 1, 2012. Regulations filed on and after Jan. 1, 2012 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 that contains the most recent version of the particular regulation. To receive a copy or subscribe to the Kansas Register, write to the Secretary of State's Office, Kansas Register, First Floor, Memorial Hall, 120 SW 10th Ave., Topeka, KS 66612, or call (785) 296-3489.

The history at the end of each regulation cites the authorizing and implementing statute(s). Any subsequent action follows. 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 Dec. 11, 1990 and the amendment became effective on Dec. 31, 1990. If the ''T number'' is not included in an action on a regulation, the regulation was filed as a permanent regulation. 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. 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.

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 the Index to Regulations in the most current Kansas Register, next check the current K.A.R. Supplement, and finally check the current K.A.R. volume. *If the regulation is found at any of these sequential steps, stop and consider that version the most recent.*

*General Rules:* *Volumes replace earlier volumes.*
*Supplements replace earlier supplements.*
*Supplements are additions that ''supplement'' current volumes.*

For example, the 2012 Supplement supplements the 2009 Volumes. At printing, the current publications are the 2009 Kansas Administrative Regulations, Volumes 1-5, and the 2012 Supplement. The 2012 Supplement contains rules and regulations filed after Dec. 31, 2008 and before Jan. 1, 2012. Subsequent regulations are published in the Kansas Register and found using the Kansas Register's index to the K.A.R. When an individual volume is published, it replaces the same volume of an earlier year. For example, a 2009 Volume 2 would replace a 2006 Volume 2.

Any questions regarding the K.A.R. may be directed to the Secretary of State's Office by calling (785) 296-4564. Questions regarding the filing procedure may be directed to the Kansas Administrative Regulations Director at (785) 296-2114. For purchasing inquiries call (785) 296-4557. Questions concerning the subject matter of a regulation should be directed to the agency administering the regulation.

KRIS W. KOBACH, *Secretary of State*

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* *Editor's note.*

# 2012 SUPPLEMENT

**to the**

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# Kansas Department of Administration

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## Article 2.—DEFINITIONS

**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.)

## Article 7.—PROBATIONARY PERIOD AND EMPLOYEE EVALUATION

**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 authority 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.)

**1-7-6. 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 ap-

pointed 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 em-

ployee 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.)

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

**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.)

## Article 14.—LAYOFF PROCEDURES AND ALTERNATIVES TO LAYOFF

**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 x 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 months.

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 most recent ratings for the employee during the last five years up to and including five 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), for performance reviews conducted on or before September 30, 2009, a rating of exceptional shall have a value of five, a rating of satisfactory shall have a value of three, and a rating of unsatisfactory shall have a value of zero.

(2) For the purposes of calculating layoff scores in accordance with the formula established in subsection (b), for performance reviews conducted on or after October 1, 2009, a rating of exceptional shall have a value of five, a rating of exceeds expectations shall have a value of four, a rating of meets expectations shall have a value of three, a rating of needs improvement shall have a value of two, and a rating of unsatisfactory shall have a value of zero.

(3) 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.

(4) 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).

(5) In case of identical layoff scores, and if 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 shall be established by the secretary that is consistent with agency affirmative action goals and timetables for addressing underutilization of persons in protected groups. If further ties remain, preference in retention shall be given to the person with the greatest length of service as defined in K.A.R. 1-2-46. 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 exists, the appointing authority shall be responsible for determining 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.

(i) 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, 75-2948, 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.)

## Article 16.—TRAVEL REIMBURSEMENT

**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 administrative head of the agency, 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 administrative head of the agency, 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 amount of time 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 terminal expenses shall be allowed at the destination. Air terminal shall be defined as the principal 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.

This regulation shall be effective on and after July 1, 2010. (Authorized by and implementing K.S.A. 2008 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.)

**1-16-15. Reduced allowances.** (a) Except as provided in subsection (d) of K.A.R. 1-16-18, each agency that desires to pay a reduced meals allowance or lodging expense shall obtain the prior approval of the secretary of administration. The agency shall submit a request on a form from the division of accounts and reports.

(b) The following instances of reduced allowances, which have been approved by the secretary of administration, shall not require the use of the approval form:

(1) If the agency conveys the following information to the employee in advance of the travel, the agency may handle subsistence payments as stated to the employee:

(A) The agency is not requiring its employee to undertake the travel in question; and

(B) the agency desires to not pay subsistence or desires to pay at a specified reduced rate.

(2) 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 subsection (d) of K.A.R. 1-16-18.

(3) 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.

(4) If a traveling employee requests a specified reduced subsistence amount, the requested amount may be paid.

(c) Requests for approval of reduced subsistence allowances shall be based on reducing meals allowances and lodging expenses in multiples of a half dollar, and this reduced subsistence shall in all other respects be paid in accordance with applicable regulations and accounting procedures.

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 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.)

**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 set forth in this regulation.

(1) Meals allowance rates, including per-meal allowances, and lodging reimbursement limitation rates established in accordance with K.S.A. 75-3207a, and amendments thereto, shall be published in informational circulars of the division of accounts and reports. Rates shall be established for the following geographic areas or categories of travel:

(A) Travel to in-state destinations;

(B) travel to out-of-state destinations, exclusive of designated out-of-state, high-cost geographic areas;

(C) travel to out-of-state, designated high-cost geographic areas;

(D) travel to out-of-state, special designated high-cost geographic areas;

(E) international travel. As used in this regulation, "international travel" means travel outside the 50 states and the District of Columbia;

(F) travel involving conference lodging that qualifies under K.A.R. 1-16-18a(e); and

(G) other categories as the secretary of administration deems appropriate.

(2) Subject to the approval of the secretary of administration, any city in a state bordering or near Kansas may be designated as a "border city" by the director of accounts and reports. For travel by state personnel to a border city, all meals allowances and lodging expense limitations shall be applied at the appropriate in-state rate established in accordance with K.S.A. 75-3207a, and amendments thereto.

(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 in accordance with K.S.A. 75-3207a, and amendments thereto.

(c) Meals allowance; exceptions.

(1) An exception to the meal allowance for international travel may be made at the option of the agency head or the agency head's designee by claiming actual expenses, subject to any daily limitation established in accordance with K.S.A. 75-3207a, and amendments thereto.

(2) 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 in accordance with K.S.A. 75-3207a, and amendments thereto.

(3)(A) Except as prohibited by paragraph (c)(3)(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 point 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)(3) 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)(3) shall be paid at the applicable per-meal allowance rate established in accordance with 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 in accordance with 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 place'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 in accordance with 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 as pro-

vided in K.S.A. 75-3207a, and amendments thereto.

This regulation shall be effective on and after July 1, 2010. (Authorized by and implementing K.S.A. 2008 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.)

**1-16-18a. Designated high-cost geographic areas.** (a) For official travel to and from, or within, any designated high-cost geographic area identified in subsection (c) 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 and one of these cities is a designated high-cost geographic area, the subsistence allowance rate shall change from the designated high-cost geographic area rate to the regular rate, or from the regular rate to the designated high-cost geographic area rate, subject to and on application of the appropriate meals allowance as determined by the time of arrival at the second destination city.

(c) The boundaries of designated high-cost geographic areas shall include all locations within the corporate limits of the cities listed, unless otherwise specified. The designated high-cost geographic areas shall be as follows:

(1) Out-of-state, designated high-cost geographic areas:

(A) Afton, Oklahoma, including Shangri-La Resort;

(B) Anchorage, Alaska;

(C) Aspen, Colorado, including all locations within Pitkin County;

(D) Atlanta, Georgia;

(E) Atlantic City, New Jersey, including all locations within Atlantic County;

(F) Austin, Texas;

(G) Avon and Beaver Creek, Colorado;

(H) Baltimore, Maryland;

(I) Barrow, Alaska;

(J) Boca Raton, Florida;

(K) Boston, Massachusetts, including all locations within Suffolk County;

(L) Cambridge, Massachusetts;

(M) Carmel, California;

(N) Chicago, Illinois, including all locations within Du Page, Lake, and Cook Counties;

(O) Cleveland, Ohio;

(P) Dallas/Fort Worth, Texas;

(Q) Denver, Colorado;

(R) Edison, New Jersey, including all locations within Middlesex County;

(S) Fairbanks, Alaska;

(T) Fort Myers and Sanibel Island, Florida, including all locations within Lee County;

(U) Hershey, Pennsylvania;

(V) Hilton Head Island, South Carolina, including all locations within Beaufort County;

(W) Honolulu, Oahu, Hawaii, including all locations on the Island of Oahu;

(X) Houston, Texas;

(Y) Indianapolis, Indiana;

(Z) Juneau, Alaska;

(AA) Kaanapali Beach, Maui, Hawaii;

(BB) Kailau-Kona, Hawaii;

(CC) Kaunakakai, Molokai, Hawaii;

(DD) Keystone, Colorado, including all locations within Summitt County;

(EE) King of Prussia, Pennsylvania;

(FF) Kodiak, Alaska;

(GG) Lake Buena Vista, Florida;

(HH) Las Vegas, Nevada;

(II) Los Angeles, California, including all locations within Los Angeles, Kern, Orange, and Ventura Counties;

(JJ) Miami, Florida;

(KK) Minneapolis and St. Paul, Minnesota, including all locations within Hennepin, Ramsey, and Anoka Counties;

(LL) Monterey, California, including all locations within Monterey County;

(MM) Morristown, New Jersey;

(NN) Nashville, Tennessee;

(OO) Newark, New Jersey, including all locations within Bergen, Essex, Hudson, Passaic, and Union Counties;

(PP) New Orleans, Louisiana, including all locations within Jefferson, Orleans, Plaquemines, and St. Bernard Parishes;

(QQ) Newport, Rhode Island, including all locations within Newport County;

(RR) Nome, Alaska;

(SS) Oakland, California, including all locations within Alameda, Contra Costa, and Marin Counties;

(TT) Ocean City, Maryland, including all locations within Worcester County;

(UU) Philadelphia, Pennsylvania, including all locations within Montgomery and Philadelphia Counties;

(VV) Phoenix, Arizona;

(WW) Pittsburgh, Pennsylvania;

(XX) Portland, Oregon;

(YY) Princeton, New Jersey, including all locations within Mercer County;

(ZZ) Salt Lake City, Utah;

(AAA) San Antonio, Texas;

(BBB) San Diego, California, including all locations within San Diego County;

(CCC) San Francisco, California, including all locations within San Francisco County;

(DDD) San Jose, California, including all locations within Santa Clara County;

(EEE) San Mateo, California, including all locations within San Mateo County;

(FFF) Santa Barbara, California, including all locations within Santa Barbara County;

(GGG) Santa Cruz, California, including all locations within Santa Cruz County;

(HHH) Seattle, Washington, including all locations within King County;

(III) South Padre Island, Texas;

(JJJ) Stamford, Connecticut;

(KKK) St. Louis, Missouri;

(LLL) Sun Valley, Idaho, including all locations within Blaine County;

(MMM) Tampa, Florida;

(NNN) Tom's River, New Jersey, including all locations within Ocean County;

(OOO) Tucson, Arizona;

(PPP) Vail, Colorado, including all locations within Eagle County;

(QQQ) Wailea, Maui, Hawaii;

(RRR) White Plains, New York, including all locations within Westchester County; and

(SSS) all areas approved as designated high-cost geographic areas pursuant to subsection (d); and

(2) out-of-state, special designated high-cost geographic areas:

(A) Washington, D.C., including the cities of Alexandria, Fairfax, and Falls Church; the counties of Arlington, Fairfax, and Loudoun in Virginia; and the counties of Montgomery and Prince Georges in Maryland; and

(B) New York, New York, including all locations within the counties of Nassau and Suffolk.

(d) State agencies may request the director of accounts and reports to conduct a study of subsistence costs in any area not identified as a designated high-cost geographic area in subsection (c). The director of accounts and reports may recommend to the secretary of administration that an area be added to the list of designated high-cost geographic areas if the study findings of the area justify this action. If the secretary approves the addition of that area, subsistence payments for travel to the area may be made at the rate for designated high-cost geographic areas.

(e)(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 subsection, 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.

This regulation shall be effective on and after July 1, 2010. (Authorized by and implementing K.S.A. 2008 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.)

**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.)

## 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 renewal 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 3
# State Treasurer

*Articles*

3-3. Linked Deposit Loan Programs.
3-4. Low-Income Family Postsecondary Savings Accounts Incentive Program.

## Article 3.—LINKED DEPOSIT LOAN PROGRAMS

**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.)

**3-4-4. 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 reapply 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

*Articles*


4-1. Agricultural Chemicals.
4-3. Commercial Feeding Stuffs.
4-6. Certificate of Free Sale.
4-7. Milk and Dairy Products.
4-10. Anhydrous Ammonia.
4-13. Pesticides.
4-15. Plants and Plant Products.
4-27. Lodging Establishments.
4-28. Food Safety.


### Article 1.—AGRICULTURAL CHEMICALS

**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.)

**4-1-5. 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.)

**4-1-8.** (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.)

**4-1-11.** (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.)

**4-1-13. 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 registra-

tion 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.)

**4-1-17. 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; implementing 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 3.—COMMERCIAL FEEDING STUFFS

**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 regu-

lation 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 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 reference 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.)

## Article 7.—MILK AND DAIRY PRODUCTS

**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, 1981; 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.)

**4-7-716. 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.)

## 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 con-

struction 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 appurte-

nances 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.)

**4-10-2a 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 backflow 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.)

**4-10-4.** (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 storage 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 appurtances 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 ½ 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.)

**4-10-5a. 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.)

**4-10-10. 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 13.—PESTICIDES

**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 located 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.)

**4-13-9. 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 listed 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.)

**4-13-14. 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.)

**4-13-16. 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.)

**4-13-20. 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 liquid 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.)

**4-13-25b. 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 accommodate 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 compostion 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 specifica-

tions, 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 operator 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.)

**4-13-25*l*. 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.)

**4-13-30. 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.)

**4-13-33. 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.)

**4-13-62. 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.)

## Article 15.—PLANTS AND PLANT PRODUCTS

**4-15-5. Live plant dealer license fee.** The fee for a live plant dealer license shall be $60. (Authorized by K.S.A. 2008 Supp. 2-2126; implementing K.S.A. 2008 Supp. 2-2120; effective Oct. 18, 2002; amended June 5, 2009.)

## 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.** Each of the following terms as used in K.A.R. 4-27-2 through K.A.R. 4-

27-21 shall have the meaning assigned in this regulation. (a) "Bathhouse" means 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" means 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) "Boarding house" has the meaning specified in K.S.A. 36-501, and amendments thereto.

(d) "Egress" means an exit or route leading out of a lodging establishment.

(e) "Extended-stay establishment" means a lodging establishment in which a room is rented or leased to transient guests. Housekeeping functions are not provided on a daily basis.

(f) "Hotel" has the meaning specified in K.S.A. 36-501, and amendments thereto.

(g) "Hot tub" means 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.

(h) "KDA" means Kansas department of agriculture.

(i) "Kitchenette" means a compact kitchen with cooking utensils, tableware, refrigerator, microwave, stove, or sink or any combination of these.

(j) "Licensee" means a person who is responsible for the operation of the lodging establishment and possesses a valid license to operate a lodging establishment.

(k) "Linens" means the cloth items used in the lodging establishment, including sheets, bedspreads, blankets, pillowcases, mattress pads, towels, and washcloths.

(l) "Lodge" means 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.

(m) "Lodging establishment" has the meaning specified in K.S.A. 36-501, and amendments thereto.

(n) "Major renovation" means 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.

(o) "Municipality" has the meaning specified in K.S.A. 36-501, and amendments thereto.

(p) "Person" has the meaning specified in K.S.A. 36-501, and amendments thereto.

(q) "Person in charge" means 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.

(r) "Recreational water facility" and "RWF" 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.

(s) "Regulatory authority" means the secretary of the department of agriculture or the secretary's designee.

(t) "Rooming house" has the meaning specified in K.S.A. 36-501, and amendments thereto.

(u) "Sanitize" means 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.

(v) "Secretary" has the meaning specified in K.S.A. 36-501, and amendments thereto.

(w) "Single-service articles" means items that are designed, constructed, and intended for one-time use and for one person's use, after which the item is 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.

(x) "Spa" means 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. 2008 Supp. 36-506; implementing K.S.A. 2008 Supp. 36-501 and 36-506; effective June 4, 2010.)

**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, RWF, 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 regulatory authority to modify or waive one or more requirements of a regulation if the regulatory authority 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 regulatory authority;

(B) maintain a permanent record of the variance at the lodging establishment; and

(C) maintain and provide to the regulatory authority, upon request, records that demonstrate that the variance is being followed. (Authorized by K.S.A. 2008 Supp. 36-506; implementing K.S.A. 2008 Supp. 36-502; effective June 4, 2010.)

**4-27-4. Food service and food safety.** Each licensee that serves food shall comply with one of the following provisions: (a) Each licensee, if serving food to the general public, shall be required to obtain a food service license in accordance with K.S.A. 36-501 et seq., and amendments thereto, and comply with all applicable standards adopted in K.A.R. 4-28-8 through K.A.R. 4-28-16.

(b) A licensee that provides only complimentary food service to only that establishment's overnight guests shall not be required to purchase a separate food service license. This food service shall meet all applicable standards adopted in K.A.R. 4-28-8 through K.A.R. 4-28-16.

(c) Any licensee of a boarding house who does not have a food service license as specified in K.S.A. 36-501 et seq., and amendments thereto, may serve food only to the overnight guests. The licensee of each boarding house shall comply with all applicable standards adopted in K.A.R. 4-28-8 through K.A.R. 4-28-16. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

**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.

"Imminent health hazard" shall include 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 and safety of guests, employees, and the general public.

(b) Each licensee shall notify the regulatory authority within 12 hours of the discovery of an im-

minent health hazard. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

**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 regulatory authority has reason to believe that defects could be present with regard to the integrity of the structure or electrical system of the lodging establishment, that authority may require the licensee 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 regulatory authority 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 regulatory authority 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 regulatory authority.

(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 regulatory authority.

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 regulatory authority 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 representative, or any other entity approved by the regulatory authority. A 12-month history of test results shall be maintained at the lodging establishment and made available to the regulatory authority 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 regulatory authority. A 12-month history of test results shall be maintained at the lodging establishment and made available to the regulatory authority 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 regulatory authority 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. 2008 Supp. 36-506; effective June 4, 2010.)

**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 regulatory authority, 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 regulatory authority.

(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) The requirements of one of the following paragraphs shall be met:

(1) No coffeemaker or coffeepot shall be located within a toilet room. Each coffeepot shall be rinsed before each new guest.

(2) Each coffeepot located within a toilet room 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 devices 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 regulatory authority 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 (PCO).

(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. 2008 Supp. 36-506; effective June 4, 2010.)

**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 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 regulatory authority with documentation of a time and temperature relationship 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. 2008 Supp. 36-506; effective June 4, 2010.)

**4-27-11. Housekeeping and laundry facilities; maintenance supplies and equipment.** Each licensee shall ensure that all housekeeping 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 regulatory authority.

(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. 2008 Supp. 36-506; effective June 4, 2010.)

**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 regulatory authority 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. 2008 Supp. 36-506; effective June 4, 2010.)

**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 maintenance or shall be designated as damaged 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 em-

ployee 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 regulatory authority.

(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 regulatory authority.

(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 vermin-proofed and kept in a vermin-proof 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 (PCO).

(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. 2008 Supp. 36-506; effective June 4, 2010.)

**4-27-16. Swimming pools, RWFs, and hot tubs.** (a) General requirements. Each licensee shall ensure that all swimming pools, RWFs, 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 regulatory authority, 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 regulatory authority 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 regulatory authority.

(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 inground 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 regulatory authority. 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 regulatory authority, 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. 2008 Supp. 36-506; effective June 4, 2010.)

**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 regulatory authority shall be used as a potable water supply.

(c)(1) Each nonpublic water supply system shall be constructed, maintained, and operated as spec-

ified 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 quality 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 regulatory authority 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 regulatory authority 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 regulatory authority. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

**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 regulatory authority 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. 2008 Supp. 36-506; effective June 4, 2010.)

**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 with a means for injection of pesticides, herbicides, or other chemicals, and pumped or repressurized 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 regulatory authority 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 regulatory authority 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. 2008 Supp. 36-506; effective June 4, 2010.)

**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 regulatory authority. 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. 2008 Supp. 36-506; effective June 4, 2010.)

**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. Definitions.** (a) "Bakery product" shall mean bread, rolls, cake, pies, cookies, and all

similar goods used or intended to be used for human consumption.

(b) "Food" shall have either of the following meanings:

(1) The meaning specified in K.S.A. 36-501, and amendments thereto, when relating to the licensing, inspection, and regulation of the following:

(A) Mobile retail ice cream vendors;

(B) food service establishments located in retail food stores; and

(C) food vending machines, food vending machine companies, and food vending machine dealers; or

(2) the meaning specified in K.S.A. 65-688, and amendments thereto, when relating to the licensing, inspection, and regulation of retail food stores and food processing plants.

(c) "Food processing plant" shall have the meaning specified in K.S.A. 65-688, and amendments thereto.

(d) "Food service establishment located in a retail food store" shall mean a "food service establishment," as defined in K.S.A. 36-501 and amendments thereto, that is located in a "retail food store," as defined in subsection (j).

(e) "Food vending machine" shall have the meaning specified in K.S.A. 36-501, and amendments thereto.

(f) "Food vending machine company" shall have the meaning specified in K.S.A. 36-501, and amendments thereto.

(g) "Food vending machine dealer" shall have the meaning specified in K.S.A. 36-501, and amendments thereto.

(h) "Frozen food locker plant" shall mean any plant that provides lockers, cabinets, boxes, baskets, or other receptacles kept constantly at the temperatures specified in K.A.R. 4-28-25 for the storage of food products.

(i) "Mobile retail ice cream vendor" shall mean a vehicle-mounted prepackaged frozen dessert facility designed to be readily movable.

(j) "Retail food store" shall have the meaning specified in K.S.A. 65-688, and amendments thereto.

(k) "Secretary" shall mean the secretary of agriculture or the secretary's authorized representative. (Authorized by K.S.A. 2008 Supp. 65-673; implementing K.S.A. 2008 Supp. 65-673 and 74-581; effective, T-4-11-5-04, Nov. 5, 2004; effective Feb. 18, 2005; amended June 4, 2010.)

**4-28-2. Adoption by reference.** The provisions of 21 C.F.R. Parts 100 through 169, excluding 21 C.F.R. 100.1 and 100.2, as in effect on April 1, 2008, are hereby adopted by reference and shall apply to food processing plants. (Authorized by K.S.A. 2008 Supp. 65-673; implementing K.S.A. 2008 Supp. 65-673 and 74-581; effective, T-4-11-5-04, Nov. 5, 2004; effective Feb. 18, 2005; amended June 4, 2010.)

**4-28-7. Fees; food service establishment.** (a) Each person operating or intending to operate a food service establishment shall submit an application on a form supplied by the department with the following fees:

(1) The application fee shall be $200.

(2) Except as specified in paragraph (3) of this subsection, the license fee shall be $200.

(3) The license fee shall be $130 for the following types of food service establishments:

(A) Each senior satellite site that serves the elderly, with no on-site food preparation; and

(B) each school satellite site that serves children, with no on-site food preparation.

(b) Each license shall expire on December 31 in the year for which the license is issued.

(c) Each license shall require annual renewal by the licensee's submission of an application for renewal, on a form supplied by the department, and the license fee specified in paragraph (a)(2), (a)(3)(A), or (a)(3)(B), as applicable.

(d) License renewal applications received by the department after the following January 31 shall not be processed. For each such application, the applicant shall submit an application for license with the applicable license fee and the license application fee. (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.)

**4-28-8. Definitions.** Chapter one of the 2005 "food code," published by the U.S. department of health and human services, is adopted by reference, subject to the following additions, deletions, and substitutions: (a)(1) Wherever the word "PERMIT" appears in this chapter, the word shall be deleted and shall be replaced by "LICENSE," and wherever the phrase "PERMIT HOLDER" appears in this chapter, the phrase shall be deleted and shall be replaced by the word "LICENSEE."

(2) Wherever the parenthetical phrase "(Time/

Temperature Control for Safety Food)" appears in this chapter, the phrase shall be deleted.

(3) In subpart 1-201.10(B) under "additive," the definition of "food additive" shall be deleted and shall be replaced by the definition in K.S.A. 65-656, and amendments thereto.

(4) In subpart 1-201.10(B) under "additive," the definition of "color additive" shall be deleted and shall be replaced by the definition in K.S.A. 65-656, and amendments thereto.

(5) In subpart 1-201.10(B), the definition of "adulterated" shall be deleted and shall be replaced by the definition of "food deemed adulterated" in K.S.A. 65-664, and amendments thereto.

(6) In the definition of "$a_w$," the symbol "$A_w$" at the end of the definition shall be changed to read "$a_w$."

(7) The following definition of "commissary" shall be added after the definition of "comminuted":

"Commissary" means a catering establishment, restaurant, or similar place that is necessary for the safe operation of a MOBILE FOOD ESTABLISHMENT or PUSHCART in which food, containers, or supplies are kept, handled, prepared, packaged, or stored.

(8) In subpart 1-201.10(B) in the definition of "disclosure," the words "for consumers" shall be added after the word "identifies."

(9) In subpart 1-201.10(B), the following changes shall be made:

(A) Under "food establishment" in paragraph (2)(a), the word "and" shall be deleted.

(B) Under "food establishment" in paragraph (2)(b), the period after "FOOD" shall be deleted and shall be replaced by a semicolon.

(C) Under "food establishment" in paragraph (2), the following paragraphs shall be added after paragraph (b):

"(c) A 'food service establishment' as defined in K.S.A. 36-501, and amendments thereto;

"(d) A 'food vending machine' as defined in K.S.A. 36-501, and amendments thereto; and

"(e) A 'retail food store' as defined in K.S.A. 65-688, and amendments thereto."

(D) Under "food establishment" in paragraph (3), subparagraph (a) shall be deleted.

(E) Under "food establishment" in paragraph (3), subparagraph (b) shall be redesignated as (a).

(F) Under "food establishment" in paragraph (3), subparagraph (c) shall be redesignated as (b).

(G) Under "food establishment" in paragraph (3), subparagraph (d) shall be redesignated as (c).

(H) Under "food establishment" in paragraph (3), subparagraph (e) shall be redesignated as (d).

(I) Under "food establishment" in paragraph (3), subparagraph (f) shall be redesignated as (e). Insert the word "only" after the words "offers FOOD," replace the number "6 " with "4," and delete the words "the number of guests served does not exceed 18."

(J) Under "food establishment" paragraph (3), subparagraph (g) shall be redesignated as (f).

(10) In subpart 1-201.10(B), the definition of "food processing plant" shall be deleted and shall be replaced by the definition of "food processing plant" in K.S.A. 65-688, and amendments thereto.

(11) The following definition of "mobile food establishment" shall be added after the definition of "mg/L":

"Mobile food establishment" means a self-contained FOOD ESTABLISHMENT that is mounted on axles and wheels, is designed to be readily moveable, and remains at one physical address for not more than 17 consecutive days.

(12) In subpart 1-201.10(B), the definition of "person" shall be deleted and shall be replaced by the definition of "person" in K.S.A. 36-501(j), and amendments thereto.

(13) The following definition of "pushcart" shall be added after the definition of "public water supply system":

"Pushcart" means a manually propelled vehicle limited to serving non-potentially hazardous foods or POTENTIALLY HAZARDOUS FOODS that require only limited preparation or prepackaged food maintained at proper temperatures.

(14) In subpart 1-201.10(B), the definition of "person in charge" shall be deleted and shall be replaced by the following: " 'Person in charge' means at the time of inspection, any individual or employee present in a FOOD ESTABLISHMENT 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."

(15) In subpart 1-201.10(B), in the definition of "potentially hazardous food," the following changes shall be made:

(A) In paragraph (1), the parenthetical abbreviation "(TCS)" shall be deleted.

(B) In paragraph (2), the designation of paragraph (a) shall be deleted, and this paragraph shall become part of paragraph (2). The words "raw cut tomatoes" shall be added after the words "cut melons."

(C) Paragraph (b) shall be deleted, including tables A and B.

(D) The text in paragraph (3)(c) shall be deleted and replaced with the following:

"A FOOD with an $a_w$ value of 0.85 or less;".

(E) The text in paragraph (d) and all of paragraphs (d) (i), (ii), and (iii) shall be deleted and replaced with the following: "A FOOD with a pH level of 4.6 or below when measured at 24°C (75°F)."

(16) In subpart 1-201.10(B), the definition of "public water system" shall be deleted and shall be replaced by the definition of "public water supply system" in K.S.A. 65-162a, and amendments thereto.

(17) In subpart 1-201.10(B) under "ready-to-eat food" in paragraph (2) (b), the words "that are washed as specified under § 3-302.15" shall be deleted.

(18) In subpart 1-201.10(B), the definition of "refuse" shall be deleted and shall be replaced by the definition of "solid waste" in K.S.A. 65-3402, and amendments thereto.

(19) In subpart 1-201.10(B) in the definition of "regulatory authority," the word "local" and the words "or federal" shall be deleted.

(20) In subpart 1-201.10(B), the definition of "sewage" shall be deleted and shall be replaced by the definition of "sewage" in K.S.A. 65-164, and amendments thereto.

(21) In subpart 1-201.10(B), the definition of "vending machine" shall be deleted and shall be replaced by the definition of "food vending machine" in K.S.A. 36-501, and amendments thereto.

(22) In subpart 1-201.10 in the definition of "vending machine location," the word "Food" shall be inserted before the word "Vending."

(b) As used in this article, the superscript "*" that follows the title of a section shall designate the requirements in that section as being of critical importance, unless otherwise specified within that section as follows:

(1) The superscript "N" shall designate a requirement as being of noncritical importance.

(2) The superscript "S" may designate a requirement as being of noncritical importance. The term "swing" is used to describe this type of requirement. (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.)

**4-28-11. Equipment, utensils, and linens.** Chapter four of the 2005 "food code," published by the U.S. department of health and human services, is adopted by reference, with the following additions, deletions, and substitutions: (a) Wherever the phrase "PERMIT HOLDER" appears in this chapter, the phrase shall be deleted and replaced by the word "LICENSEE."

(b) Wherever the parenthetical phrase "(TIME/TEMPERATURE CONTROL FOR SAFETY FOOD)" appears in this chapter, the phrase shall be deleted.

(c)(1) In subpart 4-204.14, the word "Food" shall be inserted before the word "Vending" in the title.

(2) In subpart 4-204.14, the word "FOOD" shall be inserted before the word "VENDING."

(d) In subpart 4-204.16, the words "for human consumption" shall be added to the end of the sentence.

(e)(1) In subpart 4-204.19, the word "Food" shall be inserted before the word "Vending" in the title.

(2) In subpart 4-204.19, the word "FOOD" shall be inserted before the word "VENDING."

(f) In subpart 4-204.110(B)(1), the phrase "as specified under § 8-103.11" shall be deleted and shall be replaced by "by the regulatory authority."

(g)(1) In subpart 4-204.111, the word "Food" shall be inserted before the word "Vending" in the title.

(2) In subpart 4-204.111(B)(1) and (2), the word "FOOD" shall be inserted before the word "VENDING."

(h)(1) In subpart 4-204.121, the word "Food" shall be inserted before the word "Vending" in the title.

(2) In subpart 4-204.121(A) and (B), the word "FOOD" shall be inserted before the word "VENDING."

(i)(1) In subpart 4-204.123, the word "Food" shall be inserted before the word "Vending" in the title.

(2) In subpart 4-204.123(A) and (B), the word "FOOD" shall be inserted before the word "VENDING."

(j) In subpart 4-301.11, the symbol "*" shall be added after the word "Capacities." in the title, and an "s" shall be added after the phrase "Chapter 3."

(k)(1) In subpart 4-301.12, the title "Manual Warewashing, Sink Compartment Requirements." shall be deleted and replaced with "Warewashing Equipment Requirements.*"

(2) In subpart 4-301.12(A), the phrase "and ¶ (F)" shall be added before the words "of this section."

(3) In subpart 4-301.12(D), the words "by the regulatory authority" shall be added after the word "APPROVED."

(4) In subpart 4-301.12, the following paragraph shall be added after paragraph (E):

"(F) Manual warewashing sinks are not required if a mechanical warewashing machine is properly used, operated, and maintained and the machine is large enough for washing, rinsing and SANITIZING the largest EQUIPMENT and UTENSILS."

(l)(1) In subpart 4-501.14, the word "raw" shall be deleted before the word "FOODS."

(2) In subpart 4-501.14, the words "and SANITIZED" shall be added after the word "cleaned."

(m) In subpart 4-603.16(A)(1), the word "or" shall be added at the end of the paragraph. (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.)

**4-28-12. Water, plumbing, and waste.** Chapter five of the 2005 "food code," published by the U.S. department of health and human services, is adopted by reference, with the following additions, deletions, and substitutions: (a) Wherever the phrase "PUBLIC WATER SYSTEM" appears in this chapter, the word "SUPPLY" shall be inserted before the word "SYSTEM."

(b) In subpart 5-103.12, the symbol "*" shall be added after the title "Pressure."

(c) In subpart 5-202.12(C), the phrase "15 seconds" shall be deleted and shall be replaced by the phrase "20 seconds."

(d)(1) In subpart 5-203.11(A), the phrase "¶¶ (B) and (C)" shall be deleted and replaced by "¶ (B)."

(2) Subpart 5-203.11(C) shall be deleted.

(e) In subpart 5-203.12, the following changes shall be made:

(1) The words "and Urinals" in the title shall be deleted.

(2) "(A)" shall be inserted before the first sentence, and the second sentence shall be deleted.

(3) The following sentence shall be inserted after the first sentence: "(B) EMPLOYEES and CONSUMERS may use the same toilet facilities provided that CONSUMERS have access to them without entering the FOOD preparation, FOOD storage, or WAREWASHING or UTENSIL storage areas of the FOOD ESTABLISHMENT."

(f) In subpart 5-401.11(A), the words "with a minimum capacity of a 20-gallon tank" shall be added after the word "tank."

(g)(1) In subpart 5-402.11(A), the phrase "¶¶ (B), (C), and (D)" shall be deleted and replaced by "¶ (B)."

(2) In subpart 5-402.11(A), the words ", portable EQUIPMENT, or UTENSILS are" shall be deleted and replaced by "is."

(3) Subparts 5-402.11(C) and (D) shall be deleted.

(h)(1) In subpart 5-501.14, the word "Food" shall be inserted before the phrase "Vending Machines" in the title.

(2) In subpart 5-501.14, "FOOD" shall be inserted before the word "VENDING." (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.)

**4-28-18. Guaranty; definition.** (a) A guaranty of undertaking referred to in K.S.A. 65-659(b), and amendments thereto, may be either of the following:

(1) Limited to a specific shipment or other delivery of an article, in which case the guaranty of undertaking may be a part of or attached to the invoice or bill of sale covering the shipment or delivery; or

(2) general and continuing, in which case the guaranty of undertaking shall apply to any shipment or other delivery of an article. The guaranty of undertaking shall be deemed to be effective from the date the article was shipped or delivered by the person giving the guaranty of undertaking.

(b) Each limited guaranty of undertaking shall contain the following information:

(1) The name of the person giving the guaranty of undertaking, followed by "hereby guarantees that no article listed herein is adulterated or misbranded within the meaning of the Kansas food, drug and cosmetic act, K.S.A. 65-619 et seq., and amendments thereto";

(2) the name of the article or articles for which the guaranty of undertaking is issued;

(3) the signature of the person giving the guaranty of undertaking;

(4) the date the guaranty of undertaking was signed; and

(5) the street address of the person giving the guaranty of undertaking.

(c) Each general and continuing form of guaranty of undertaking shall contain the following information:

(1) The name and street address of the person giving the guaranty of undertaking;

(2) the name and street address of the person to whom the guaranty of undertaking is given;

(3) the date the guaranty of undertaking is issued;

(4) the name of the article or articles for which the guaranty of undertaking is issued;

(5) a statement that the article comprising each shipment or other delivery made by the person giving the guaranty of undertaking is guaranteed, on the date of the shipment or delivery, not to be adulterated or misbranded within the meaning of the Kansas food, drug and cosmetic act, K.S.A. 65-619 et seq. and amendments thereto; and

(6) the signature of the person giving the guaranty of undertaking.

(d) The application of a guaranty of undertaking referred to in K.S.A. 65-659 (b), and amendments thereto, to any shipment or other delivery of an article shall expire if the article, after shipment or delivery by the person who gave the guaranty of undertaking, becomes adulterated or misbranded within the meaning of the Kansas food, drug and cosmetic act, K.S.A 65-619 et seq. and amendments thereto.

(e) Each guaranty of undertaking signed by two or more persons shall state that the persons severally guarantee the article to which the guaranty of undertaking applies.

(f) No representation or suggestion that an article is guaranteed under the Kansas food, drug and cosmetic act, K.S.A. 65-619 et seq. and amendments thereto, shall be made in that article's labeling. (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.)

**4-28-19. Definitions and standards of identity for miscellaneous beef products.** (a) "Cheek meat" shall mean the trimmed cheeks of the carcass of cattle.

(b)(1) "Chopped beef" and "ground beef" shall mean chopped or ground, fresh or frozen skeletal muscle of cattle without the addition of fat and with or without seasoning.

(2) Chopped beef and ground beef shall not contain added beef fat, water, binders, extenders, hearts, tongues, or muscle of the esophagus.

(3) Chopped beef and ground beef shall not contain more than 30% fat by laboratory analysis.

(4) If cheek meat is used in the preparation of chopped beef or ground beef, the amount of cheek meat shall be limited to 25%. If the amount of cheek meat exceeds the natural proportion of cheek meat present on the whole carcass, its presence shall be declared on the label in the ingredient statement required by K.S.A. 65-665 (i), and amendments thereto, if any, and otherwise contiguous to the name of the product.

(c)(1) "Hamburger" shall mean chopped or ground, fresh or frozen skeletal muscle of cattle, with or without the addition of beef fat or seasoning.

(2) Hamburger shall not contain added beef fat, water, binders, extenders, hearts, tongues, or muscle of the esophagus.

(3) Hamburger shall not contain more than 30% fat by laboratory analysis.

(4) If cheek meat is used in the preparation of hamburger, the amount of cheek meat shall be limited to 25%. If the amount of cheek meat exceeds the natural proportion of cheek meat present on the whole carcass, its presence shall be declared on the label in the ingredient statement required by K.S.A. 65-665 (i), and amendments thereto, if any, and otherwise contiguous to the name of the product.

(d) "Beef pattie" shall meet the requirements of K.A.R. 4-16-1c. A beef pattie may be breaded in accordance with K.A.R. 4-28-22, in which case the product shall be labeled "breaded beef pattie," "breaded chopped beef pattie," "breaded ground beef pattie," or "breaded hamburger pattie" and the breading ingredients shall be shown on the label.

(e) "Steak" shall mean a single slice of fresh or frozen, lean skeletal muscle of cattle with naturally accompanying fat and, in certain cuts, including T-bone, round, club, and rib, the naturally accompanying bone. The term "steak" shall not be used in describing any meat product or meat food product that is a beef pattie in composition or appearance.

(f)(1) "Fabricated steak" shall meet the requirements of K.A.R. 4-16-1c.

(2) If cheek meat is used in the preparation of fabricated steak, the amount of cheek meat shall be limited to 25%. If the amount of cheek meat exceeds the natural proportion of cheek meat

present on the whole carcass, its presence shall be declared on the label in the ingredient statement required by K.S.A. 65-665 (i), and amendments thereto, if any, and otherwise contiguous to the name of the product.

(3) This product may be breaded in accordance with K.A.R. 4-28-22, in which case the word "breaded" shall immediately precede the name of the product in type of uniform size and prominence and the breading ingredients shall be shown on the label.

(g) "Partially defatted beef fatty tissue" shall mean a beef by-product derived from the low-temperature rendering, not exceeding 120°F, of fresh beef fatty tissue. This product shall have a pinkish color and a fresh odor and appearance. (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.)

**4-28-20. Definitions and standards of identity for miscellaneous meat food products.** (a)(1) Meat food patties with additives. "Meat food patties with additives" shall contain specific meats, including beef, veal, lamb, pork, poultry, or various combinations of these meats, in their formulation. Meat food patties with additives shall not contain more than 30% fat by laboratory analysis.

(2) If water is added to facilitate chopping and mixing the ingredients, the amount of water shall be limited to 10% of the formulation ingredients specified in this subsection.

(3)(A) If one or more of the following binders or extenders are used, the total amount of binders or extenders shall be limited to 3½% of the total ingredients in the pattie: dried milk, nonfat dry milk, calcium reduced dried skim milk, cereal, vegetable starch, starchy vegetable flour, soy flour, and soy protein concentrate.

(B) If isolated soy protein is used as a binder or extender, the total amount shall be limited to 2% of the total ingredients in the pattie.

(4) Meat food patties with additives may contain seasoning, partially defatted beef fatty tissues, or partially defatted pork fatty tissues.

(5) The product's finished characteristics shall be essentially those of a meat pattie. All ingredients shall be listed on required labeling contiguous to the product name.

(b) Nonspecific meat food patties. Each pattie prepared with binders or extenders not specified in subsection (a), or containing binders or extenders in excess of 3½%, shall contain at least 70% meat in its formulation and no more than 30% fat by laboratory analysis. All ingredients shall be listed on required labeling contiguous to the product name.

(c) Cooked patties. If patties are cooked or partially cooked, the composition of the raw mix from which the patties were prepared shall be used in determining whether the patties meet the requirements of this regulation. (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.)

**4-28-21. Definitions and standards of identity for miscellaneous pork products.** (a) "Partially defatted pork fatty tissue" shall mean a pork by-product derived from the low-temperature rendering, not exceeding 120°F, of fresh pork fatty tissue. This product shall have a pinkish color and a fresh odor and appearance.

(b)(1) "Pork tenderloin tender" shall be prepared from fresh psoas muscle found on each side of the vertebral column of hogs. This product may be labeled "pork tenderloin" or "pork tender."

(2) This product may be breaded in accordance with K.A.R. 4-28-22, in which case the product shall be labeled "breaded pork tenderloin" or "breaded pork tender" and the breading ingredients shall be shown on the label. If the product is breaded, the product shall be treated for control of trichinae.

(c) "Pork pattie" shall consist of chopped or ground skeletal muscle of hogs, either fresh or frozen, and shall not contain added water, binders, extenders, or more than 40% actual fat. The product shall be labeled "pork pattie" and may be breaded in accordance with K.A.R. 4-28-22, in which case the product shall be labeled "breaded pork pattie" and the breading ingredients shall be shown on the label. If the product is breaded, the product shall be treated for control of trichinae.

(d) "Pork steak" shall mean a single slice of fresh or frozen, lean skeletal muscle of hogs with the naturally accompanying fat and, in certain cuts, the naturally accompanying bone. The term "steak" shall not be used in describing any meat product or meat food product that is essentially a pork pattie in composition or appearance.

(e) "Pork cutlet" shall consist of thin slices of pork meat flattened and knitted together in cutlet-size products by means of cubing, frenching machines, or hand pounding with cubing hammers.

The product shall be labeled with the word "cutlet" in type of uniform size and prominence. A pork cutlet may be identified as sliced pork meat if the product name on the label clearly states the specific part of the carcass from which the meat in the product is derived, which may include "pork loin cutlets." (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.)

**4-28-22. Breaded products.** (a) Unless otherwise specified in this article, the amount of batter and breading used as a coating for any breaded product shall not exceed 30% of the weight of the finished breaded product. The word "breaded" shall be included in the product name.

(b) Each "fritter" shall contain at least 35% raw meat or poultry in the total formulation. Any fritter may contain not more than 65% batter and breading. The word "fritter" shall be included in the product name. If the word "breaded" is included in the product name, the batter and breading shall be limited to 30%. (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.)

**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, and fresh poultry shall be prohibited. Frozen meat and meat products, seafood and fish, and poultry shall be maintained frozen and meet the requirements of K.A.R. 4-28-8 through 4-28-16.

(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 in glass cases or otherwise enclosed to protect the products from flies, dust, and other contamination. (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.)

**4-28-24. Rooms where food is handled.** (a) No room where food is handled shall be used for any purposes other than those directly connected with the preparing, baking, storage, and handling of food. No room where food is handled shall be used as a washing, sleeping, or living room. Each room where food is handled shall, at all times, be separated and closed from the washing, living, and sleeping rooms.

(b) One or more rooms separate from the room where food is handled shall be provided for the changing and hanging of wearing apparel. Each room used for the changing and hanging of wearing apparel shall be kept clean at all times. (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.)

**4-28-25. Temperature requirements.** (a) The refrigeration system for each frozen food locker plant shall be equipped to maintain uniform temperatures. This subsection shall not apply to locker plants having constant temperature supervision. Temperatures shall be maintained in the respective rooms as follows:

(1) In each chill or aging room, temperatures of 37°F or lower with a tolerance of 10° for a reasonable time after fresh food is placed in the chill room;

(2) in each sharp-freeze room and sharp-freeze compartments, temperatures of −10°F or lower in rooms where still-air cooling is employed and temperatures of 0° or lower in rooms where forced air circulation is employed, with a tolerance of 10° for either type of installation for a reasonable time after putting fresh food into the freezer; and

(3) in each locker room, temperatures of 0°F or lower.

(b) Each chill room, sharp-freeze room, and locker room shall be equipped with an accurate temperature-reading device. (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.)

**4-28-26. Means for cleansing and sterilizing tools and equipment.** Each frozen food locker plant shall be provided with adequate means for washing and sterilizing tools and other equipment. An adequate supply of potable water shall be provided. If hot running water is not available, a means of heating water shall be provided. (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.)

**4-28-27. Toilet and handwashing facilities.** (a) The owner or operator of each frozen food locker plant shall provide the following at the plant:

(1) At least one working toilet;

(2) handwashing sinks located for convenient use by employees in food handling and warewashing areas and in or immediately adjacent to the toilet rooms; and

(3) clean, individual, disposable towels at each handwashing sink.

(b) Each person handling food products in the frozen food locker plant shall be required to wash that person's hands after using the toilet. (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.)

**4-28-28. Inspection by plant operator.** All food products shall be subject to the inspection of the operator of the frozen food locker plant. All meat products showing any sign of disease or decomposition shall be rejected for storage. All vegetable or fruit products showing any sign of decomposition or infestation of insects, rodents, and other pests shall be rejected for storage. (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.)

**4-28-29. Products to be frozen before storage.** All food products shall be completely frozen before being stored in lockers. (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.)

**4-28-30. Place for processing.** If the owner or operator of a frozen food locker plant processes food at the plant, all processing shall be done in an enclosed or semienclosed place that is used only for processing foods and is not accessible to persons who are not engaged in the processing of foods for storage at the frozen food locker plant. (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.)

## Agency 5

# Kansas Department of Agriculture—Division of Water Resources

*Articles*


5-1. Definitions.
5-3. Appropriation Rights.
5-4. Distribution of Water Between Users.
5-7. Abandonment and Termination.
5-14. Enforcement and Appeals.
5-16. Flex Account.
5-17. Water Banking.
5-20. Intensive Groundwater Use Control Area.
5-21. Western Kansas Groundwater Management District No. 1.
5-22. Equus Beds Groundwater Management District No. 2.
5-25. Big Bend Groundwater Management District No. 5.


### Article 1.—DEFINITIONS

**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.)

**5-1-9. 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; implementing K.S.A. 82a-706a and K.S.A. 82a-706c; effective Sept. 22, 2000; amended Oct. 24, 2003; amended May 21, 2010.)

## Article 3.—APPROPRIATION RIGHTS

**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.)

**5-3-23. 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 approvable 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 an-

nual 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.)

## 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 inves-

tigation, 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.)

## Article 7.—ABANDONMENT AND TERMINATION

**5-7-1. Due and sufficient cause for nonuse.** (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; 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 standby 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.

(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. 2009 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.)

**5-7-4. Water rights conservation program.** (a) Applications for enrollment in the water rights conservation program (WRCP) shall not be accepted after December 31, 2009. Applications received on or before December 31, 2009, shall be considered for enrollment in the program. Enrollment in 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, 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) In an area that is closed to new appropriations of water, except for temporary permits, term permits, and domestic use; or

(B) in 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 a formally 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; implementing K.S.A. 82a-706, K.S.A. 82a-713, K.S.A. 2008 Supp. 82a-714, as amended by L. 2009, Ch. 51, § 4, and K.S.A. 2008 Supp. 82a-718; effective July 1, 1994; amended Sept. 22, 2000; amended Dec. 28, 2009.)

## Article 14.—ENFORCEMENT AND APPEALS

**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 termination 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 presiding 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 prehearing order or limited grant of intervention.

(1) Unless otherwise limited by this regulation or the presiding officer, each party and each intervener 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 de-

termines 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 nonuse 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 requestor'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 record 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.)

## Article 16.—FLEX ACCOUNT

**5-16-1. Definitions.** As used in this article, in the Kansas water appropriation act, and by the

chief engineer in the administration of the Kansas water appropriation act, unless the context clearly requires otherwise, the following words and phrases shall have the meanings specified in this regulation. (a) "Base amount" and "BA" mean the quantity of water deposited in a flex account.

(b) "Base average usage factor" and "BAUF" mean the percentage of the "base average usage," as this term is defined in K.S.A. 82a-736 and amendments thereto, that is multiplied by five as a part of the calculations specified in K.A.R. 5-16-5 to determine the quantity of water that may be deposited into a flex account. The BAUF shall not exceed the maximum of 90% established by K.S.A. 82a-736, and amendments thereto.

(c) "Base water right" means a vested or certified water right or rights for which the owner applies to the chief engineer to establish a flex account pursuant to K.S.A. 82a-736, and amendments thereto.

(d) "BAU" means the "base average usage" as defined in K.S.A. 82a-736, and amendments thereto.

(e) "Good standing," only as that term is used in K.S.A. 82a-736 and amendments thereto, in reference to base water rights, means a base water right that meets the following conditions:

(1) Has been lawfully exercised within the period specified in K.A.R. 5-16-5;

(2) has had all required water use reports filed and any civil fines assessed for failure to timely file a complete and accurate water use report paid; and

(3) has had no period of nonuse with a duration of five or more consecutive years since January 1, 1990, except for enrollment in the water right conservation program pursuant to K.A.R. 5-7-4 or L. 2011, ch. 89, sec. 25 and amendments thereto, enrollment in the federal conservation reserve program, or enrollment in another multiyear federal or state conservation program.

(f) "Significant water conservation measures" means actual physical changes in a water distribution system or management practices that improve water use efficiency, 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 significant reduction in the number of irrigated acres.

(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.)

**5-16-3. Establishing a flex account.** (a) A flex account shall be established by filing an application for a flex account and a term permit on a form prescribed by the chief engineer. Each application shall meet the following requirements:

(1) Show the location of all wells located within one-half mile of the proposed point of diversion and the names, addresses, and telephone numbers of the owners of those wells. 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 flex account. Each application shall be accompanied by the filing fee specified in K.A.R. 5-16-2;

(2) be date-stamped showing the date the application was filed with the chief engineer;

(3) indicate the five consecutive years that are to be designated as the flex account period; and

(4) indicate whether the flex account period will commence with the year in which the application is filed or with the next year after the year in which the application is filed.

(b) Before any application to establish a 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 a duly authorized agent of an owner of the water right.

(c) Before the flex account can be established or the term permit approved, all of the water rights owners, or a duly 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 flex account and apply for a term permit may be filed in either of 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 for a single type 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 flex account shall not be established and the term permit to exercise the 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. 2010 Supp. 82a-736, as amended by L. 2011, ch. 89, sec. 28; effective Oct. 11, 2002; amended, T-5-8-29-11, Aug. 29, 2011; amended Dec. 16, 2011.)

**5-16-5. Maximum annual quantity of water authorized by term permit.** (a) Except as specified in subsections (b) through (e), the maximum quantity of water deposited in a flex account and authorized to be diverted in five consecutive calendar years under the authority of a term permit shall be determined in accordance with K.S.A. 82a-736, and amendments thereto, by means of performing the following calculations:

(1) Add the quantity of water lawfully used under the base water right or rights each year during the period 2000 through 2009. This sum is the total quantity of water;

(2) divide that total quantity of water by 10;

(3) multiply that resulting quantity in paragraph (a)(2) by the BAUF;

(4) multiply that resulting quantity in paragraph (a)(3) by five; and

(5) if the application required by K.A.R. 5-16-3 was filed after November 1 of the year designated as the first year of the flex account period, subtract the quantity of water used under the base water right during the year in which the application was filed from the resulting quantity in paragraph (a)(4).

(b) If significant water conservation measures were implemented under the base water rights at any time during the period of calendar years 2000 through 2009, the average annual quantity of water actually used may be calculated using the five consecutive calendar years immediately preceding the implementation of significant water conservation measures, but these five calendar years shall not begin before calendar year 1995. The five-year allocation under the term permit shall be determined by performing the following calculations:

(1) Add the quantity of water lawfully used each year under the base water right or rights for the five consecutive calendar years. This sum is the total quantity of water;

(2) divide that total quantity of water by five;

(3) multiply that resulting quantity in paragraph (b)(2) by the BAUF;

(4) multiply that resulting quantity in paragraph (b)(3) by five; and

(5) if the application required by K.A.R. 5-16-3 was filed after November 1 of the year designated as the first year of the flex account period, subtract the quantity of water used under the base water right during the year in which the application was filed from the resulting quantity in paragraph (b)(4).

(c) If water use records for a base water right are inadequate to accurately determine actual water use during any calendar year during the period used to determine the base average usage, then that year shall be counted as having no water use.

(d) No flex account shall be allowed if the 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.

(e)(1) If water was authorized to be diverted for less than the entire period used to determine the base average usage, the five-year allocation shall be determined by means of these calculations:

(A) Add the quantity of water lawfully used each year under the base water right or rights for the entire period used. This sum is the base average usage;

(B) divide the base average usage by the number of years, or parts thereof, that water was authorized to be diverted by the chief engineer;

(C) multiply that resulting quantity in paragraph (e)(2) by the BAUF;

(D) multiply that resulting quantity in paragraph (e)(3) by five; and

(E) if the application required by K.A.R. 5-16-3 was filed after November 1 of the year designated as the first year of the flex account period, subtract the quantity of water used under the base water right during the year in which the application was filed from the resulting quantity in paragraph (e)(4).

(2) Water rights that authorized use of water for less than two calendar years during the period used to determine the base average usage shall not be eligible for a flex account. (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.)

## Article 17.—WATER BANKING

**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.)

## 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 reason-

able 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

**5-21-4. 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:

$$Q = \frac{AR}{12}$$

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 al-

lowed 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.)

## Article 22.—EQUUS BEDS GROUNDWATER MANAGEMENT DISTRICT NO. 2

**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.)

**5-22-4d. 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.)

**5-22-7. 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 $Qa = T/N$ where:

(A) Qa 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, K is equal to 0.5 feet per year. In McPherson county, K is a constant equaling 0.25 feet per year. K is calculated by multiplying the recharge percentage, which is 10 percent in McPherson county and 20 percent for the rest of the district, times the average annual precipitation of 2.5 feet per year.

(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; and

(G) the application meets the requirements of all other applicable regulations in effect when the application is filed;

(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; and

(B) a notice of completion was timely filed with the chief engineer under the original approval of application;

(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. 2008 Supp. 82a-1028; effective May 1, 1983; amended Oct. 15, 1990; amended March 7, 1994; amended Nov. 12, 2004; amended May 14, 2010.)

## Article 25.—BIG BEND GROUNDWATER MANAGEMENT DISTRICT NO. 5

**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.)

**5-25-15. 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.)

# Agency 7
# Secretary of State

*Articles*

7-16. FEES.
7-41. KANSAS UNIFORM ELECTRONIC TRANSACTIONS ACT.

## 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.)

## 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 insurance, 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 im-

plementing 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.)

# Agency 9
# Kansas Animal Health Department

**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*

9-7. MOVEMENT OF LIVESTOCK INTO OR THROUGH KANSAS.
9-27. REPORTABLE DISEASES.

## Article 7.—MOVEMENT OF LIVESTOCK INTO OR THROUGH KANSAS

**9-7-4. 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 they 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 confirmed at a state-federal cooperative laboratory.

(2) Breeding cattle six months of age or over imported into Kansas shall meet interstate requirements according to state certification, as outlined in the United States department of agriculture's uniform methods and rules, animal and plant health inspection service (APHIS) publication 91-45-013, effective October 1, 2003.

(c) Trichomoniasis.

(1) Bulls shall not be imported into Kansas from another state unless they go directly to a licensed slaughter plant or are accompanied by a completed certificate of veterinary inspection signed by an accredited veterinarian. The certificate of veterinary inspection shall meet the following requirements:

(A) Have been issued within the past 30 days;

(B) individually list each animal entering Kansas, using an "official identification device or method" as specified in the definition of that term in 9 C.F.R. 71.1. The following definitions in 9 C.F.R. 71.1, dated January 1, 2009, are hereby adopted by reference and modified as specified in paragraph (c)(1)(B)(iii):

(i) "Administrator";

(ii) "official brand inspection agency"; and

(iii) "official identification device or method." At the end of this definition, the phrase "a recognized brand inspection authority" shall be deleted and replaced by "an official brand inspection agency as defined in 9 C.F.R. 71.1, dated January 1, 2009"; and

(C) state whether, to the veterinarian's knowledge, trichomoniasis has occurred in the herd of origin within the past two years.

(2) Virgin bulls 18 months of age or younger shall be accompanied by a statement attached to the certificate of veterinary inspection. The statement shall be signed by the owner or owner's representative and shall indicate that the bulls have not been sexually exposed to breeding-aged females.

(3)(A) Non-virgin bulls, bulls 19 months of age or older, and bulls of unknown status shall be certified negative for Tritrichomonas foetus. A copy of the test results shall be attached to the certificate of veterinary inspection.

(B) "Certified negative" shall mean that the samples have been submitted for testing to a lab-

oratory accredited by the American association of veterinary laboratory diagnosticians (AAVLD). The samples shall be collected into and transported to the lab using the "InPouch TF" test kit system. The samples shall meet either of the following requirements:

(i) Be found negative on three successive test samples collected at least one week apart if the "InPouch TF" microscopic examination testing is conducted; or

(ii) be found negative on one real-time polymerase chain reaction (PCR) test. The owner shall certify that the bull has had at least two weeks of sexual rest before the time the sample is collected. This statement shall be recorded on or attached to the certificate of veterinary inspection.

The tests specified in paragraphs (c)(3)(B)(i) and (ii) shall be conducted within 30 days before the tested animal's entry into Kansas, and the producer shall ensure that no female contact occurs following the first qualifying test.

(4) Each 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 this subsection. (Authorized by K.S.A. 47-607d, 47-610, 47-657; implementing K.S.A. 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.)

## 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) piroplasmosis;

(s) vesicular exanthema;

(t) Johne's disease;

(u) scabies;

(v) scrapie;

(w) bovine leukosis;

(x) other diseases that the livestock commissioner determines to be immediately reportable due to an animal health emergency situation; and

(y) trichomoniasis. (Authorized by K.S.A. 47-610 and 47-1832; implementing K.S.A. 47-610 and 47-622; effective Jan. 23, 1998; amended Sept. 24, 2010.)

## Agency 14

# Kansas Department of Revenue—Division of Alcoholic Beverage Control

*Articles*


14-6. Containers and Labels.
14-10. Trade Practices.
14-11. Farm Wineries.
14-13. Retail Liquor Dealer.
14-16. Licenses; Suspension and Revocation.
14-19. Class A Clubs.
14-20. Class B Clubs.
14-21. Drinking Establishments.
14-23. Temporary Permits.
14-24. Winery Shipping Permits.


### Article 6.—CONTAINERS AND LABELS

**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. Containers of cereal malt beverage; statement of alcohol content required.** Each original package of cereal malt beverage offered for sale in this state shall bear a statement that the contents contain no more than 3.2% alcohol by weight, except that any kind or brand of cereal malt beverage that contains less than ½ of 1% of alcohol by volume may show a statement that the contents contain less than 0.5% alcohol by volume. (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 Oct. 1, 1988; amended Aug. 6, 1990; amended Sept. 17, 2010.)

### Article 10.—TRADE PRACTICES

**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.)

**14-11-4. 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.)

**14-11-9. 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.)

**14-11-10d.** (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.)

**14-11-14.** (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 markings.** 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.)

**14-11-22. 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. (Authorized 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 13.—RETAIL LIQUOR DEALER

**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.)

## Article 16.—LICENSES; SUSPENSION AND REVOCATION

**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 1, 2009, 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. 2008 Supp. 41-328, K.S.A. 2008 Supp. 41-2611, and K.S.A. 41-2633a; effective Sept. 17, 2010.)

## Article 19.—CLASS A CLUBS

**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.)

**14-19-38. 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.)

## Article 20.—CLASS B CLUBS

**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.)

**14-20-40. 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.)

## Article 21.—DRINKING ESTABLISHMENTS

**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.)

**14-21-21. 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.)

## Article 23.—TEMPORARY PERMITS

**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.)

**14-23-5. 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.)

**14-23-8. 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.)

**14-23-10. 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.)

## 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.)

# Agency 16
# Attorney General

*Articles*

16-11. Personal and Family Protection Act.

## 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 withdrawn 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 at-

tests 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. Signs.** (a) Each sign posted pursuant to K.S.A. 75-7c10, and amendments thereto, shall contain the graphic in the document titled "personal and family protection act: required signage for K.A.R. 16-11-7," dated October 19, 2006, and hereby adopted by reference.

(b) The size of the sign shall be eight inches by eight inches or larger. If the sign is eight inches by eight inches, the size of the graphic adopted by reference in subsection (a) shall be six inches in diameter. If the sign is larger than eight inches by eight inches, the size of the graphic shall be proportional to the size of the sign.

(c) Each sign shall meet all of the following requirements:

(1) The background shall be white.

(2) The portion of the graphic depicting the handgun shall be black.

(3) The portion of the graphic depicting the circle and diagonal slash across the handgun shall be red.

(4) No text shall be placed within the one-inch area surrounding the graphic.

(d) Each sign shall be displayed according to the following requirements:

(1) The sign shall be posted at the eye level of an adult. "At the eye level of an adult" shall mean

that the entire sign is between four feet and six feet from the ground.

(2) The sign shall be posted not more than 12 inches to the right or left of all exterior public and nonpublic entrances to the building.

(3) The sign shall be visible from the exterior of the building.

(4) The sign shall not be obstructed by sliding doorways, displays, or other postings.

(e) Each sign that becomes illegible shall be replaced immediately. (Authorized by and implementing K.S.A. 2009 Supp. 75-7c10, as amended by L. 2010, Ch. 140, §9; effective Nov. 27, 2006; amended Jan. 14, 2011.)

**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.)

# Agency 17
# Office of the State Bank Commissioner

*Articles*

17-24. MORTGAGE BUSINESS.

## Article 24.—MORTGAGE BUSINESS

**17-24-2. Mortgage business fees.** At the time of filing any application, or providing any notice that requires the amendment of any license or registration 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 principal place of business or branch office ..... $600

(b) Application for new or renewal registration as loan originator ..... $125

(c) Amendment of any license or registration ..... $50

(Authorized by K.S.A. 2008 Supp. 9-2209, as amended by 2009 SB 240, §9; implementing K.S.A. 9-2204, K.S.A. 2008 Supp. 9-2205, as amended by 2009 SB 240, §7, and K.S.A. 9-2215; effective, T-17-4-9-99, April 9, 1999; amended Dec. 21, 2001; amended Oct. 2, 2009.)

**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.)

# 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.

*Articles*


19-6. Disclosure and Confidential Procedures.
19-22. Contributions and Other Receipts.
19-23. Expenditures and Other Disbursements.
19-30. Contribution Limitations.


## 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.)

## 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.)

## 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.)

## Article 30.—CONTRIBUTION LIMITATIONS

**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.)

# Agency 22

# State Fire Marshal

*Articles*

22-1. Kansas Fire Prevention Code.
22-8. Liquefied Petroleum Gases.
22-10. Installation and Certification Standards for Extinguishing Devices.
22-11. Adult Care Homes, Hospitals, Residential Care Facilities and Maternity Centers.
22-15. Child Care Facilities.
22-18. Educational Occupancies.
22-19. Certification of Fire Investigators.
22-24. Regional Hazardous Materials Response.

## Article 1.—KANSAS FIRE PREVENTION CODE

**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 under 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.)

## Article 8.—LIQUEFIED PETROLEUM GASES

**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.)

## Article 10.—INSTALLATION AND CERTIFICATION STANDARDS FOR EXTINGUISHING DEVICES

**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 a 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.)

## Article 11.—ADULT CARE HOMES, HOSPITALS, RESIDENTIAL CARE FACILITIES AND MATERNITY CENTERS

**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.)

**22-11-8. 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 15.—CHILD CARE FACILITIES

**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 18.—EDUCATIONAL OCCUPANCIES

**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

**22-19-2. 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.)

**22-19-5. Filing reports with state fire marshal.** (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 contain all information on the current report form used by the state fire marshal's deputies, including 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) Supplemental reports shall be filed indicating disposition of the case.

(c) Each report shall be submitted through the investigative database used by the state fire marshal's investigations division.

(d) Failure to file the reports 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. 2009 Supp. 31-133; implementing K.S.A. 2009 Supp. 31-137; effective May 10, 1993; amended Aug. 5, 2011.)

## Article 24.—REGIONAL HAZARDOUS MATERIALS RESPONSE

**22-24-3. Adoption by reference.** As part of the development and implementation of a statewide system of hazardous material assessment and response, the following nationally recognized standards are hereby adopted by reference:

(a) "Standard for competence of responders to hazardous materials/weapons of mass destruction incidents," national fire protection association (NFPA) standard no. 472, including annexes but excluding chapter 1, section 2.3 and chapter 9, 2008 edition; and

(b) "standard for competencies for EMS personnel responding to hazardous materials/weapons of mass destruction incidents," national fire protection association (NFPA) standard no. 473, including annexes but excluding chapter 1, section 2.3, 2008 edition. (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.)

## Agency 26

# Kansas Department on Aging

*Articles*


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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 supportive 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.)

**26-1-5. 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 confi-

dential 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, subcontract, 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.)

## Article 2.—GRANTS AND CONTRACTS

**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 de-

partment 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; amended 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.)

**26-2-9.** (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 nonprofit 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.)

**26-3-4.** (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.)

## 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 inform-

ing 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.)

**26-4-6.** (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

**26-5-2.** (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 8.—SENIOR CARE ACT

**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.)

**26-8-5. 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.)

**26-8-8. 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.)

## 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 preadmission 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 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, Dec. 11, 2001; effective Sept. 6, 2002; revoked July 15, 2011.)

## 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:

(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 Kansas department of health and environment 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 registered nurse practitioner" means an individual who is certified by the Kansas board of nursing as an advanced registered nurse practitioner.

(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 Kansas department of health and environment 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 on aging, the Kansas department of social and rehabilitation services, or the Kansas health policy authority.

(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) "Contaminated laundry" means any clothes or linens that have been soiled with body substances including blood, stool, urine, vomitus, or other potentially infectious material.

(s) "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.

(t) "Day shift" means any eight-hour to 12-hour work period that occurs between the hours of 6 a.m. and 9 p.m.

(u) "Department" means the Kansas department on aging.

(v) "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 board of the dietary managers' association; or

(4) has training and experience in dietetic services supervision and management that are determined by the Kansas department on aging to be equivalent in content to the requirement specified in paragraph (2) or (3) of this subsection.

(w) "Dietitian" means an individual who is licensed by the Kansas department of health and environment as a dietitian.

(x) "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.

(y) "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 in Kansas as a registered professional nurse.

(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.

(z) "Full-time" means 35 or more hours each week.

(aa) "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.

(bb) "Home plus" has the meaning specified in K.S.A. 39-923 and amendments thereto.

(cc) "Interdisciplinary team" means the following group of individuals:

(1) A registered nurse with responsibility for the care of the residents; and

(2) other appropriate staff, as identified by res-

ident comprehensive assessments, who are responsible for the development of care plans for residents.

(dd) "Intermediate care facility for the mentally retarded" has the meaning specified in K.S.A. 39-923 and amendments thereto.

(ee) "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. 38-2201 through 38-2283, and amendments thereto, or the revised Kansas juvenile justice code, K.S.A. 38-2301 through 38-2387, and amendments thereto.

(ff) "Licensed mental health technician" means an individual licensed by the Kansas board of nursing as a licensed mental health technician.

(gg) "Licensed nurse" means an individual licensed by the Kansas board of nursing as a registered professional nurse or licensed practical nurse.

(hh) "Licensed practical nurse" means 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.

(ii) "Licensee" means an individual, firm, partnership, association, company, corporation, or joint stock association authorized by a license obtained from the secretary of aging to operate an adult care home.

(jj) "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. 65-28,102 and amendments thereto;

(2) a physician assistant 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 advanced registered nurse practitioner who is licensed by the Kansas board of nursing in accordance with K.S.A. 65-1113 and amendments thereto and who provides health care services in accordance with article 11 of the Kansas board of nursing's regulations.

(kk) "Medication" means any "drug" as defined by K.S.A. 65-1626 and amendments thereto.

(ll) "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 proper resident; and

(4) documenting the dose in the resident's clinical record.

(mm) "Medication aide" means an individual who has a medication aide certificate issued by the Kansas department of health and environment according to K.A.R. 28-39-169b and is supervised by a licensed nurse.

(nn) "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.

(oo) "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.

(pp) "Nurse aide" means an individual who has a nurse aide certificate issued by the Kansas department of health and environment according to K.A.R. 28-39-165 and is supervised by a licensed nurse.

(qq) "Nurse aide trainee" means an individual

who is in the process of completing a nurse aide training program as specified in K.A.R. 28-39-165 or K.A.R. 28-39-167 and has not been issued a nurse aide certificate by the Kansas department of health and environment.

(rr) "Nursing facility" has the meaning specified in K.S.A. 39-923 and amendments thereto.

(ss) "Nursing facility for mental health" has the meaning specified in K.S.A. 39-923 and amendments thereto.

(tt) "Nursing personnel" means all of the following:

(1) Registered professional nurses;

(2) licensed practical nurses;

(3) licensed mental health technicians in nursing facilities for mental health;

(4) medication aides;

(5) nurse aides;

(6) nurse aide trainees; and

(7) paid nutrition assistants.

(uu) "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.

(vv) "Occupational therapist" means an individual who is licensed with the Kansas board of healing arts as an occupational therapist.

(ww) "Occupational therapy assistant" means an individual who is licensed by the Kansas board of healing arts as an occupational therapy assistant.

(xx) "Operator" has the meaning specified in K.S.A. 39-923 and amendments thereto.

(yy) "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 Kansas department of health and environment;

(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) contact the supervising licensed nurse verbally or on the resident call system for help in case of an emergency.

(zz) "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.

(aaa) "Pharmacist" has the meaning specified in K.S.A. 65-1626 and amendments thereto.

(bbb) "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.

(ccc) "Physical therapist" means an individual who is licensed by the Kansas board of healing arts as a physical therapist.

(ddd) "Physical therapy assistant" means an individual who is certified by the Kansas board of healing arts as a physical therapy assistant.

(eee) "Physician" has the meaning specified in K.S.A. 65-28,102 and amendments thereto.

(fff) "Psychopharmacologic drug" means any medication prescribed with the intent of controlling mood, mental status, or behavior.

(ggg) "Registered professional nurse" means an individual who is licensed by the Kansas state board of nursing as a registered professional nurse.

(hhh) "Renovation" means a change to an adult care home that affects the building's structural integrity or life safety system.

(iii) "Resident" has the meaning specified in K.S.A. 39-923 and amendments thereto.

(jjj) "Resident capacity" means the number of an adult care home's beds or adult day care slots, as licensed by the Kansas department on aging.

(kkk) "Residential health care facility" has the meaning specified in K.S.A. 39-923 and amendments thereto.

(lll) "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.

(mmm) "Restraint" is the control and limitation of a resident's movement by physical, mechanical, or chemical means.

(nnn) "Sanitization" means effective bacteri-

cidal treatment by a process that reduces the bacterial count, including pathogens, to a safe level on utensils and equipment.

(ooo) "Secretary" means the secretary of the department on aging.

(ppp) "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.

(qqq) "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.

(rrr) "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 Kansas department of health and environment and receives supervision from a licensed social worker on a regular basis.

(sss) "Social worker" means an individual who is licensed by the Kansas behavioral sciences regulatory board as a social worker.

(ttt) "Speech-language pathologist" means an individual who is licensed by the Kansas department of health and environment as a speech-language pathologist.

(uuu) "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; implementing K.S.A. 2009 Supp. 39-923 and K.S.A. 39-932; effective May 22, 2009; amended Jan. 7, 2011.)

**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 per-

taining 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 chap-

ter 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.)

## 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 well-being.

(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 res-

ident 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 separate, 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 nonemergency 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 ef-

fective 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 ac-

tivities 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 nonemergency 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 nonemergency 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 (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 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.

(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 configurations 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 100F; 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 February 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 |
| 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 heath 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) 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 surveyors. (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 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 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 proce-

dures 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 im-

mediate 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 des-

ignee, 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 dietician 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 administrator 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 heath 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 rep-

resentative 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 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 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 resi-

dent'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.)

**26-42-106. Reserved.**

**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 heath 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 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.)

**26-43-102. 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.

(l) 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 dietician 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.)

## Agency 28

# Department of Health and Environment

*Articles*


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### Article 1.—DISEASES

**28-1-27. HIV screening guidelines.** (a) Adoption by reference. The HIV screening guidelines for each pregnant woman and newborn child whose HIV status is unknown shall be the section titled "recommendations for pregnant women" on pages 11 through 14 in the centers for disease control and prevention's document titled "revised recommendations for HIV testing of adults, adolescents, and pregnant women in health-care settings," dated September 22, 2006. This section is hereby adopted by reference, except as specified in subsection (b).

(b) Deletions. In the portion titled "universal opt-out screening," the following text shall be deleted:

(1) The words "oral or" in the following sentence: "Pregnant women should receive oral or written information that includes an explanation of HIV infection, a description of interventions that can reduce HIV transmission from mother to infant, and the meanings of positive and negative test results and should be offered an opportunity to ask questions and to decline testing"; and

(2) the following sentence: "No additional process or written documentation of informed consent beyond what is required for other routine prenatal tests should be required for HIV testing." (Authorized by and implementing K.S.A. 2010 Supp. 65-6018; effective Feb. 25, 2011.)

**28-1-30. Definitions.** For the purposes of this article, the following definitions shall apply:

(a) "College designee" and "university designee" mean a person determined by the administration at a postsecondary educational institution to be responsible for the oversight and implemen-

tation of that institution's TB prevention and control plan.

(b) "Department" means Kansas department of health and environment.

(c) "Health care provider" means any of the following licensed persons: medical doctor, doctor of osteopathy, doctor of podiatric medicine, advanced registered nurse practitioner as defined in K.S.A. 65-1113 and amendments thereto, and physician assistant.

(d) "High-risk student" means a student who meets any of the following conditions:

(1) Has signs and symptoms of active TB;

(2) has been in contact with a person who has been diagnosed with active TB; or

(3) has traveled, resided in for more than three months, or was born in any country where TB is endemic as determined by the secretary and consistent with guidance provided by the centers for disease control and prevention.

(e) "Postsecondary educational institution" has the meaning specified in K.S.A. 65-129e, and amendments thereto.

(f) "Secretary" means secretary of health and environment or the secretary's designee.

(g) "Student" means an individual who has been admitted to a postsecondary educational institution where the course of studies will require physical attendance in a classroom setting with one or more persons.

(h) "TB" means tuberculosis.

(i) "TB prevention and control plan" means the policies and procedures adopted pursuant to K.S.A. 65-129f, and amendments thereto, used at a postsecondary educational institution to reduce the risk of tuberculosis transmission and derived from pages 32 through 42 of the guidelines in "controlling tuberculosis in the United States: recommendations from the American thoracic society, CDC, and the infectious diseases society of America," published in morbidity and mortality weekly report (MMWR) on November 4, 2005, vol. 54, no. RR-12. The pages specified in this subsection are hereby adopted by reference.

(j) "Tuberculosis" has the meaning specified in K.S.A. 65-116a, and amendments thereto. For the purposes of these regulations, the term "active TB" shall mean a person diagnosed with tuberculosis by a health care provider, and the term "latent TB infection" shall mean a person who is determined by a health care provider to have the bacterium that causes tuberculosis but has not been diagnosed with active TB. (Authorized by and implementing K.S.A. 2010 Supp. 65-129e and 65-129f; effective April 15, 2011.)

**28-1-31. TB prevention and control plan.** (a) Each college designee and university designee shall implement a TB prevention and control plan.

(1) The TB prevention and control plan shall include a TB evaluation component for each student determined to be a high-risk student, which shall include the following as necessary:

(A) Tuberculin skin testing;

(B) interferon gamma release assay;

(C) chest radiograph;

(D) sputum evaluation;

(E) physical exam; and

(F) review of signs of symptoms.

(2) The TB prevention and control plan shall provide notification to the department if a student has been found to have latent TB infection or active TB, in accordance with K.A.R. 28-1-2.

(b) Each postsecondary educational institution shall be in compliance with this regulation within 12 months after the beginning of the academic year following the effective date of this regulation. (Authorized by and implementing K.S.A. 2010 Supp. 65-129e and 65-129f; effective April 15, 2011.)

**28-1-32. Health services at colleges and universities; submission of a TB prevention and control plan; monitoring of compliance.** (a) Each college designee and university designee shall submit to the department a TB prevention and control plan and any revisions that have been developed in consultation with the department, to ensure that the TB prevention and control plan includes evaluation criteria that are in compliance with the best practice standards as recommended by the division of tuberculosis elimination of the centers for disease control and prevention.

(b) Each postsecondary educational institution that provides health services and that performs infection or disease evaluations, or both, shall keep internal TB evaluation records for each high-risk student.

(c) Each postsecondary educational institution that does not have health services to perform infection or disease evaluations, or both, shall maintain the data on the form provided by the department for each individual considered to be a high-risk student.

(d) Each postsecondary educational institution shall be in compliance with this regulation within

12 months after the beginning of the academic year following the effective date of this regulation. (Authorized by and implementing K.S.A. 2010 Supp. 65-129e and 65-129f; effective April 15, 2011.)

## Article 4.—MATERNAL AND CHILD HEALTH

**28-4-92. License fees.** When an applicant or licensee submits an application for a license or for the renewal of a license, the applicant or licensee shall submit to the secretary the appropriate nonrefundable license fee specified in this regulation:

(a) For each maternity center as defined in K.S.A. 65-502 and amendments thereto, $75;

(b) for each child placement agency as defined in K.S.A. 65-503 and amendments thereto, $75;

(c) for each child care resource and referral agency as defined in K.S.A. 65-503 and amendments thereto, $75;

(d) for each of the following child care facilities, $75 plus $1 times the maximum number of children to be authorized under the license:

(1) Day care home or group day care home, as defined in K.A.R. 28-4-113; and

(2) child care center, as defined in K.A.R. 28-4-420; and

(e) for each of the following child care facilities with a license capacity of 13 or more children, $35 plus $1 for each child included in the license capacity, with the total not to exceed $75, and for each of the following child care facilities with a license capacity of 12 or fewer children, $15:

(1) Attendant care facility, as defined in K.A.R. 28-4-285;

(2) detention center or secure care center, as defined in K.A.R. 28-4-350;

(3) preschool, as defined in K.A.R. 28-4-420;

(4) psychiatric residential treatment facility, as defined in K.A.R. 28-4-1200;

(5) residential center or group boarding home, as defined in K.A.R. 28-4-268; and

(6) secure residential treatment facility, as defined in K.A.R. 28-4-330. (Authorized by and implementing K.S.A. 65-505, as amended by L. 2010, ch. 161, sec. 6; effective, T-83-24, Aug. 25, 1982; effective May 1, 1983; amended, T-86-46, Dec. 18, 1985; amended May 1, 1986; amended, T-87-22, Aug. 21, 1986; amended May 1, 1987; amended, T-28-8-16-10, Aug. 16, 2010; amended Dec. 17, 2010.)

**28-4-93. Online information dissemination system.** This regulation shall apply to the department's online information dissemination system for child care facilities, as defined in K.S.A. 65-503 and amendments thereto. (a) Definitions. The following terms shall have the meanings specified in this regulation:

(1) "Applicant" means a person who has applied for a license to operate a child care facility but who has not yet been granted the license.

(2) "Applicant with a temporary permit" means a person who has been granted a temporary permit to operate a child care facility.

(3) "Department" means Kansas department of health and environment.

(4) "Licensee" means a person who has been granted a license to operate a child care facility.

(5) "Online information dissemination system" means the electronic database of the department that is accessible to the public.

(b) Identifying information. Each applicant, each applicant with a temporary permit, and each licensee that wants the department to display the address and the telephone number of the child care facility on the online information dissemination system shall notify the department on a form provided by the department. (Authorized by and implementing K.S.A. 2010 Supp. 65-534; effective Feb. 3, 2012.)

**28-4-113. Definitions.** (a) "Applicant" means a person who has applied for a license but who has not yet been granted a license to operate a facility.

(b) "Applicant with a temporary permit" means a person who has been granted a temporary permit to operate a facility.

(c) "Care provider" and "provider" mean an individual who cares for and supervises children in a facility and has responsibility for the health, safety, and well-being of children, including the following:

(1) A primary care provider;

(2) an individual who is at least 16 years of age and who is working in the facility; and

(3) a substitute.

(d) "Day care home" means the premises on which care is provided for a maximum of 10 children under 16 years of age, with a limited number of children under five years of age in accordance with K.A.R. 28-4-114 (e).

(e) "Department" means Kansas department of health and environment.

(f) "Emergency care" means care for a period not to exceed two weeks for children not regularly enrolled in a facility.

(g) "Evening care" means care after 6:00 p.m. and before 1:00 a.m. the following day for children enrolled at a facility and present during operating hours.

(h) "Extended absence" means time away from a facility for a period of more than three hours in a day.

(i) "Facility" means a day care home or a group day care home.

(j) "Fire inspector" means a person approved by the state fire marshal to conduct fire safety inspections.

(k) "Group day care home" means the premises on which care is provided for a maximum of 12 children under 16 years of age, with a limited number of children under five years of age in accordance with K.A.R. 28-4-114 (f).

(l) "Large motor activity" means any movement involving the arms, legs, feet, or entire body, including crawling, running, and jumping.

(m) "License capacity" means the maximum number of children who are authorized to be on the premises at any one time.

(n) "Licensed physician" means an individual who is licensed to practice either medicine and surgery or osteopathy in Kansas by the Kansas state board of healing arts or who practices either medicine and surgery or osteopathy in another state and is licensed under the licensing statutes of that state.

(o) "Licensee" means a person who has been granted a license to operate a facility.

(p) "Overnight care" means care after 1:00 a.m. for children enrolled at a facility and present during operating hours.

(q) "Primary care provider" means an applicant with a temporary permit, a licensee, or the designee of an applicant with a temporary permit or a licensee. Each applicant with a temporary permit, each licensee, and each designee shall be at least 18 years of age and shall meet the requirements for a primary care provider specified in K.A.R. 28-4-114a.

(r) "Professional development training" means training approved by the secretary that is related to working with children in care.

(s) "Substitute" means an individual who supervises children in the temporary absence or extended absence of the primary care provider and who meets the following requirements:

(1) In the temporary absence of the primary care provider, the substitute shall be at least 16 years of age and shall meet all of the requirements for a provider specified in K.A.R. 28-4-114a (a)(2), (b)(4)(C), and (c).

(2) In the extended absence of the primary care provider, the substitute shall be at least 18 years of age and shall meet all of the requirements for a primary care provider specified in K.A.R. 28-4-114a.

(t) "Temporary absence" means time away from a facility for a period not to exceed three hours in a day.

(u) "Use zone" means the surface under and around a piece of equipment onto which a child falling from or exiting the equipment would be expected to land.

(v) "Weapons" means any of the following:

(1) Firearms;

(2) ammunition;

(3) air-powered guns, including BB guns, pellet guns, and paint ball guns;

(4) hunting and fishing knives;

(5) archery equipment; or

(6) martial arts equipment. (Authorized by K.S.A. 2010 Supp. 65-508; implementing K.S.A. 2010 Supp. 65-503 and K.S.A. 2010 Supp. 65-508; effective, E-80-18, Oct. 17, 1979; effective May 1, 1980; amended May 1, 1981; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended Feb. 26, 1990; amended Feb. 3, 2012.)

**28-4-114. Applicant; licensee.** (a) Application process.

(1) Any person desiring to operate a facility shall apply for a license on forms provided by the department.

(2) Each applicant and each licensee shall submit the fee specified in K.A.R. 28-4-92 for a license or for the renewal of a license. The applicable fee shall be submitted at the time of license application or renewal and shall not be refundable.

(3) The granting of a license to any applicant or applicant with a temporary permit may be refused by the secretary if the applicant or applicant with a temporary permit is not in compliance with the applicable requirements of the following:

(A) K.S.A. 65-504 through 65-506, and amendments thereto;

(B) K.S.A. 65-508, and amendments thereto;

(C) K.S.A. 65-512, and amendments thereto;

(D) K.S.A. 65-530 and 65-531, and amendments thereto; and

(E) all regulations governing facilities.

(4) Failure to submit the application forms and fee for renewal of a license shall result in an assessment of a late fee pursuant to K.S.A. 65-505, and amendments thereto, and may result in closure of the facility.

(b) Applicant and licensee requirements. Each applicant, if an individual, and each licensee, if an individual, shall meet the following requirements:

(1) Be at least 18 years of age;

(2) not be involved in child care or a combination of child care and other employment for more than 18 hours in a 24-hour period; and

(3) not be engaged in either business or social activities that interfere with the care or supervision of children.

(c) Multiple child care facilities.

(1) Each applicant with a temporary permit and each licensee who operates more than one child care facility, as defined in K.S.A. 65-503 and amendments thereto, shall maintain each child care facility as a separate entity.

(2) A license for an additional child care facility shall not be granted until all existing child care facilities for which the licensee has been granted a license are in compliance with licensing regulations.

(d) Multiple licenses. No licensee shall be licensed concurrently for or provide more than one type of child care or child and adult care on the same premises.

(e) License capacity for day care homes. Each applicant with a temporary permit and each licensee shall ensure that the requirements of this subsection are met.

(1) The maximum number of children for which a day care home may be licensed shall be the following:

TABLE I—LICENSE CAPACITY, ONE PROVIDER

| Maximum Number of Children Under 18 Months | Maximum Number of Children at Least 18 Months but Under 5 Years of Age | Maximum Number of Children at Least 5 Years but Under 11 Years of Age* | License Capacity |
|---|---|---|---|
| 0 | 7 | 3 | 10 |
| 1 | 5 | 4 | 10 |
| 2 | 4 | 3 | 9 |
| 3 | 3 | 2 | 8 |

*Children five years of age and over may be substituted for younger children in the license capacity.

(2) Children at least 11 years of age but under 16 years of age who are unrelated to the provider shall be included in the license capacity if child care for this age group as a whole exceeds three hours a week.

(f) Maximum capacity for group day care homes. Each applicant with a temporary permit and each licensee shall ensure that all of the requirements of this subsection are met.

(1) The maximum number of children for which a group day care home may be licensed shall be the following:

TABLE II—LICENSE CAPACITY, ONE PROVIDER

| Age of Children Enrolled | License Capacity |
|---|---|
| At Least 2½ Years but Under 11 Years of Age | 9 |
| At Least 3 Years but Under 11 Years of Age | 10 |
| At Least 5 Years but Under 11 Years of Age | 12 |

TABLE III—LICENSE CAPACITY, TWO PROVIDERS*

| Maximum Number of Children Under 18 Months | Maximum Number of Children at Least 18 Months but Under 5 Years of Age | Maximum Number of Children at Least 5 Years but Under 11 Years of Age** | License Capacity* |
|---|---|---|---|
| 1 | 8 | 3 | 12 |
| 2 | 7 | 3 | 12 |
| 3 | 6 | 3 | 12 |
| 4 | 4 | 2 | 10 |

*A second provider shall be present when the number of children exceeds the maximum number allowed for one provider. See Table I.

**Children five years of age and over may be substituted for younger children in the license capacity.

TABLE IV—LICENSE CAPACITY, TWO PROVIDERS*

| Maximum Number of Children Under 18 Months | Maximum Number of Children at Least 18 Months but Under 2½ Years of Age | Maximum Number of Children at Least 2½ Years but Under 11 Years of Age** | License Capacity* |
|---|---|---|---|
| 0 | 5 | 7 | 12 |

*A second provider shall be present when the number of children exceeds the maximum number allowed for one provider. See Table I.

**Children five years of age and over may be substituted for younger children in the license capacity.

(2) Children at least 11 years of age but under 16 years of age unrelated to the provider shall be included in the license capacity if child care for this age group as a whole exceeds three hours a week.

(g) Developmental levels. Any child who does not function according to age-appropriate expectations shall be counted in the age group that reflects the developmental age level of the child.

(h) License capacity not exceeded. Each applicant with a temporary permit and each licensee shall ensure that the total number of children on the premises, including children under 11 years of age related to the applicant with a temporary permit, the licensee, or any other provider, does not exceed the license capacity, except for additional children permitted in subsection (j).

(i) Emergency care. Emergency care may be provided if the additional children do not cause the license capacity to be exceeded.

(j) Additional children on the premises. In addition to the number of children permitted under the terms of the temporary permit or the license and specified in subsections (e) and (f), other children may be permitted on the premises.

(1) Not more than two additional children 2½ years of age or older who attend part-day preschool or part-day kindergarten may be present at any time between the hours of 11:00 a.m. and 1:00 p.m. for the noon meal on days that school is in session.

(2) Not more than two additional children at least five years of age but under 11 years of age may be present between the hours of 6:00 a.m. and 6:00 p.m. The additional children may be present as follows:

(A) During the academic school year before and after school, in-service days, school holidays, scheduled or emergency closures, and school breaks not to exceed two consecutive weeks; and

(B) during the two consecutive weeks before the opening of the academic school year in August or September and following the end of the academic school year in May or June.

(3) Not more than two additional children 11 years of age or older, unrelated to the applicant with a temporary permit or the licensee, may be present for not more than two hours a day during child care hours if all of the following conditions are met:

(A) The additional children are not on the premises for the purpose of receiving child care in the facility.

(B) The additional children are visiting the applicant's or the licensee's own child or children.

(C) The additional children are supervised by a provider if they have access to the children in care.

(k) Substitute. Each applicant with a temporary permit and each licensee shall arrange for a substitute to care for children in the event of a temporary absence or extended absence of the primary care provider

(l) Posting of temporary permit or license and availability of regulations. Each applicant with a temporary permit and each licensee shall post any temporary permit or license conspicuously as required by K.S.A. 65-504, and amendments thereto. A copy of the current regulations governing facilities shall be kept on the premises and shall be available to all providers at all times.

(m) Closure. Any applicant may withdraw the application for a license. Any applicant with a temporary permit and any licensee may submit, at any time, a request to close the facility. If an application is withdrawn or a facility is closed, any temporary permit or license granted to the applicant or licensee for that facility shall become void. (Authorized by K.S.A. 2010 Supp. 65-508; implementing K.S.A. 2010 Supp. 65-504, K.S.A. 2010 Supp. 65-505, and K.S.A. 2010 Supp. 65-508; effective, E-80-18, Oct. 17, 1979; effective May 1, 1980; amended May 1, 1981; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended Feb. 26, 1990; amended Feb. 3, 2012.)

**28-4-114a. Initial and ongoing professional development.** If an applicant, an applicant with a temporary permit, or a licensee is not an individual, the applicant, applicant with a temporary permit, or licensee shall designate an individual to meet the requirements of this regulation.

(a) Orientation.

(1) Each person shall, before applying for a license, complete an orientation program on the requirements for operating a facility, provided by the health department or the secretary's designee that serves the county in which the facility will be located.

(2) Each applicant, each applicant with a temporary permit, and each licensee shall provide orientation to each individual who will be caring for children about the policies and practices of the facility, including duties and responsibilities for the care and supervision of children. Each provider shall complete the orientation before the provider is given sole responsibility for the care and supervision of children. The orientation shall include the following:

(A) Licensing regulations;

(B) the policies and practices of the facility, including emergency procedures, behavior management, and discipline;

(C) the schedule of daily activities;

(D) care and supervision of children in care;

(E) health and safety practices; and

(F) confidentiality.

(b) Health and safety training. Each applicant, each applicant with a temporary permit, each licensee, and each provider shall complete health and safety training approved by the department.

(1) Each applicant and each applicant with a temporary permit shall complete the training not later than 30 calendar days after submitting an application for a license.

(2) Each provider shall complete the training before the date of employment or not later than 30 calendar days after the date of employment.

(3) Each licensee whose license was issued before the effective date of this regulation shall complete the training within one calendar year after the effective date of this regulation. Each provider who was employed in the facility before the effective date of this regulation shall complete the training within one calendar year after the effective date of this regulation.

(4) The health and safety training shall include the following:

(A) At least two clock-hours of training in recognizing the signs of child abuse or neglect, including prevention of abusive head trauma, and the reporting of suspected child abuse and neglect;

(B) at least two clock-hours of training in basic child development; and

(C) at least two clock-hours of training on safe sleep practices and sudden infant death syndrome if the individual will be caring for children under 12 months of age.

(c) Pediatric first aid and pediatric cardiopulmonary resuscitation (CPR) certifications. Each applicant, each applicant with a temporary permit, each licensee, and each provider shall obtain certification in pediatric first aid and pediatric CPR as specified in this subsection.

(1) Each applicant and each applicant with a temporary permit shall obtain the certifications not later than 30 calendar days after submitting an application for a license.

(2) Each provider shall obtain the certifications before the date of employment or not later than 30 calendar days after the date of employment.

(3) Each licensee whose license was issued before the effective date of this regulation shall obtain the certifications within one calendar year after the effective date of this regulation. Each provider who was employed in the facility before the effective date of this regulation shall obtain the certifications within one calendar year after the effective date of this regulation.

(4) Each individual required to obtain the certifications shall maintain current certifications.

(d) Initial professional development requirements. In addition to the professional development requirements in subsections (a), (b), and (c), each applicant, each applicant with a temporary permit, and each primary care provider shall, not later than 30 calendar days following initial application for a license or employment, meet one of the following requirements:

(1) Have a child development associate credential;

(2) complete at least 15 hours of professional development training, which may include the training required in subsections (a), (b), and (c);

(3) have at least three months of previous employment in a facility or in a child care center, as defined in K.A.R. 28-4-420, that has been in continuous operation for three or more years; or

(4) meet the requirements for a program director of a child care center as specified in K.A.R. 28-4-429.

(e) Annual professional development training requirements. In each licensure year, each primary care provider shall meet one of the following requirements:

(1) Complete five clock-hours of professional development training;

(2) maintain current accreditation by the national association for family child care; or

(3) hold a current child development associate credential.

(f) Documentation. Documentation of all orientation, training, and certifications for each individual shall be kept in that individual's file in the facility. (Authorized by and implementing K.S.A. 2010 Supp. 65-508; effective Feb. 3, 2012.)

**28-4-115. Facility.** (a) Water supply and sewerage systems. Each applicant, each applicant with a temporary permit, and each licensee shall ensure that public water and sewerage systems, where available, are used. If a nonpublic source for the water supply is used, the water shall be safe for drinking and shall be tested annually by a department-certified laboratory. If a well is used,

the well shall be approved by the local authority for private well permitting, the department, or a licensed water well contractor. A copy of the test results and the approval shall be kept on file at the facility. Each private sewerage system shall be maintained in compliance with all applicable state and local laws.

(b) Drinking water for children under 12 months of age. If children under 12 months of age are enrolled in a facility using water from a nonpublic source, including private well water, commercially bottled drinking water shall be purchased and used until a laboratory test confirms that the nitrate content of the private well water is not more than 10 milligrams per liter (10 mg/l) as nitrogen.

(c) General environmental requirements. Each facility shall have 25 square feet of available play space per child and shall be constructed, arranged, and maintained to provide for the health and safety of children in care. Each applicant, each applicant with a temporary permit, and each licensee shall ensure that the facility meets the following requirements:

(1) Has walls that are in good condition;

(2) is skirted and anchored if a mobile home;

(3) has a 2A 10B:C fire extinguisher;

(4) has a working smoke detector on each level of the facility;

(5) is uncluttered, visibly clean, and free from any evidence of vermin infestation and any objects or materials that constitute a danger to children in care;

(6) has kitchen and outdoor trash and garbage in covered containers or in tied plastic bags;

(7) meets all of the following requirements for each heating appliance:

(A) Has a protective barrier for each freestanding heating appliance to protect from burns; and

(B) has each heating appliance using combustible fuel vented to the outside;

(8) has each electrical outlet covered or inaccessible to prevent easy access by a child when the outlet is not in use;

(9) has any power strip or extension cord positioned in a manner that prevents a tripping or shock hazard;

(10) has each stairway with more than two stairs railed;

(11) if any children under 2½ years of age are in care, meets all of the following requirements:

(A) Has each stairway equipped with balusters not more than four inches apart or guarded to prevent a child's head or body from falling through;

(B) has each stairway guarded by a secured door or gated to prevent unsupervised access by the child, including a latching device that an adult can open readily in an emergency;

(C) does not have any accordion gate in use; and

(D) does not have a pressure gate at the top of any stairway;

(12) has a readily available second means of escape from the first floor;

(13) has each lockable interior door designed to permit the door to be unlocked from either side in case of an emergency;

(14) is maintained at a temperature of not less than 65 degrees Fahrenheit and not more than 85 degrees Fahrenheit in the play area;

(15) does not have any window coverings with strings or cords accessible to children in care; and

(16) has at least one bathroom with at least one sink and one flush toilet. All fixtures shall be in working order at all times. An individual towel and washcloth or disposable products shall be provided for each child. Hand soap shall be readily accessible in each bathroom.

(d) Fire safety. Each facility shall be approved for fire safety by a fire inspector.

(e) Basements and other floors. A basement or a second floor used for child care in a facility shall be approved for fire safety by a fire inspector before use. A third floor shall not be used for child care.

(f) Refrigerator. A refrigerator shall be available for the storage of perishable foods. Refrigerated medications shall be in a locked box.

(g) Storage of hazardous items. The following hazardous items shall be safely stored:

(1) All household cleaning supplies and all bodily care products bearing warning labels to keep out of reach of children or containing alcohol shall be in locked storage or stored out of reach of children under six years of age. Soap used for hand washing may be kept unlocked and placed on the back of the counter by a bathroom or kitchen sink.

(2) Dangerous chemicals, household supplies with warning labels to keep out of reach of children, and all medications shall be in locked storage or stored out of the reach of children under 10 years of age.

(3) Sharp instruments shall be stored in drawers or cabinets equipped with childproof devices to

prevent access by children or stored out of reach of children.

(4) Tobacco products, ashtrays, lighters, and matches shall be stored out of reach of children.

(h) Storage of weapons. No child in care shall have access to weapons. All weapons shall be stored in a locked room, closet, container, or cabinet. Ammunition shall be kept in locked storage separate from other weapons.

(i) Outdoor play area. The designated area for outdoor play and large motor activities on the premises shall meet all of the following requirements:

(1) The outdoor play area shall be fenced if the play area adjoins that of another child care facility, as defined in K.S.A. 65-503 and amendments thereto, or if the area surrounding, or the conditions existing outside, the play area present hazards that could be dangerous to the safety of the children, which may include any of the following:

(A) A fish pond or a decorative pool containing water;

(B) railroad tracks; or

(C) a water hazard, including a ditch, a pond, a lake, and any standing water.

(2) Outdoor play equipment that is safely constructed and in good repair shall be available and placed in an area free of health, safety, and environmental hazards.

(3) The use of a trampoline shall be prohibited during the hours of operation of the facility. If a trampoline is on the premises, the trampoline shall be made inaccessible to children during the facility's hours of operation.

(4) Climbing equipment and swings shall be either anchored in the ground with metal straps or pins or set in cement, to prevent movement of the equipment and swings.

(5) All surfaces under and around climbing equipment and swings shall meet the following requirements:

(A) Impact-absorbent surfacing material shall be installed in each use zone under and around anchored equipment over four feet in height, including climbing equipment, slides, and swings.

(B) Impact-absorbent surfacing material shall consist of material intended for playground use, including shredded bark mulch, wood chips, fine sand, fine gravel, shredded rubber, unitary surfacing material, or synthetic impact material.

(C) Hard-surfacing materials, including asphalt, concrete, and hard-packed dirt, shall not be used in any use zone. This requirement shall apply regardless of the height of the climbing equipment, slides, and swings.

(D) Surfaces made of loose material shall be maintained by replacing, leveling, or raking the material.

(6) Swings shall not have wooden or metal seats.

(7) Teeter-totters and merry-go-rounds designed for school-age children shall not be used by children under five years of age.

(j) Each facility licensed on and after March 1, 2012 shall have a designated area for outdoor play and large motor activities as part of the licensed premises. (Authorized by and implementing K.S.A. 2010 Supp. 65-508; effective, E-80-18, Oct. 17, 1979; effective May 1, 1980; amended May 1, 1981; amended May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended May 1, 1987; amended Feb. 26, 1990; amended Feb. 3, 2012.)

**28-4-115a. Supervision.** (a) Supervision plan.

(1) Each applicant, each applicant with a temporary permit, and each licensee shall develop a supervision plan for children in care that includes all age ranges of children for whom care will be provided. A copy of the plan shall be available for review by the parents or legal guardians of children in care and by the department. The plan shall include the following:

(A) A description of the rooms, levels, or areas of the facility including indoor and outdoor areas in which the child will participate in activities, have snacks or meals, nap, or sleep;

(B) the manner in which supervision will be provided; and

(C) any arrangements for the provision of evening or overnight care.

(2) Each applicant, each applicant with a temporary permit, and each licensee shall update the supervision plan when changes are made in any of the requirements of paragraph (a)(1).

(3) Each provider shall follow the supervision plan.

(b) General supervision requirements. Each applicant with a temporary permit and each licensee shall ensure that supervision is provided as necessary to protect the health, safety, and well-being of each child in care.

(1) Each child in care shall be under the supervision of a provider who is responsible for the child's health, safety, and well-being.

(2) Each provider shall be aware at all times of

the location of each child in that provider's care and the activities in which the child is engaged. Each provider shall perform the following:

(A) Interact with the child and attend to the child's needs;

(B) respond immediately if the child is crying or in distress in order to determine the cause and to provide comfort and assistance;

(C) investigate immediately any change in the activity or noise level of the child; and

(D) respond immediately to any emergency that could impact the health, safety, and well-being of the child.

(3) No provider shall engage in business, social, or personal activities that interfere with the care and supervision of children.

(4) If used, electronic monitoring devices, including infant monitors, shall not replace any of the supervision requirements of this regulation.

(c) Indoor supervision requirements. When any child is indoors, each provider shall ensure that all of the following requirements are met, in addition to the requirements of subsection (b):

(1) For each child who is under 2½ years of age and who is awake, the provider shall be within sight of and in proximity to the child, watching and overseeing the activities of the child. When the provider is attending to personal hygiene needs or engaging in other child care duties and is temporarily unable to remain within sight of the child, the provider shall meet all of the following conditions:

(A) The provider has first ensured the safety of each child.

(B) The provider is able to respond immediately to any child in distress.

(C) The provider remains within hearing distance of each child.

(2) For each child 2½ years of age and older who is awake, the provider may permit the child to go unattended to another room within the facility to engage in activities if all of the following conditions are met:

(A) The provider determines, based on observations of the child's behavior and information from the parent or legal guardian, that the child can go unattended to another room within the facility.

(B) The door to each room remains open.

(C) The provider remains within hearing distance of the child.

(D) The provider visually checks on the child and responds as necessary to meet the needs of the child.

(3) Each applicant with a temporary permit and each licensee shall ensure that supervision is provided for each child who is napping or sleeping.

(A) Each child who is napping or sleeping shall be within sight or hearing distance of the provider and shall be visually checked on by the provider at least once every 15 minutes.

(B) The provider shall meet all of the requirements of K.A.R. 28-4-116a for any child who is under 12 months of age and is napping or sleeping.

(C) When any child is napping or sleeping in a room separate from the provider, the door to that room shall remain open.

(D) When a child awakens and is ready to get up, the provider shall attend to the child's needs and assist the child in moving to another activity.

(d) Outdoor supervision requirements. When any child is outdoors, each provider shall ensure that all of the following requirements are met, in addition to the requirements of subsection (b):

(1) For each child under five years of age, the provider shall be outdoors at all times and remain within sight of and in proximity to each child, watching and directing the activities of the child.

(2) For each child five years of age and older, the provider may permit the child to go unattended to the facility's designated outdoor play area on the premises if all of the following conditions are met:

(A) The designated play area on the premises is enclosed with a fence.

(B) The provider determines that the area is free of any potential hazards to the health and safety of the child.

(C) The provider remains within hearing distance of the child.

(D) The provider visually checks on the child and responds as necessary to meet the needs of the child.

(e) Evening care and overnight care. Each applicant with a temporary permit and each licensee who provide evening care or overnight care shall ensure that the following requirements are met:

(1) All requirements of subsections (a) through (d) shall be met.

(2) When overnight care is provided in a day care home, at least one provider shall remain awake at all times.

(3) When overnight care is provided in a group day care home, a second provider shall remain

awake at all times if the number of children who are awake exceeds the requirements of K.A.R. 28-4-114 (e), table I. (Authorized by and implementing K.S.A. 2010 Supp. 65-508; effective Feb. 3, 2012.)

**28-4-116. Daily care of children.** (a) Daily activities.

(1) Each applicant with a temporary permit and each licensee shall provide daily activities that promote healthy growth and development, take into consideration the cultural background and traditions that are familiar to the children, and incorporate both indoor and outdoor activities that are appropriate for the ages and developmental levels of the children in care.

(2) Each child shall be offered a choice of activities and the opportunity to participate. Age-appropriate toys, play equipment, books, and other learning materials shall be available in sufficient quantities to allow each child a choice of activities.

(3) The activities, supplies, and equipment shall be designed to promote the following:

(A) Large motor and small motor development, which may include running, climbing, jumping, grasping objects, drawing, buttoning, and tying;

(B) creative expression, which may include dramatic play, music, and art;

(C) math and science skills, which may include sorting, matching, counting, and measuring; and

(D) language development and literacy, which may include reading, singing, finger plays, writing, and stories.

(4) Each child shall be given the opportunity for at least one hour of physical activity daily, either outdoors as described in paragraph (a)(7) or indoors.

(5) Each applicant with a temporary permit and each licensee shall ensure that the following requirements are met if the daily activities include any media viewing:

(A) Each program shall be age-appropriate and, if rated, shall have a rating appropriate for the ages and developmental levels of the children who view the program.

(B) No child shall be required to participate in media viewing. Each child not engaged in media viewing shall be offered a choice of at least one other activity for that time period.

(6) Toys and other items used by children shall meet the following requirements:

(A) Be clean, of safe construction, and in good repair;

(B) be washed and sanitized daily when used by children under 18 months of age; and

(C) be washed and sanitized before being used by another child, if contaminated by saliva or other bodily fluids.

(7) Unless prohibited by the child's medical condition or extreme weather conditions, each child in care shall be taken outdoors daily. Each child 12 months of age or older shall have the opportunity for at least one hour of outdoor play daily.

(b) Self-help and personal care. Each provider shall ensure that each child is assisted as needed with hand washing, toileting, dressing, and other personal care.

(c) Hand washing. Hands shall be washed using soap and warm running water and dried with a paper towel or a single-use towel. When soap and running water are not readily available, an alcohol-based hand sanitizer may be used only by adults and, under adult supervision, by children two years of age and older.

(1) Each provider shall wash that provider's hands as needed when hands are soiled and when each of the following occurs:

(A) At the start of the hours of operation or when first arriving at the facility;

(B) returning from being outdoors;

(C) after toileting, diapering, assisting a child with toileting, or handling any bodily fluids;

(D) before preparing each snack and each meal and before and after eating each snack and each meal;

(E) before and after administrating any medication; and

(F) after feeding or handling any pet.

(2) Each child shall wash that child's hands or be assisted in washing that child's hands as needed when hands are soiled and when each of the following occurs:

(A) First arriving at the facility;

(B) returning from being outdoors;

(C) after toileting;

(D) before and after eating each snack and each meal; and

(E) after feeding or handling any pet.

(d) Smoking prohibited. No provider shall smoke while providing direct physical care to children. Smoking in any room, enclosed area, or other enclosed space on the premises shall be pro-

hibited when children are in care pursuant to K.S.A. 65-530, and amendments thereto.

(e) Nutrition and food service. Each applicant with a temporary permit and each licensee shall develop and implement menu plans for meals and snacks that contain a variety of healthful foods, including fresh fruits, fresh vegetables, whole grains, lean meats, and low-fat dairy products.

(1) If children under 18 months of age are in care, the following requirements shall be met:

(A) Each child shall be held when bottle-fed until the child can hold the child's own bottle.

(B) No child shall be allowed to sleep with a bottle in the mouth.

(C) Each bottle that contains prepared formula or breast milk shall be stored in the refrigerator with the nipple covered. The bottle shall be labeled with the child's name, the contents, and the date received and shall be used within 24 hours of the date on the label.

(D) If a child does not finish a bottle, the contents of the bottle shall be discarded.

(E) No formula or breast milk shall be heated in a microwave oven.

(F) Solid foods shall be offered when the provider and the parent or legal guardian of the child determine that the child is ready for solid foods. Opened containers of solid foods shall be labeled with the child's name, the contents, and the date opened. Containers shall be covered and stored in the refrigerator.

(2) Each applicant with a temporary permit and each licensee shall serve nutritious meals and snacks based on the amount of time a child is in care.

(A) Each child who is in care at least 2½ hours but under four hours shall be served at least one snack.

(B) Each child who is in care at least four hours but under eight hours shall be served at least one snack and at least one meal.

(C) Each child who is in care at least eight hours but under 10 hours shall be served at least two snacks and one meal or at least one snack and two meals.

(D) Each child who is in care for 10 or more hours shall be served at least two meals and at least two snacks.

(3) Each applicant with a temporary permit and each licensee shall include the following items in meals and snacks:

(A) Breakfast shall include the following:

(i) A fruit, vegetable, full-strength fruit juice, or full-strength vegetable juice;

(ii) bread or grain product; and

(iii) milk.

(B) Noon and evening meals shall include one item from each of the following:

(i) Meat or a meat alternative;

(ii) two vegetables or two fruits, or one vegetable and one fruit;

(iii) bread or a grain product; and

(iv) milk.

(C) Midmorning and midafternoon snacks shall include at least two of the following:

(i) Milk;

(ii) fruit, vegetable, full-strength fruit juice, or full-strength vegetable juice;

(iii) meat or a meat alternative; or

(iv) bread or grain product.

(D) For snacks, juice shall not be served when milk is served as the only other item.

(4) A sufficient quantity of food shall be prepared for each meal to allow each child to have a second portion of bread, milk, and either vegetables or fruits.

(5) Drinking water shall be available to each child at all times when the child is in care.

(6) Only pasteurized milk products shall be served.

(7) Milk served to any child who is two years of age or older shall have a fat content of one percent or less, unless a medical reason is documented in writing by a licensed physician.

(8) If a fruit juice or a vegetable juice is served, the juice shall be pasteurized and full-strength.

(9) If any child has a food allergy or special dietary need, the provider and the parent or legal guardian of the child shall make arrangements for the provision of alternative foods or beverages.

(10) Meals and snacks shall be served to each child using individual tableware that is appropriate for the food or beverage being served. Food shall be served on tableware appropriate for that food and shall not be served directly on a bare surface, including a tabletop.

(11) Tableware shall be washed, rinsed and air-dried or placed in a dishwasher after each meal.

(12) Sanitary methods of food handling and storage shall be followed.

(13) A washable or disposable individual cup, towel, and washcloth shall be provided for each child.

(f) Recordkeeping. Each applicant with a temporary permit and each licensee shall ensure that

a file is maintained for each child, including each child enrolled for emergency care. Each file shall include the following information:

(1) The full name, home and business addresses, and telephone numbers of the child's parent or parents or legal guardian and the name, address, and telephone number of the individual to notify in case of emergency;

(2) the full name and telephone number of each individual authorized to pick up the child and to provide transportation to and from the facility;

(3) a medical record as required by K.A.R. 28-4-117(a), except that each child enrolled for emergency care shall be exempt from K.A.R. 28-4-117 (a)(2); and

(4) written permission from the parent or legal guardian for emergency medical care and for the child to go off the premises as required by K.A.R. 28-4-124 and 28-4-127(b)(1)(A). (Authorized by K.S.A. 2010 Supp. 65-508; implementing K.S.A. 65-507 and K.S.A. 2010 Supp. 65-508; effective, E-80-18, Oct. 17, 1979; effective May 1, 1980; amended May 1, 1981; amended May 1, 1983; amended May 1, 1985; amended May 1, 1987; amended Feb. 26, 1990; amended Feb. 3, 2012.)

**28-4-116a. Napping and sleeping.** (a) Rest period. Each child shall have a daily, supervised rest period as needed. Each child who does not nap or sleep shall be given the opportunity for quiet play.

(b) Safe sleep practices for children in care.

(1) Each applicant with a temporary permit and each licensee shall develop and implement safe sleep practices for children in care who are napping or sleeping.

(2) Each applicant with a temporary permit and each licensee shall ensure that the safe sleep practices are discussed with the parent or legal guardian of each child before the first day of care.

(3) Each provider shall follow the safe sleep practices of the facility.

(4) Each child who is 12 months of age or older shall nap or sleep on a bed, a cot, the lower bunk of a bunk bed, or a pad over a carpet or area rug on the floor.

(5) Each applicant with a temporary permit and each licensee shall ensure that all of the following requirements are met for each child in care who is under 12 months of age.

(A) The child shall nap or sleep in a crib or a playpen. Stacking cribs or bassinets shall not be used. Cribs with water-bed mattresses shall not be used.

(B) If the child falls asleep on a surface other than a crib or playpen, the child shall be moved to a crib or playpen.

(C) The child shall not nap or sleep in the same crib or playpen as that occupied by another child at the same time.

(D) The child shall be placed on the child's back to nap or sleep.

(E) When the child is able to turn over independently, the child shall be placed on the child's back but then shall be allowed to remain in a position preferred by the child. Wedges or infant positioners shall not be used.

(F) The child shall sleep in a crib or a playpen that is free of any soft items, which may include pillows, quilts, heavy blankets, bumpers, and toys.

(G) If a lightweight blanket is used, the blanket shall be tucked along the sides and foot of the mattress. The blanket shall not be placed higher than the child's chest. The head of the child shall remain uncovered. The child may nap or sleep in sleep clothing, including sleepers and sleep sacks, in place of a lightweight blanket.

(c) Napping or sleeping surfaces. Each applicant with a temporary permit and each licensee shall ensure that the following requirements are met for all napping or sleeping surfaces:

(1) Clean, individual bedding shall be provided for each child.

(2) Each surface used for napping or sleeping shall be kept clean, of safe construction, and maintained in good repair.

(3) Each crib and each playpen shall be used only for children who meet the manufacturer's recommendations for use, including any age, height, or weight limitations. The manufacturer's instructions for use, including any recommendations for use, shall be kept on file at the facility.

(4) Each crib and each playpen shall have a firm, tightfitting mattress and a fitted sheet. The mattress shall be set at its lowest point when any child using the crib or playpen becomes able either to sit up or to pull up to a standing position inside the crib or playpen, whichever occurs first, to ensure that the child cannot climb out of the crib or playpen.

(5) If a crib or playpen is slatted, the slats shall be spaced not more than 2⅜ inches apart.

(6) On and after December 28, 2012, each applicant, each applicant with a temporary permit, and each licensee shall ensure that no crib pur-

chased before June 28, 2011 is in use in the facility.

(7) Each pad used for napping or sleeping shall be at least ½ inch thick, washable or enclosed in a washable cover, and long enough so that the child's head and feet rest on the pad. Clean, individual bedding, including a bottom and a top cover, shall be provided for each child.

(8) Cribs, cots, playpens, and pads, when in use for napping or sleeping, shall be separated by at least 24 inches in all directions except when bordering on the wall.

(9) When not in use, cribs, cots, playpens, pads, and bedding shall be stored in a clean and sanitary manner.

(d) Consumer warning or recall. Each applicant with a temporary permit and each licensee shall make any necessary changes to follow the recommendations of any consumer warning or recall of a crib or a playpen as soon as the warning or recall is known.

(e) Transition from crib or playpen. The determination of when a child who is 12 months of age or older is ready to transition from a crib or a playpen to another napping or sleeping surface shall be made by the parent or guardian of the child and by either the applicant with a temporary permit or the licensee. The requirements of paragraphs (c)(3) and (4) for a child using a crib or playpen shall apply. (Authorized by and implementing K.S.A. 2010 Supp. 65-508; effective Feb. 3, 2012.)

**28-4-120.** (Authorized by K.S.A. 65-522; implementing K.S.A. 65-519 and 65-521; effective May 1, 1981; amended May 1, 1986; amended Feb. 26, 1990; amended July 11, 2008; revoked Feb. 3, 2012.)

**28-4-121.** (Authorized by K.S.A. 65-522; implementing K.S.A. 65-519; effective July 11, 2008; revoked Feb. 3, 2012.)

**28-4-370.** (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-502, 65-504, 65-508; effective May 1, 1981; revoked July 9, 2010.)

**28-4-371.** (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-503, 65-508, K.S.A. 1982 Supp. 65-504, 65-505; effective May 1, 1981; amended, T-83-24, Aug. 25, 1982; amended May 1, 1983; revoked July 9, 2010.)

**28-4-372.** (Authorized by K.S.A. 65-508; implementing K.S.A. 65-502, 65-504, 65-509, 65-510, 65-511; effective May 1, 1981; revoked July 9, 2010.)

**28-4-373.** (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-502, 65-504, 65-507, 65-508; effective May 1, 1981; revoked July 9, 2010.)

**28-4-374.** (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507, 65-508; effective May 1, 1981; amended May 1, 1985; revoked July 9, 2010.)

**28-4-375.** (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507, 65-508; effective May 1, 1981; amended May 1, 1985; revoked July 9, 2010.)

**28-4-376.** (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507, 65-508, 65-510; effective May 1, 1981; amended May 1, 1985; revoked July 9, 2010.)

**28-4-377.** (Authorized by and implementing K.S.A. 65-508; effective May 1, 1981; amended, T-87-34, Nov. 19, 1986; amended May 1, 1987; revoked July 9, 2010.)

**28-4-378 and 28-4-379.** (Authorized by and implementing K.S.A. 65-508; effective May 1, 1981; revoked July 9, 2010.)

**28-4-428a. Education and training requirements.** (a) Orientation.

(1) Each person shall, before applying for a license, complete an orientation program on the requirements for operating a preschool or a child care center. If the person is not an individual, the person shall designate an individual to meet this requirement. The orientation shall be provided by the county health department or the secretary's designee that serves the county in which the preschool or child care center will be located.

(2) Each licensee shall provide orientation to each program director not later than seven calendar days after the date of employment and before the program director is given sole responsibility for implementing and supervising the program.

(3) Each licensee shall ensure that orientation is completed by each staff member who will be counted in the staff-child ratio and by each volunteer who will be counted in the staff-child ratio. Each staff member and volunteer shall complete the orientation within seven calendar days after the date of employment or volunteering and be-

fore the staff member or volunteer is given sole responsibility for the care and supervision of children.

(4) Each licensee shall ensure that the orientation for each program director, staff member, and volunteer is related to work duties and responsibilities and includes the following:

(A) Licensing regulations;

(B) the policies and practices of the preschool or child care center, including emergency procedures, behavior management, and discipline;

(C) the schedule of daily activities;

(D) care and supervision of children in care;

(E) health and safety practices; and

(F) confidentiality.

(b) Health and safety training.

(1) Each staff member who is counted in the staff-child ratio, each volunteer who is counted in the staff-child ratio, and each program director shall complete health and safety training either before employment or volunteering or not later than 30 calendar days after the date of employment or volunteering.

(2) The training shall be approved by the secretary and shall include the following:

(A) At least two clock-hours of training in recognizing the signs of child abuse or neglect, including prevention of abusive head trauma and the reporting of suspected child abuse and neglect;

(B) at least two clock-hours of training in basic child development; and

(C) at least two clock-hours of training on safe sleep practices and sudden infant death syndrome if the individual will be caring for children under 12 months of age.

(3) Each individual who is required to complete this training and who was employed in the preschool or child care center before the effective date of this regulation shall complete the training within one calendar year after the effective date of this regulation.

(c) Pediatric first aid and cardiopulmonary resuscitation (CPR) certifications.

(1) Each staff member counted in the staff-child ratio, each volunteer counted in the staff-child ratio, and each program director shall obtain certification in pediatric first aid and in pediatric CPR as specified in this subsection either before the date of employment or volunteering or not later than 30 calendar days after the date of employment or volunteering.

(2) Each individual who is required to obtain the certifications and who was employed in the preschool or child care center before the effective date of this regulation shall obtain the certifications within one calendar year after the effective date of this regulation.

(3) Each individual who is required to obtain the certifications shall maintain current certifications.

(4) Each licensee shall ensure that, for each unit in a preschool or child care center, at least one staff member or volunteer counted in the staff-child ratio who has current certification in pediatric first aid and current certification in pediatric CPR is in attendance at all times.

(d) Education requirements. Each program director shall be a high school graduate or equivalent. For each unit in a preschool or child care center, there shall be in attendance at all times at least one staff member who has a high school diploma or equivalent, as required in K.A.R. 28-4-429(h).

(e) Annual in-service training requirements.

(1) Each program director shall complete annual in-service training as required in K.A.R. 28-4-428(e)(1).

(2) Each staff member counted in the staff-child ratio and each volunteer counted in the staff-child ratio shall complete annual in-service training as required in K.A.R. 28-4-428(e)(2).

(f) Documentation. Each licensee shall ensure that documentation of all orientation, training, certifications, and education requirements is kept in each individual's file in the preschool or child care center. (Authorized by and implementing K.S.A. 2010 Supp. 65-508; effective Feb. 3, 2012.)

**28-4-440. Infant and toddler programs.** (a) Infant and toddler programs shall be conducted on the ground floor only.

(b) Each unit of infants and each unit of toddlers shall be separate from each unit of older children.

(c) Floor furnaces shall be prohibited.

(d) A sleeping area separate from the play area shall be provided for infants.

(e) A crib or playpen shall be provided for each infant in care at any one time. Cribs and playpens shall be maintained in good condition. Clean individual bedding shall be provided.

(f) Each licensee shall ensure that the following requirements are met:

(1) The use of stacking cribs, cribs with water mattresses, or bassinets shall be prohibited.

(2) Cribs and playpens shall have slats not more than 2⅜ inches apart.

(3) All sides of each crib or playpen shall be up while the crib or playpen is in use.

(4) On and after December 28, 2012, each licensee shall ensure that no crib purchased before June 28, 2011 is in use in the facility.

(g) Each licensee shall make any necessary changes to follow the recommendations of any consumer warning or recall of a crib or a playpen as soon as the warning or recall is known.

(h) Each licensee shall develop and implement safe sleep policies and practices for infants and toddlers and shall ensure that the policies and practices are discussed with the parent or legal guardian of each child before the first day of care. The safe sleep policies and practices shall include the following requirements:

(1) Each staff member who cares for children and each volunteer who cares for children shall follow the safe sleep policies and practices of the child care center.

(2) Each staff member who cares for infants and each volunteer who cares for infants shall ensure that all of the following requirements are met:

(A) Each infant shall nap or sleep in a crib or a playpen.

(B) An infant shall not nap or sleep in the same crib or playpen as that occupied by another infant or child at the same time.

(C) If an infant falls asleep on a surface other than a crib or playpen, the infant shall be moved to a crib or playpen.

(D) Each infant shall be placed on the infant's back to nap or sleep.

(E) When an infant is able to turn over independently, the infant shall be placed on the infant's back but then shall be allowed to remain in a position preferred by the infant. Wedges or infant positioners shall not be used.

(F) Each infant shall sleep in a crib or a playpen that is free of any soft items, which may include pillows, quilts, heavy blankets, bumpers, and toys.

(G) If a lightweight blanket is used, the blanket shall be tucked along the sides and foot of the mattress. The blanket shall not be placed higher than the infant's chest. The head of the infant shall remain uncovered. Any infant may nap or sleep in sleep clothing, including sleepers and sleep sacks, in place of a lightweight blanket.

(i) When children are awake, they shall not be left unattended in cribs or other confinement for more than 30 minutes.

(j) An adult-size rocking chair shall be provided for each unit of infants.

(k) Children not held for feeding shall have low chairs and tables, infant seats with trays, or high chairs with a wide base and a safety strap.

(l) Either individually labeled towels and washcloths or disposable products shall be provided.

(m) Items that children can place in their mouths shall be washed and sanitized daily and shall be washed and sanitized before being used by another child, if contaminated by saliva or other bodily fluids.

(n) Each licensee shall ensure that at least one staff member who meets one of the following staff requirements is present for each unit of infants and each unit of toddlers:

(1) Option 1: An individual who meets the qualifications of K.A.R. 28-4-429(b) and has at least three months' experience caring for infants and toddlers;

(2) option 2: a licensed L.P.N. or R.N. with three months' experience in pediatrics or in licensed child care centers enrolling infants and toddlers; or

(3) option 3: a child development associate credential in infant and toddler care.

(o) Each licensee shall ensure that the following program requirements are met:

(1) Daily activities shall contribute to the following:

(A) Gross and fine motor development;

(B) visual-motor coordination;

(C) language stimulation; and

(D) social and personal growth.

(2) Infants and toddlers shall spend time outdoors daily unless extreme weather conditions prevail.

(p) Each licensee shall ensure that the following food service requirements are met:

(1) The nitrate content of water for children under one year of age shall not exceed 10 milligrams per liter (10 mg/l) as nitrogen.

(2) Drinking water shall be available to each child at all times when the child is in care.

(3) Infants shall be held when bottle-fed until they can hold their own bottles.

(4) Infants and toddlers shall not be allowed to sleep with bottles in their mouths.

(5) Each bottle that contains prepared formula or breast milk shall be refrigerated with the nipple covered. The bottle shall be labeled with the

child's name, the contents, and the date received and shall be used within 24 hours of the date on the label. If a child does not finish a bottle, the contents of the bottle shall be discarded. No formula or breast milk shall be heated in a microwave oven.

(6) Solid foods shall be offered when the program director and the parent or legal guardian of a child determine that the child is ready for solid foods. Opened containers of solid foods shall be labeled with child's name, the contents, and the date opened. Containers shall be covered and refrigerated. The food shall be used within three calendar days of the date opened. Food in previously opened containers shall be reheated only once and shall not be served to another child.

(q) Each licensee shall ensure that the following toileting requirements are met:

(1) Children's clothing shall be changed whenever wet or soiled.

(2) Each child shall have at least two complete changes of clothing.

(3) Handwashing facilities shall be in or adjacent to the diaper-changing area.

(4) A changing table shall be provided for each unit of infants and each unit of toddlers.

(5) Each changing table shall have an impervious, undamaged surface. Each table shall be sturdy and shall be equipped with railings or safety straps.

(6) Changing tables shall be sanitized after each use by washing with a disinfectant solution of ¼ cup of chlorine bleach to one gallon of water or with an appropriate commercial disinfectant.

(7) Wet or soiled washable diapers or training pants shall be stored in a labeled, covered container or plastic bag and shall be returned home with the parent.

(8) Wet or soiled disposable diapers shall be placed in a covered container or plastic bag, which shall be emptied daily.

(9) There shall be one potty chair or child-sized toilet for every five toddlers. When a potty chair is used, the following requirements shall be met:

(A) Potty chairs shall be left in the toilet room.

(B) The wastes shall be disposed of immediately in a flush toilet.

(C) The container shall be sanitized after each use and shall be washed with soap and water daily.

(D) Potty chairs shall not be counted as toilets.

(10) Each individual shall wash that individual's hands after diapering, assisting a child with toileting, or changing a child's wet or soiled clothing.

(11) Changing and toileting procedures shall be posted.

(r) There shall be daily communication between the parent, parents, or legal guardian and the staff about each child's behavior and development. (Authorized by and implementing K.S.A. 2010 Supp. 65-508; effective May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-34, Nov. 19, 1986; amended May 1, 1987; amended Feb. 3, 2012.)

**28-4-503. Timing of specimen collections.** (a) The initial specimen from each infant born in an institution shall be obtained as follows:

(1) Before discharge but no later than at 72 hours of age;

(2) before any transfer of the infant from the institution of birth to another institution; and

(3) before any blood transfusion.

(b) The initial specimen from each infant born outside of an institution shall be obtained as follows:

(1) No later than at 72 hours of age; and

(2) before any blood transfusion.

(c) A repeat specimen shall be obtained from each infant born in an institution or outside of an institution under any of the following conditions:

(1) The specimen is unsatisfactory as specified in K.A.R. 28-4-505.

(2) Follow-up recommendations have been issued by the department.

(3) The infant is less than 24 hours old when the initial specimen is taken. (Authorized by K.S.A. 65-101 and K.S.A. 2009 Supp. 65-180; implementing K.S.A. 2009 Supp. 65-180 and K.S.A. 65-181; effective, T-87-48, Dec. 19, 1986; effective May 1, 1987; amended April 14, 2000; amended Dec. 3, 2010.)

**28-4-505. Unsatisfactory specimens.** (a) Each unsatisfactory specimen shall be retained by the department. The sending agency or facility shall be notified that the specimen is unsatisfactory. The physician or birth attendant shall be notified that the specimen is unsatisfactory with a request to submit another specimen.

(b) A specimen shall be labeled unsatisfactory if one of the following criteria is met:

(1) Identifying information is missing.

(2) More than 10 days have elapsed since the date of collection.

(3) The specimen is of unacceptable quality or quantity for analysis. (Authorized by K.S.A. 65-

101 and K.S.A. 2009 Supp. 65-180; implementing K.S.A. 2009 Supp. 65-180 and K.S.A. 65-181; effective, T-87-48, Dec. 19, 1986; effective May 1, 1987; amended April 14, 2000; amended Dec. 3, 2010.)

**28-4-514. MSUD and PKU; financial assistance availability for certain related expenses.** (a)(1) The following factors shall be used to determine each family's eligibility for financial assistance for necessary treatment products or medically necessary food treatment products, or both:

(A) Applicable income; and

(B) cash assets in excess of 15 percent of the applicable income.

(2) If a family seeking financial assistance under this regulation has more than one family member with MSUD or PKU, the family shall be considered eligible for financial assistance at a level that is 100 percent less than the eligibility level for a family with one family member.

(b) Each individual who applies for or who receives financial assistance under this regulation shall also meet the requirements in K.A.R. 28-4-401.

(c) The following eligibility requirements shall apply to each family:

(1) Each family with applicable income and cash assets less than or equal to 185 percent of the federal poverty level shall be eligible to receive 100 percent of the cost of necessary treatment products. This family shall be eligible each year for up to $1,000 of medically necessary food treatment products for family members who are 18 years of age and younger.

(2) Each family with applicable income and cash assets more than 185 percent but not more than 285 percent of the federal poverty level shall be eligible to receive 50 percent of the cost of necessary treatment products.

(3) Each family with applicable income and cash assets more than 285 percent but not more than 385 percent of the federal poverty level shall be eligible to receive 25 percent of the cost of necessary treatment products.

(4) No family with applicable income and cash assets over 385 percent of the federal poverty level shall be eligible to receive any of the cost of necessary treatment products.

(d) If a family's health insurance covers a portion of the cost of necessary treatment products, the family's financial responsibility for this cost shall be determined pursuant to subsection (c).

(e) If the department orders any necessary treatment products for a family that is responsible for part of the cost, that family shall receive a statement indicating the amount to be reimbursed to the department. If reimbursement is not received from the family within 60 days of the statement date, the placement of any future orders for necessary treatment products for that family shall no longer be processed by the department. (Authorized by K.S.A. 65-101 and K.S.A. 2009 Supp. 65-180; implementing K.S.A. 2009 Supp. 65-180; effective, T-28-7-5-06, July 5, 2006; effective Oct. 20, 2006; amended Dec. 3, 2010.)

**28-4-520. Definitions.** In addition to the definitions in K.S.A. 65-1,241 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation:

(a) "Abnormal condition" means any condition established at conception or acquired in utero that results in a morphologic, metabolic, functional, or behavioral disorder requiring medical or other intervention.

(b) "Birth defects information system" means the Kansas birth defects reporting system, which collects, maintains, analyzes, and disseminates information regarding abnormal conditions, birth defects, and congenital anomalies of each stillbirth and of each child from birth to five years of age with a birth defect.

(c) "Congenital anomaly" means an error of morphogenesis that is established at conception or acquired during intrauterine life, which is also referred to as a birth defect.

(d) "ICD-9-CM" means the clinical modification of the "international classification of diseases," ninth revision, published by Ingenix inc., which is used to code and classify morbidity data from inpatient and outpatient records, physician offices, and most surveys from the national center for health statistics. The following portions of volume one of this document are hereby adopted by reference:

(1) "Genetic and metabolic conditions," codes 243 through 279.2 on pages 49 through 60;

(2) "sickle cell anemia and other hemoglobinopathies," codes 282.4 through 282.7 on pages 61 and 62;

(3) "congenital anomalies," codes 740 through 759 on pages 227 through 240; and

(4) "fetal alcohol syndrome," code 760.71 on page 241.

(e) "Primary diagnosis" means the principal disease or condition assigned to an infant by a licensed physician based on the history of the disease process, signs and symptoms, laboratory data, and special tests. (Authorized by and implementing K.S.A. 2009 Supp. 65-1,245; effective Dec. 3, 2010.)

**28-4-521. Reporting abnormal conditions and congenital anomalies.** (a) Reporting requirements. Each physician, hospital, and freestanding birthing center shall report to the birth defects information system, pursuant to K.S.A. 65-1,241 and amendments thereto, the abnormal conditions and congenital anomalies listed in the portions of ICD-9-CM adopted by reference in K.A.R. 28-4-520.

(b) Method of reporting. Each abnormal condition and congenital anomaly that is required to be reported under this regulation shall be reported to the birth defects information system on a form approved by the secretary.

(c) Removal of reported information. Any parent or legal guardian may request the removal of reported information from the birth defects information system by using the removal form in accordance with K.S.A. 65-1,244, and amendments thereto. (Authorized by K.S.A. 2009 Supp. 65-1,245; implementing K.S.A. 2009 Supp. 65-1,241, 65-1,244, and 65-1,245; effective Dec. 3, 2010.)

**28-4-1200. Definitions.** For the purposes of K.A.R. 28-4-1200 through K.A.R. 28-4-1218, the following definitions shall apply: (a) "Administrator" means a person employed by a PRTF who is responsible for the overall administration of the PRTF.

(b) "Applicant" means a person who has applied for a license but who has not yet been granted a license to operate a PRTF. This term shall include an applicant who has been granted a temporary permit to operate a PRTF.

(c) "Basement" means each area in a building with a floor level more than 30 inches below ground level on all sides.

(d) "Department" means the Kansas department of health and environment.

(e) "Direct care staff" means the staff members employed by the PRTF to supervise the residents.

(f) "Exception" means a waiver of compliance with a specific PRTF regulation or any portion of a specific PRTF regulation that is granted by the secretary to an applicant or a licensee.

(g) "Individual plan of care" means a written, goal-oriented treatment plan and therapeutic activities designed to move the resident to a level of functioning consistent with living in a community setting.

(h) "Licensee" means a person who has been granted a license to operate a PRTF.

(i) "Program" means the comprehensive and coordinated activities and services providing for the care and treatment of residents.

(j) "Program director" means the staff person responsible for the oversight and implementation of the program.

(k) "Psychiatric residential treatment facility" and "PRTF" mean a residential facility for which the applicant or licensee meets the requirements of K.A.R. 28-4-1201.

(l) "Resident" means an individual who is at least six years of age but not yet 22 years of age and who is accepted for care and treatment in a PRTF.

(m) "Resident record" means any electronic or written document concerning a resident admitted to a PRTF that is created or obtained by an employee of the PRTF.

(n) "Restraint" means the application of physical force or any mechanical devices or the administration of any drugs for the purpose of restricting the free movement of a resident's body.

(o) "Seclusion" means the involuntary confinement of a resident in a separate or locked room or an area from which the resident is physically prevented from leaving.

(p) "Secretary" means the secretary of the Kansas department of health and environment.

(q) "Treatment" means comprehensive, individualized, goal-directed, therapeutic services provided to residents. (Authorized by K.S.A. 65-508 and 65-510; implementing K.S.A. 65-503 and 65-508; effective Oct. 9, 2009.)

**28-4-1201. License requirements.** (a) Each applicant and each licensee shall meet all of the following requirements in order to obtain and maintain a license to operate a PRTF:

(1) The state and federal participation requirements for medicaid reimbursement;

(2) receipt of accreditation of the PRTF by one of the following accrediting organizations:

(A) Council on accreditation of rehabilitation facilities (CARF);

(B) council on accreditation of child and family agencies (COA);

(C) the joint commission or the joint commission on accreditation of healthcare organizations (JCAHO); or

(D) an accrediting body approved by the Kansas health policy authority (KHPA), the Kansas department of social and rehabilitation services (SRS), and the Kansas juvenile justice authority (JJA); and

(3) receipt of approval of the PRTF by the Kansas department of social and rehabilitation services as meeting the state requirements.

(b) Each applicant and each licensee, if a corporation, shall be in good standing with the Kansas secretary of state.

(c) Each applicant and each licensee shall maintain documentation of compliance with all applicable building codes, fire safety requirements, and zoning codes. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-504 and 65-508; effective Oct. 9, 2009.)

**28-4-1202. Application procedures.** (a) Each person, in order to obtain a license, shall submit a complete application on forms provided by the department. The application shall be submitted at least 90 calendar days before the planned opening date of the PRTF and shall include the following:

(1) A description of the program and services to be offered, including the following:

(A) A statement of the PRTF's purpose and goals; and

(B) the number, ages, and gender of residents for whom the PRTF is designed;

(2) the anticipated opening date;

(3) a request for the background checks for staff members and volunteers specified in K.A.R. 28-4-1205;

(4) documentation of compliance with the license requirements in K.A.R. 28-4-1201; and

(5) the license fee specified in K.A.R. 28-4-92.

(b) Each applicant shall notify the school district where the PRTF is to be located of the following:

(1) The planned opening date and the number, age range, gender, and anticipated special education needs of the residents to be served;

(2) a statement indicating whether the residents will attend public school or will receive educational services on-site at the PRTF; and

(3) documentation that the notification was received by the school district at least 90 days before the planned opening date.

The 90-day notification to the local school district may be waived by the secretary upon receipt of a written agreement by the local school district.

(c) Each applicant shall submit to the department floor plans for each building that will be used as a PRTF. Each floor plan shall state whether or not any building will rely on locked entrances and exits or on delayed-exit mechanisms to secure the PRTF. Each applicant wanting to use delayed-exit mechanisms or to use hardware to lock or otherwise secure the exits shall obtain and shall submit to the department prior written approval from the Kansas state fire marshal, the Kansas department of social and rehabilitation services, the Kansas juvenile justice authority, and the Kansas health policy authority.

(d) Each applicant shall provide the department with a copy of the approval of the Kansas state fire marshal's office for the floor plan and the use of any delayed-exit mechanism or hardware to lock or otherwise secure the exits before a license is issued.

(e) The granting of a license to any applicant may be refused by the secretary if the applicant is not in compliance with the requirements of the following:

(1) K.S.A. 65-504 through 65-508 and amendments thereto;

(2) K.S.A. 65-512 and 65-513 and amendments thereto;

(3) K.S.A. 65-516 and amendments thereto;

(4) K.S.A. 65-531 and amendments thereto; and

(5) all regulations governing psychiatric residential treatment facilities. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-504, 65-505, and 65-508 and K.S.A. 2008 Supp. 65-516; effective Oct. 9, 2009.)

**28-4-1203. Capacity; posting requirements; validity of temporary permit or license; new application required; advertising; closure.** (a) Capacity. The maximum number, the age range, and the gender of residents authorized by the temporary permit or license shall not be exceeded.

(b) Posting requirements. The current temporary permit or the current license shall be posted conspicuously within the PRTF.

(c) Validity of temporary permit or license. Each temporary permit or license shall be valid

only for the applicant or licensee and for the address specified on the temporary permit or the license. When an initial or amended license becomes effective, all temporary permits or licenses previously granted to the applicant or licensee at the same address shall become void.

(d) New application required. A new application and the fee specified in K.A.R. 28-4-92 shall be submitted for each change of ownership or location at least 90 calendar days before the planned change.

(e) Advertising. The advertising for each PRTF shall conform to the statement of services as given on the application. A claim for specialized services shall not be made unless the PRTF is staffed and equipped to offer those services.

(f) Closure. Any applicant may withdraw the application for a license. Any licensee may submit, at any time, a request to close the PRTF operated by the licensee. If an application is withdrawn or a PRTF is closed, the current temporary permit or license granted to the applicant or licensee for that PRTF shall become void. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-504, 65-505, and 65-508; effective Oct. 9, 2009.)

**28-4-1204. Licensure; renewal; notifications; exceptions; amendments.** (a) No person shall operate a PRTF unless issued a temporary permit or a license by the secretary.

(b) No earlier than 90 days before the renewal date but no later than the renewal date, each licensee who wishes to renew the license shall complete and submit an application for renewal on forms provided by the department, including the requests for background checks specified in K.A.R. 28-4-1205, and shall submit the fee specified in K.A.R. 28-4-92.

(c) Failure to submit the renewal application and fee as required by subsection (b) shall result in an assessment of a late renewal fee pursuant to K.S.A. 65-505, and amendments thereto, and may result in closure of the PRTF.

(d) Each licensee shall notify the department within 24 hours of any change in approval or accreditation required in K.A.R. 28-4-1201.

(e) Any applicant or licensee may request an exception from the secretary.

(1) Any request for an exception may be granted if the secretary determines that the exception is in the best interest of one or more residents or the family of a resident and the exception does not violate statutory requirements.

(2) Written notice from the secretary stating the nature of each exception and its duration shall be kept on file at the PRTF and shall be readily accessible to the department, SRS, and JJA.

(f) Each licensee shall obtain the secretary's written approval before making any change in any of the following:

(1) The use or proposed use of the buildings;

(2) any changes to the physical structure of any building, including the following:

(A) An addition or alteration as specified in K.A.R. 28-4-1215;

(B) any change in the use of locked entrances or exits; and

(C) any change in any delayed-exit mechanisms;

(3) the addition or removal of a locking system for any room used for seclusion, as specified in K.A.R. 28-4-1212; or

(4) the program, provided through either of the following:

(A) Direct services; or

(B) agreements with specified community resources.

(g) Any licensee may submit a written request for an amended license.

(1) Each licensee who intends to change the terms of the license, including the maximum number, the age range, or the gender of residents to be served, shall submit a request for an amendment on a form provided by the department and a nonrefundable amendment fee of $35. An amendment fee shall not be required if the request to change the terms of the license is made at the time of the renewal.

(2) Each request for a change in the maximum number, the age range, or the gender of residents to be served shall include written documentation of the notification to the school district where the PRTF is located, as specified in K.A.R. 28-4-1202.

(3) The licensee shall make no change to the terms of the license, including the maximum number of residents, the age range of residents to be served, the gender of residents, and the type of license, until an amendment is granted, in writing, by the secretary. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-504, 65-505, and 65-508 and K.S.A. 2008 Supp. 65-516; effective Oct. 9, 2009.)

**28-4-1205. Background checks.** (a) With each initial application or renewal application, each applicant or licensee shall submit a request to conduct a background check by the Kansas bu-

reau of investigation and a background check by the Kansas department of social and rehabilitation services in order to comply with the provisions of K.S.A. 65-516, and amendments thereto. Each request shall be submitted on a form provided by the department. The request shall list the required information for each individual 10 years of age and older who will be residing, working, or regularly volunteering in the PRTF.

(b) Each licensee shall submit a request to the department to conduct a background check by the Kansas bureau of investigation and a background check by the Kansas department of social and rehabilitation services before each new individual begins residing, working, or regularly volunteering in the PRTF.

(c) A copy of each request for a background check shall be kept on file at the PRTF.

(d) Residents admitted into a PRTF for care and treatment shall not be considered to be residing in the PRTF for the purposes of background checks. (Authorized by K.S.A. 65-508; implementing K.S.A. 2008 Supp. 65-516; effective Oct. 9, 2009.)

**28-4-1206. Administration.** (a) Each PRTF shall be governed by one of the following entities:

(1) A public agency, which shall employ an administrator for the PRTF; or

(2) a private entity with a governing board that is legally responsible for the operation, policies, finances, and general management of the PRTF. The private entity shall employ an administrator for the PRTF. The administrator shall not be a voting member of the governing board.

(b) Each licensee shall develop and implement written policies and procedures for the operation of the PRTF that shall include detailed descriptions of the roles and the responsibilities for staff and volunteers. The staff practices shall conform to the written policies and procedures and to all regulations governing PRTFs.

(c) A licensee or a staff member of a PRTF shall not accept permanent legal guardianship of any individual before the individual is admitted to the PRTF or while the individual is in treatment at the PRTF.

(d) A copy of the regulations governing PRTFs shall be kept on the premises at all times and shall be made available to all staff members.

(e) Each licensee shall make available to the department all reports and findings of on-site surveys, periodic performance reviews, monitoring visits, and accreditation reports by the PRTF's accrediting body.

(f) Each licensee shall have sufficient finances to ensure the provision of program activities and services to each resident. Each licensee shall provide the financial resources necessary to maintain compliance with these regulations.

(g) Each resident's personal money shall be kept separate from the PRTF's funds. Each licensee shall maintain financial records of each resident's personal money. (Authorized by and implementing K.S.A. 65-508; effective Oct. 9, 2009.)

**28-4-1207. Staff requirements.** (a) Each individual working or volunteering in a PRTF shall be qualified by temperament, emotional maturity, judgment, and understanding of residents necessary to maintain the health, comfort, safety, and welfare of individuals placed in psychiatric residential treatment facilities.

(b) Each food service staff member shall demonstrate compliance with all of the following requirements through ongoing job performance:

(1) Knowledge of the nutritional needs of residents;

(2) understanding of quantity food preparation and service;

(3) sanitary food handling and storage methods;

(4) willingness to consider individual, cultural, and religious food preferences of the residents; and

(5) willingness to work with the program director in planning learning experiences for residents about nutrition. (Authorized by and implementing K.S.A. 65-508; effective Oct. 9, 2009.)

**28-4-1208. Records.** Each licensee shall develop and implement written policies and procedures that address PRTF recordkeeping requirements, including resident records, personnel records, and general records. (a) Resident records. Each licensee shall maintain an individual record for each resident, which shall include the following information:

(1) A health record that meets the requirements in K.A.R. 28-4-1211;

(2) a copy of each written report of any incidents involving the resident and specified in K.A.R. 28-4-1209 and K.A.R. 28-4-1214;

(3) documentation of each use of seclusion for the resident; and

(4) a financial record of the resident's personal money as specified in K.A.R. 28-4-1206.

(b) Personnel records. Each licensee shall maintain an individual personnel record for each staff member, which shall include the following information:

(1) A health record that meets the requirements in K.A.R. 28-4-1211, including a record of the results of any health examinations and tuberculin tests;

(2) the staff member's current job responsibilities;

(3) documentation that the staff member has read, understands, and agrees to all of the following:

(A) The statutes and regulations regarding the mandatory reporting of suspected child abuse, neglect, and exploitation;

(B) all regulations governing PRTFs; and

(C) the PRTF's policies and procedures applicable to the job responsibilities of the staff member; and

(4) a copy of a valid driver's license of a type appropriate for the vehicle being used, for any staff member who transports any resident.

(c) Volunteer records. Each licensee shall maintain an individual record for each volunteer of the PRTF, which shall include the following information:

(1) A health record that meets the requirements in K.A.R. 28-4-1211, including a record of the results of any health examinations and tuberculin tests, for each volunteer in contact with residents; and

(2) a copy of a valid driver's license of a type appropriate for the vehicle being used, for any volunteer who transports any resident.

(d) General records. Each licensee shall ensure that general records are completed and maintained, which shall include the following:

(1) Documentation of the requests submitted to the department for the purpose of background checks for each staff member and volunteer in order to comply with the provisions of K.S.A. 65-516, and amendments thereto;

(2) documentation of notification to the school district;

(3) documentation of each approval granted by the secretary for any change, exception, or amendment as specified in K.A.R. 28-4-1204 and K.A.R. 28-4-1215;

(4) the policies and procedures of the PRTF;

(5) all reports and findings of on-site visits, periodic performance reviews, monitoring visits to determine compliance with PRTF regulations and standards, and any accreditation reports by the PRTF's accrediting body;

(6) all written reports of the following:

(A) All incidents or events specified in K.A.R. 28-4-1209 and K.A.R. 28-4-1214; and

(B) the use of restraint or seclusion;

(7) all documentation specified in K.A.R. 28-4-1218 for transporting residents;

(8) all documentation specified in K.A.R. 28-4-1212 for the locking systems for the door of each room used for seclusion, including documentation of the state fire marshal's approval;

(9) all documentation specified in K.A.R. 28-4-1214 for emergency plans, fire and tornado drills, and written policies and procedures on the security and control of the residents;

(10) all documentation specified in K.A.R. 28-4-1214 for the inspection and the maintenance of security devices, including locking mechanisms and any delayed-exit mechanisms on doors;

(11) documentation of approval of any private water or sewage systems as specified in K.A.R. 28-4-1215; and

(12) documentation of vehicle and liability insurance for each vehicle used by the PRTF to transport residents as specified in K.A.R. 28-4-1218. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507 and 65-508 and K.S.A. 2008 Supp. 65-516; effective Oct. 9, 2009.)

**28-4-1209. Notification and reporting requirements.** (a) Each licensee shall ensure that the following notifications are submitted verbally or in writing upon discovery of the incident or event, but no later than 24 hours after the discovery:

(1) Each instance of suspected abuse or neglect of a resident shall be reported to the Kansas department of social and rehabilitation services or to law enforcement.

(2) Each incident resulting in the death of any resident shall be reported to the following:

(A) Law enforcement;

(B) the department;

(C) the parent or guardian of the resident;

(D) the resident's placing agent;

(E) the state medicaid agency;

(F) the Kansas department of social and rehabilitation services; and

(G) the state-designated protection and advocacy entity.

(3) Each incident resulting in the death of a staff member while on duty at the PRTF shall be reported to the department and to any other entities according to the policies of the PRTF.

(4) Each incident resulting in a serious injury to any resident, including burns, lacerations, bone fractures, substantial hematomas, and injuries to internal organs, shall be reported to the following:

(A) The department;

(B) the county health department in which the PRTF is located;

(C) the parent or legal guardian of any resident involved in the incident;

(D) the placing agent of any resident involved in the incident;

(E) the state medicaid agency;

(F) the Kansas department of social and rehabilitation services; and

(G) the state-designated protection and advocacy entity.

(5) Each incident of suspected sexual assault involving a resident as a victim or as a perpetrator shall be reported to the following:

(A) Law enforcement;

(B) the Kansas department of social and rehabilitation services;

(C) the parent or legal guardian of the resident;

(D) the resident's placing agent; and

(E) the department.

(6) Each suicide attempt by a resident shall be reported to the following:

(A) The department;

(B) the resident's placing agent;

(C) the parent or guardian of the resident;

(D) the state medicaid agency;

(E) the Kansas department of social and rehabilitation services; and

(F) the state-designated protection and advocacy entity.

(7) Each natural disaster shall be reported to the department.

(8) Each instance of work stoppage shall be reported to the department.

(9) Each incident that involves a riot or the taking of hostages shall be reported to the department.

(10) Each fire shall be reported to the department and to the state fire marshal.

(11) Each incident that involves any suspected illegal act committed by a resident while in the PRTF or by a staff member while on duty at the PRTF shall be reported to law enforcement in accordance with the policies of the PRTF.

(12) If any resident, staff member, or volunteer of the PRTF contracts a reportable infectious or contagious disease specified in K.A.R. 28-1-2, the licensee shall ensure that a report is submitted to the local county health department within 24 hours, excluding weekends and holidays.

(b) Each licensee shall complete a written report within five calendar days of the discovery of any incident or event identified in subsection (a). (Authorized by and implementing K.S.A. 65-508; effective Oct. 9, 2009.)

**28-4-1210. Admission requirements.** (a) No individual less than six years of age shall be admitted to a PRTF. No individual 21 years of age or older shall be admitted to a PRTF as a new resident, but any current resident may continue to receive treatment until that resident reaches 22 years of age.

(b) Each individual who shows evidence of being physically ill, injured, or under the influence of alcohol or drugs shall be assessed in accordance with the PRTF's policies and procedures to determine the appropriateness of admission and any need for immediate medical care. (Authorized by and implementing K.S.A. 65-508 and 65-510; effective Oct. 9, 2009.)

**28-4-1211. Health care.** (a) Policies for resident health care. Each licensee, in consultation with a physician, shall develop written policies that include provisions for the following:

(1) A health checklist and review for each resident upon admission, including the following:

(A) Current physical, including oral, health status;

(B) any allergies, including medication, food, and plant;

(C) any current pain, including cause, onset, duration, and location;

(D) preexisting medical conditions;

(E) current mood and affect;

(F) any current suicidal thoughts and history of suicide attempts;

(G) any infectious or contagious diseases;

(H) documentation of current immunizations or documentation of an exemption for medical or religious reasons as specified in K.A.R. 28-1-20;

(I) any drug or alcohol use;

(J) any current medications;

(K) any physical disabilities;

(L) menstrual history, if applicable;

(M) any sexually transmitted disease; and

(N) any history of pregnancy;

(2) follow-up health care, including a health assessment and referrals for any concerns identified in the health checklist and review;

(3) if medically indicated, chronic care, convalescent care, and preventive care;

(4) care for minor illness, including the use and administration of prescription and nonprescription drugs;

(5) care for residents under the influence of alcohol or other drugs;

(6) consultation regarding each individual resident, if indicated;

(7) infection control measures and universal precautions to prevent the spread of blood-borne infectious diseases, including medically indicated isolation; and

(8) maternity care as required by K.A.R. 28-4-279.

(b) Physical health of residents at admission and throughout placement. Each licensee shall maintain a health record for each resident to document the provision of health services, including dental services.

(1) Each licensee shall ensure that a health checklist is completed for each resident at the time of admission by the individual who admits the resident. The health checklist shall serve as a guide to determine if a resident is in need of medical or dental care and to determine if the resident is using any prescribed medications.

(2) Each licensee shall ensure that the PRTF's physician, a physician's assistant operating under a written protocol as authorized by a responsible physician, or an advanced registered nurse practitioner (ARNP) operating under a written protocol as authorized by a responsible physician and operating under the ARNP's scope of practice is contacted for any resident who is taking a prescribed medication at the time of admission, to assess the need for continuation of the medication.

(3) Each change of prescription or directions for administering a prescription medication shall be ordered by the authorized medical practitioner with documentation placed in the resident's record. Prescription medications shall be administered only to the designated resident as ordered by the authorized medical practitioner.

(4) Each licensee shall ensure that a physician, a physician's assistant operating under a written protocol as authorized by the responsible physician, or an ARNP operating under a written protocol as authorized by a responsible physician and operating within the ARNP's scope of practice is contacted for any resident who has acute symptoms of illness or who has a chronic illness.

(5) Within 72 hours of admission, a physician, a physician's assistant operating under a written protocol as authorized by a responsible physician, or a nurse approved to conduct screening and health assessments shall review the health checklist. Based upon health indicators derived from the checklist or in the absence of documentation of a screening within the past 24 months, the reviewing physician, physician's assistant, or nurse shall determine whether or not a full screening and health assessment are necessary. If a full screening and health assessment are necessary, the following requirements shall be met:

(A) The screening and health assessment shall be conducted by a licensed physician, a physician's assistant operating under a written protocol as authorized by a responsible physician, or a nurse approved to conduct these examinations.

(B) The screening and health assessment shall be completed within 10 days of admission.

(6) Each licensee shall ensure that each resident receives a screening for symptoms of tuberculosis. A Mantoux test, a tuberculin blood assay test, or a chest X-ray shall be required if any of the following occurs:

(A) The resident has a health history or shows symptoms compatible with tuberculosis.

(B) The location of the PRTF is in an area identified by the local health department or the secretary as a high-risk area for tuberculosis exposure.

(C) Significant exposure to an active case of tuberculosis occurs, or symptoms compatible with tuberculosis develop.

(D) If there is a positive reaction to the diagnostic procedures, proof of proper treatment or prophylaxis shall be required. Documentation of the test, X-ray, or treatment results shall be kept on file in the resident's health record, and the county health department shall be informed of the results.

(7) Each licensee shall ensure that written policies and procedures prohibit the use of tobacco in any form by any resident while in care.

(c) Oral health of residents. Each licensee shall ensure that the following requirements are met:

(1) Dental care shall be available for all residents.

(2) Each resident who has not had a dental examination within the year before admission to the

PRTF shall have a dental examination no later than 60 days after admission.

(3) Each resident shall receive emergency dental care as needed.

(4) Each licensee shall develop and implement a plan for oral health education and staff supervision of residents in the practice of good oral hygiene.

(d) Health record. Each licensee shall maintain a health record for each resident to document the provision of health services required in subsections (a), (b), and (c).

(e) Personal health and hygiene of residents.

(1) Each resident shall have access to drinking water, a lavatory, and a toilet.

(2) Each licensee shall ensure that each resident is given the opportunity to bathe upon admission and daily.

(3) Each licensee shall furnish each resident with toothpaste and a toothbrush.

(4) Each licensee shall ensure that each resident is given the opportunity to brush the resident's teeth after each meal.

(5) Each licensee shall make opportunities available to the residents for daily shaving and regular haircuts.

(6) Each resident's washable clothing shall be changed and laundered at least twice a week. Each licensee shall ensure that clean underwear and socks are available to each resident on a daily basis.

(7) Each female resident shall be provided personal hygiene supplies for use during her menstrual cycle.

(8) Each licensee shall ensure that clean, individual washcloths and bath towels are issued to each resident at least twice each week.

(9) Each licensee shall allow each resident to have at least eight hours of sleep each day.

(f) Personal health of staff members and volunteers of the PRTF.

(1) Each individual shall meet the following requirements:

(A) Be free from any infectious or contagious disease requiring isolation or quarantine as specified in K.A.R. 28-1-6;

(B) be free of any physical, mental, or emotional health conditions that would adversely affect the individual's ability to fulfill the responsibilities listed in the individual's job description and to protect the health, safety, and welfare of the residents; and

(C) be free from impaired ability due to the use of alcohol, prescription or nonprescription drugs, or other chemicals.

(2) Each individual who has contact with any resident or who is involved in food preparation or service shall have received a health assessment within one year before employment. This assessment shall be conducted by a licensed physician, a physician's assistant operating under a written protocol as authorized by a responsible physician, or a nurse authorized to conduct these assessments.

(3) The results of each health assessment shall be recorded on forms provided by the department and shall be kept on file.

(4) A health assessment record may be transferred from a previous place of employment if the assessment occurred within one year before the individual's employment at the PRTF and if the assessment was recorded on the form provided by the department.

(5) The initial health examination shall include a screening for symptoms of tuberculosis. A Mantoux test, a tuberculin blood assay test, or a chest X-ray shall be required if any of the following occurs:

(A) The individual has a health history or shows symptoms compatible with tuberculosis.

(B) The PRTF is located in an area identified by the local health department or the secretary as a high-risk area for tuberculosis exposure.

(C) Significant exposure to an active case of tuberculosis occurs, or symptoms compatible with tuberculosis develop.

(D) If there is a positive reaction to any of the diagnostic procedures, proof of proper treatment or prophylaxis shall be required. Documentation of the test, X-ray, and treatment results shall be kept on file in the individual's health record, and the county health department shall be informed of the results.

(6) If an individual experiences a significant gchange in physical, mental, or emotional health, including any indication of substance abuse, an assessment of the individual's current health status may be required by the licensee or the secretary. A licensed health care provider qualified to diagnose and treat the condition shall conduct the health assessment. A written report of the assessment shall be kept in the individual's personnel record and shall be submitted to the secretary on request.

(g) Tobacco products shall not be used inside the PRTF. Tobacco products shall not be used by

staff members or volunteers of the PRTF in the presence of residents. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507 and 65-508; effective Oct. 9, 2009.)

**28-4-1212. Health and safety requirements for the use of seclusion rooms.** (a) Each licensee shall ensure that the following requirements are met for each room used for seclusion:

(1) The locking system shall be approved by the state fire marshal.

(2) No room used for seclusion shall be in a basement.

(3) Each door shall be equipped with a window mounted in a manner that allows inspection of the entire room.

(4) Each window in a room used for seclusion shall be impact-resistant and shatterproof.

(5) The walls shall be completely free of objects.

(6) A mattress shall be available, if needed. If a mattress is used, the mattress shall be clean and in good repair.

(b) No more than one resident shall be placed in a room used for seclusion at the same time.

(c) Before any resident is admitted to a room used for seclusion, all items that could be used to injure oneself or others shall be removed from the resident.

(d) Each resident shall be permitted to wear clothing necessary to maintain modesty and comfort at all times. Paper clothing may be substituted if a resident uses clothing for self-harm. Sheets, towels, blankets, and similar items shall not be substituted for clothing.

(e) Each resident shall receive all meals and snacks normally served and shall be allowed time to exercise and perform necessary bodily functions.

(f) Each resident shall have ready access to drinking water and bathroom facilities upon request. (Authorized by and implementing K.S.A. 65-508; effective Oct. 9, 2009.)

**28-4-1213. Library; recreation; work.** (a) Library.

(1) Each licensee shall have written policies and procedures that govern the PRTF's library program, including acquisition of materials, hours of availability, and staffing.

(2) Library services shall be available to all residents.

(A) Reading and other library materials may be provided for use during non-library hours.

(B) The reading and library materials shall be age-appropriate and suitable for various levels of reading competency and shall reflect a variety of interests.

(b) Recreation.

(1) Each licensee shall ensure that indoor and outdoor recreational areas and equipment are provided where security and visual supervision can be maintained at all times. Unless restricted for health reasons or for inclement weather, all residents shall be allowed to engage in supervised indoor and outdoor recreation on a daily basis.

(2) Each licensee shall ensure that art and craft supplies, books, current magazines, games, and other indoor recreational materials are provided for leisure activities.

(c) Work.

(1) Work assignments shall not be used as a substitute for recreation.

(2) Residents shall be prohibited from performing any of the following duties:

(A) Personal services for the staff members;

(B) cleaning or maintaining areas away from the PRTF;

(C) replacing employed staff members; or

(D) any work experience classified as hazardous by the Kansas department of labor regulations governing child labor.

(d) Auxiliary staff members may supervise library, recreation, or work activities. Direct care staff shall be within visual and auditory distance to provide immediate support, if necessary. (Authorized by and implementing K.S.A. 65-508; effective Oct. 9, 2009.)

**28-4-1214. Emergency plan; drills; facility security and control of residents; storage and use of hazardous substances and unsafe items.** (a) Emergency plan. Each licensee shall develop an emergency plan to provide for the safety of all residents in emergencies, including fires, tornadoes, storms, floods, and serious injuries. The licensee shall review the plan at least annually and update it as needed.

(1) The emergency plan shall contain provisions for the care of residents in emergencies.

(2) Each licensee that permits the use of seclusion shall have a policy and procedure to evacuate each resident in seclusion if an emergency occurs.

(3) All of the staff members in the PRTF shall be informed of the emergency plan, which shall be posted in a prominent location.

(b) Fire and tornado drills. The PRTF staff shall conduct at least one fire drill and one tornado drill

during each shift during each quarter. Drills shall be planned to allow participation by the residents in at least one fire drill and at least one tornado drill during each quarter.

(c) Facility security and control of residents. Each licensee shall develop and implement written policies and procedures that include the use of a combination of supervision, inspection, and accountability to promote safe and orderly operations. The policies and procedures shall prohibit the use of mace, pepper spray, and other chemical agents.

(1) All written policies and procedures for facility security and the control of residents shall be available to all staff members. Each licensee shall review the policies and procedures at least annually, update them as needed, and ensure that all of the requirements are met. These policies and procedures shall include all of the following requirements:

(A) Written operational shift assignments shall state the duties and responsibilities for each assigned position in the PRTF.

(B) Supervisory staff shall maintain a permanent log and prepare shift reports that record routine and emergency situations.

(C) All security devices, including locking mechanisms on doors and any delayed-exit mechanisms on doors, shall have current written approval from the state fire marshal and shall be regularly inspected and maintained, with any corrective action completed as necessary and recorded.

(D) No resident shall have access to any ammunition or weapons, including firearms and air-powered guns. If a licensee prohibits carrying a concealed weapon on the premises of the PRTF, the licensee shall post notice pursuant to K.S.A. 75-7c11, and amendments thereto.

(E) Procedures shall be developed and implemented for the control and use of keys, tools, medical supplies, and culinary equipment.

(F) No resident or group of residents shall exercise control or authority over another resident, have access to the records of another resident, or have access to or the use of keys that control security.

(G) Procedures shall be developed and implemented for knowing the whereabouts of all residents at all times and for handling runaways and unauthorized absences.

(H) Safety and security precautions pertaining to the PRTF and any staff vehicles used to transport residents shall be developed and implemented.

(2) Each licensee shall ensure the development of policies and procedures that govern documentation of all incidents, including riots, the taking of hostages, and the use of restraint.

(A) The policies and procedures shall require submission of a written report of all incidents to the program director no later than the conclusion of that shift. A copy of the report shall be kept in the record of each resident involved in the incident.

(B) Reports of incidents shall be made to document compliance with K.A.R. 28-4-1209.

(3) A written plan shall provide for continuing operations if a work stoppage occurs. A copy of this plan shall be available to each staff member.

(d) Storage and use of hazardous substances and unsafe items.

(1) No resident shall have unsupervised access to poisons, hazardous substances, or flammable materials. These items shall be kept in locked storage when not in use.

(2) Each licensee shall develop and implement policies and procedures for the safe and sanitary storage and distribution of personal care and hygiene items. The following items shall be stored in an area that is either locked or under the control of staff:

(A) Aerosols;

(B) alcohol-based products;

(C) any products in glass containers; and

(D) razors, blades, and any other sharp items.

(3) Each licensee shall develop and implement policies and procedures for the safe storage and disposal of prescription and nonprescription medications. All prescription and nonprescription medications shall be stored in a locked cabinet located in a designated staff-accessible and supervised area. All refrigerated medications shall be stored under all food items in a locked refrigerator, in a refrigerator in a locked room, or in a locked medicine box in a refrigerator. Medications taken internally shall be kept separate from other medications. All unused medications shall be accounted for and disposed of in a safe manner, including being returned to the pharmacy, transferred with the resident, or safely discarded.

(4) Each PRTF shall have first-aid supplies, which shall be stored in a locked cabinet located in a staff-accessible and supervised area. First-aid supplies shall include the following:

(A) Assorted adhesive strip bandages;

(B) adhesive tape;
(C) a roll of gauze;
(D) scissors;
(E) a package of gauze squares;
(F) liquid soap;
(G) an elastic bandage;
(H) tweezers;
(I) rubbing alcohol; and
(J) disposable nonporous gloves in assorted sizes. (Authorized by and implementing K.S.A. 65-508; effective Oct. 9, 2009.)

**28-4-1215. Environmental standards.** (a) General building requirements.

(1) Each licensee shall ensure that public water and sewage systems, where available, are used. If public water and sewage systems are not available, each licensee shall maintain approval by the appropriate health authorities for any private water and sewage systems that are used.

(2) A licensed architect shall be responsible for the plans for any newly constructed building or for any major addition or major alteration to an existing building.

(A) For a new building, preliminary plans and outline specifications, including plot plans, shall be submitted to the department for review before commencing the final working drawings and specifications. Each licensee shall submit the final working drawings, construction specifications, and plot plans to the department for review and written approval before the letting of contracts.

(B) For an addition or alteration to an existing building, each licensee shall submit a written statement defining the proposed use of the construction and detailing the plans and specifications to the department for review and written approval before commencing construction.

(3) If construction is not commenced within one year of submitting a proposal for a new building or an addition or alteration to an existing building, each licensee shall resubmit the plans and proposal to the department before proposed construction begins.

(b) Location and grounds requirements.

(1) Community resources, including health services, police protection, and fire protection from an organized fire department, shall be available.

(2) There shall be at least 100 square feet of outside activity space available for each resident allowed to utilize each outdoor area at any one time.

(3) The outside activity area shall be free of physical hazards.

(4) Sufficient space for visitor and staff parking at each PRTF shall be provided.

(c) Structural requirements and use of space. Each licensee shall ensure that the PRTF design, structure, interior and exterior environment, and furnishings promote a safe, comfortable, and therapeutic environment for the residents.

(1) Each PRTF shall be accessible to and usable by persons with disabilities.

(2) Each PRTF's structural design shall facilitate personal contact and interaction between staff members and residents.

(3) Each sleeping room shall meet the following requirements:

(A) No resident's room shall be in a basement.

(B) The minimum square footage of floor space shall be 80 square feet in each room occupied by one resident. Each room occupied by more than one resident shall have at least 60 square feet of floor space for each resident. At least one dimension of the usable floor space unencumbered by furnishings or fixtures shall be at least seven feet.

(C) The minimum ceiling height shall be seven feet eight inches over at least 90 percent of the room area.

(D) An even temperature of between 68 degrees Fahrenheit and 78 degrees Fahrenheit shall be maintained, with an air exchange of at least four times each hour.

(E) Sleeping rooms occupied by residents shall have a window source of natural light. Access to a drinking water source and toilet facilities shall be available 24 hours a day.

(F) Separate beds with level, flat mattresses in good condition shall be provided for each resident. All beds shall be above the floor level.

(G) Clean bedding, adequate for the season, shall be provided for each resident. Bed linen shall be changed at least once a week or more frequently when soiled.

(4) Each sleeping room, day room, and classroom utilized by residents shall have lighting of at least 20 foot-candles in all parts of the room. There shall be lighting of at least 35 foot-candles in areas used for reading, study, or other close work.

(5) Adequate space for study and recreation shall be provided.

(6) Each living unit shall contain the following:

(A) Furnishings that provide sufficient seating

for the maximum number of residents expected to use the area at any one time;

(B) writing surfaces that provide sufficient space for the maximum number of residents expected to use the area at any one time; and

(C) furnishings that are consistent with the needs of the residents.

(7) Each PRTF shall have adequate central storage for household supplies, bedding, linen, and recreational equipment.

(8) If the PRTF is on the same premises as that of another licensed facility, the living unit of the PRTF shall be maintained in a separate, self-contained unit. Residents of the PRTF shall not use space shared with another licensed facility at the same time unless the plan for the use of space is approved, in writing, by the secretary and by SRS.

(9) If a PRTF has one or more day rooms, each day room shall provide space for a variety of resident activities. Day rooms shall be situated immediately adjacent to the residents' sleeping rooms, but separated from the sleeping rooms by a floor-to-ceiling wall. Each day room shall provide at least 35 square feet for each resident, exclusive of lavatories, showers, and toilets, for the maximum number of residents expected to use the day room area at any one time.

(10) Each room used for sports and other physical activities shall provide floor space equivalent to at least 100 square feet for each resident utilizing the room for those purposes at any one time.

(11) Sufficient space shall be provided for visitation between residents and nonresidents. The PRTF shall have space for the screening and search of both residents and visitors, if screening and search are included in the PRTF's policies and procedures. Private space shall be available for searches as needed. Storage space shall be provided for the secure storage of visitors' coats, handbags, and other personal items not allowed into the visitation area.

(12) A working telephone shall be accessible to staff members in all areas of the building. Emergency numbers, including those for the fire department, the police, a hospital, a physician, the poison control center, and an ambulance, shall be posted by each phone.

(13) A service sink and a locked storage area for cleaning supplies shall be provided in a room or closet that is well ventilated and separate from kitchen and living areas.

(d) Bathroom facilities.

(1) For each eight or fewer residents of each sex, at least one toilet, one lavatory, and either a bathtub or a shower shall be provided. All toilets shall be above floor level.

(2) Each bathroom shall be ventilated to the outdoors by means of either a window or a mechanical ventilating system, with a minimum of 10 air changes each hour.

(3) Toilet and bathing accommodations and drinking water shall be in a location accessible to sleeping rooms and living and recreation rooms.

(4) Drinking water and at least one bathroom shall be accessible to the reception and admission areas.

(5) Cold water and hot water not exceeding 120 degrees Fahrenheit shall be supplied to lavatories, bathtubs, and showers.

(6) Liquid soap, toilet paper, and paper towels shall be available in all bathroom facilities.

(e) Building maintenance standards.

(1) Each building shall be clean at all times and free from vermin infestation.

(2) The walls shall be smooth, easily cleanable, and sound. Lead-free paint shall be used on all painted surfaces.

(3) The floors and walking surfaces shall be kept free of hazardous substances at all times.

(4) The floors shall not be slippery or cracked.

(5) Each rug or carpet used as a floor covering shall be slip-resistant and free from tripping hazards. A floor covering, paint, or sealant shall be required over concrete floors for all buildings used by the residents.

(6) All bare floors shall be swept and mopped daily.

(7) A schedule for cleaning each building shall be established and maintained.

(8) Washing aids, including brushes, dish mops, and other hand aids used in dishwashing activities, shall be clean and used for no other purpose.

(9) Mops and other cleaning tools shall be cleaned and dried after each use and shall be hung on racks in a well-ventilated place.

(10) Pesticides and any other poisons shall be used in accordance with the product instructions. These substances and all other poisons shall be stored in a locked area.

(11) Toilets, lavatories, sinks, and other such accommodations in the living areas shall be cleaned each day. (Authorized by and implementing K.S.A. 65-508; effective Oct. 9, 2009.)

**28-4-1216. Food services.** Each licensee shall ensure that food preparation, service, safety,

and nutrition meet the requirements of this regulation. For purposes of this regulation, "food" shall include beverages.

(a) Sanitary practices. Each individual engaged in food preparation and food service shall use sanitary methods of food handling, food service, and storage.

(1) Only authorized individuals shall be in the food preparation area.

(2) Each individual who has any symptoms of an illness, including fever, vomiting, or diarrhea, shall be excluded from the food preparation area and shall remain excluded from the food preparation area until the time at which the individual has been asymptomatic for at least 24 hours or provides the PRTF with written documentation from a health care provider stating that the symptoms are from a noninfectious condition.

(3) Each individual who has contracted an infectious or contagious disease specified in K.A.R. 28-1-6 shall be excluded from the food preparation area and shall remain excluded from the food preparation area for the time period required for that disease.

(4) Each individual with an open cut or abrasion on the hand or forearm or with a skin sore shall cover the sore, cut, or abrasion with a bandage before handling or serving food.

(5) The hair of each individual shall be restrained when the individual is handling food.

(6) Each individual handling or serving food shall comply with each of the following requirements for handwashing:

(A) Each individual shall wash that individual's hands and exposed portions of the individual's arms before working with food, after using the toilet, and as often as necessary to keep the individual's hands clean and to minimize the risk of contamination.

(B) Each individual shall use an individual towel, disposable paper towels, or an air dryer to dry that individual's hands.

(7) Each individual preparing or handling food shall minimize bare hand and bare arm contact with exposed food that is not in a ready-to-eat form.

(8) Except when washing fruits and vegetables, no individual handling or serving food may contact exposed, ready-to-eat food with the individual's bare hands.

(9) Each individual shall use single-use gloves, food-grade tissue paper, dispensing equipment, or utensils, including spatulas or tongs, when handling or serving exposed ready-to-eat food.

(b) Nutrition.

(1) Meals and snacks shall meet the nutritional needs of the residents in accordance with the United States department of agriculture's recommended daily allowances. A sufficient quantity of food shall be prepared for each meal to allow each resident second portions of bread and milk and either vegetables or fruit.

(2) Special diets shall be provided for residents for either of the following reasons:

(A) Medical indication; or

(B) accommodation of religious practice, as indicated by a religious consultant.

(3) Each meal shall be planned and the menu shall be posted at least one week in advance. A copy of the menu of each meal served for the preceding month shall be kept on file and available for inspection.

(c) Food service and preparation areas. If food is prepared on the premises, each licensee shall provide a food preparation area that is separate from the eating area, activity area, laundry area, and bathrooms and that is not used as a passageway during the hours of food preparation and cleanup.

(1) All surfaces used for food preparation and tables used for eating shall be made of smooth, nonporous material.

(2) Before and after each use, all food preparation surfaces shall be cleaned with soapy water and sanitized by use of a solution of one ounce of bleach to one gallon of water or a sanitizing solution used in accordance with the manufacturer's instructions.

(3) Before and after each use, the tables used for eating shall be cleaned by washing with soapy water.

(4) All floors shall be swept daily and mopped when spills occur.

(5) Garbage shall be disposed of in a garbage disposal or in a covered container. If a container is used, the container shall be removed at the end of each day or more often as needed to prevent overflow or to control odor.

(6) Each food preparation area shall have handwashing facilities equipped with soap and hot and cold running water and with individual towels, paper towels, or air dryers. Each sink used for handwashing shall be equipped to provide water at a temperature of at least 100 degrees Fahrenheit.

The water temperature shall not exceed 120 degrees Fahrenheit.

(A) If the food preparation sink is used for handwashing, the sink shall be sanitized before using it for food preparation by use of a solution of ¼ cup of bleach to one gallon of water.

(B) Each PRTF with 25 or more residents shall be equipped with handwashing facilities that are separate from the food preparation sink.

(7) Clean linen used for food preparation or service shall be stored separately from soiled linen.

(d) Food storage and refrigeration. All food shall be stored and served in a way that protects the food from cross-contamination.

(1) Nonrefrigerated food.

(A) All food not requiring refrigeration shall be stored at least six inches above the floor in a clean, dry, well-ventilated storeroom or cabinet in an area with no overhead drain or sewer lines and no vermin infestation.

(B) Dry bulk food that has been opened shall be stored in metal, glass, or food-grade plastic containers with tightly fitting covers and shall be labeled with the contents and the date opened.

(C) Food shall not be stored with poisonous or toxic materials. If cleaning agents cannot be stored in a room separate from food storage areas, the cleaning agents shall be clearly labeled and kept in locked cabinets not used for the storage of food.

(2) Refrigerated and frozen food.

(A) All perishables and potentially hazardous foods requiring refrigeration shall be continuously maintained at 41 degrees Fahrenheit or lower in the refrigerator or 0 degrees Fahrenheit in the freezer.

(B) Each refrigerator and each freezer shall be equipped with a visible, accurate thermometer.

(C) Each refrigerator and each freezer shall be kept clean inside and out.

(D) All food stored in the refrigerator shall be covered, wrapped, or otherwise protected from contamination. Unserved, leftover perishable foods shall be dated, refrigerated immediately after service, and eaten within three days.

(E) Raw meat shall be stored in the refrigerator in a manner that prevents meat fluids from dripping on other foods.

(F) Ready-to-eat, commercially processed foods, including luncheon meats, cream cheese, and cottage cheese, shall be eaten within five days after opening the package.

(G) If medication requiring refrigeration is stored with refrigerated food, the medication shall be stored in a locked medicine box in a manner that prevents cross-contamination.

(3) Hot foods.

(A) Hot foods that are to be refrigerated shall be transferred to shallow containers in layers less than three inches deep and shall not be covered until cool.

(B) Potentially hazardous cooked foods shall be cooled in a manner to allow the food to cool within two hours from 135 degrees Fahrenheit to 70 degrees Fahrenheit or within six hours from 135 degrees Fahrenheit to 41 degrees Fahrenheit.

(e) Meals or snacks prepared on the premises.

(1) Each licensee shall ensure that all of the following requirements are met:

(A) All dairy products shall be pasteurized. Dry milk shall be used for cooking only.

(B) Meat shall be obtained from government-inspected sources.

(C) Raw fruits and vegetables shall be washed thoroughly before being eaten or used for cooking.

(D) Frozen foods shall be defrosted in the refrigerator, under cold running water, in a microwave oven using the defrost setting, or during the cooking process. Frozen foods shall not be defrosted by leaving them at room temperature or in standing water.

(E) Cold foods shall be maintained and served at temperatures of 41 degrees Fahrenheit or less.

(F) Hot foods shall be maintained and served at temperatures of at least 140 degrees Fahrenheit.

(2) Each licensee shall ensure that the following foods are not served or kept:

(A) Home-canned food;

(B) food from dented, rusted, bulging, or leaking cans; and

(C) food from cans without labels.

(f) Meals or snacks catered. If the licensee serves a meal or snack that is not prepared on the premises, the snack or meal shall be obtained from a food service establishment or a catering service licensed by the secretary of the Kansas department of agriculture. If food is transported to the premises, the licensee shall ensure that only food that has been transported promptly in clean, covered containers is served to the residents.

(g) Table service and cooking utensils.

(1) Each licensee shall ensure that all of the table service, serving utensils, and food cooking or serving equipment is stored in a clean, dry loca-

tion at least six inches above the floor. None of these items shall be stored under an exposed sewer line or a dripping water line or in a bathroom.

(2) Each licensee shall provide clean table service to each resident, including dishes, cups or glasses, and forks, spoons, and knives, as appropriate for the food being served.

(A) Clean cups, glasses, and dishes designed for repeat use shall be made of smooth, durable, and nonabsorbent material and shall be free from cracks or chips.

(B) Disposable, single-use table service shall be of food grade and medium weight and shall be disposed of after each use.

(3) If nondisposable table service and cooking utensils are used, each licensee shall sanitize the table service and cooking utensils using either a manual washing method or a mechanical dishwasher.

(A) If using a manual washing method, each licensee shall meet all of the following requirements:

(i) A three-compartment sink with hot and cold running water to each compartment and a drainboard shall be used for washing, rinsing, sanitizing, and air-drying.

(ii) An appropriate chemical test kit, a thermometer, or another device shall be used for testing the sanitizing solution and the water temperature.

(B) If using a mechanical dishwasher, each licensee shall ensure that all of the following requirements are met:

(i) Each commercial dishwashing machine and each domestic-type dishwashing machine shall be installed and operated in accordance with the manufacturer's instructions and shall be maintained in good repair.

(ii) If an automatic detergent dispenser, rinsing agents dispenser, or liquid sanitizer dispenser is used, the dispenser shall be installed and maintained according to the manufacturer's instructions.

(iii) Each dishwashing machine using hot water to sanitize shall be installed and operated according to the manufacturer's specifications and shall achieve surface temperature of at least 160 degrees Fahrenheit for all items.

(iv) If a domestic-type dishwasher is used, the dishwasher shall have the capacity to complete the cleaning cycle for all items in two cycles between each meal. (Authorized by and implementing K.S.A. 65-508; effective Oct. 9, 2009.)

**28-4-1217. Laundry.** (a) If laundry is done at the PRTF, the laundry sinks, appliances, and countertops or tables used for laundry shall be located in an area separate from food preparation areas and shall be installed and used in a manner that safeguards the health and safety of the residents. Adequate space shall be allocated for the laundry room and the storage of laundry supplies, including locked storage for all chemical agents used in the laundry area.

(b) Adequate space shall be allocated for the storage of clean and dirty linen and clothing. Soiled linen shall be stored separately from clean linen.

(c) Blankets shall be laundered at least once each month or, if soiled, more frequently. Blankets shall be laundered or sanitized before reissue.

(d) Each mattress shall be water-repellent and washed down and sprayed with disinfectant before reissue. Mattress materials and treatments shall meet the applicable requirements of the state fire marshal's regulations. (Authorized by and implementing K.S.A. 65-508; effective Oct. 9, 2009.)

**28-4-1218. Transportation.** Each licensee shall establish and implement written policies and procedures for transporting residents.

(a) The transportation policies and procedures shall include all of the following information:

(1) A list of the individuals authorized to transport residents for the PRTF;

(2) a description of precautions to prevent the escape of any resident during transfer;

(3) documentation of a current and appropriate license for each PRTF driver for the type of vehicle in use; and

(4) procedures to be followed in case of accident, injury, or other incident as specified in K.A.R. 28-4-1214, including notification procedures.

(b) Each transporting vehicle owned or leased by the licensee shall have a yearly safety check. A record of the yearly safety check and all repairs or improvements made shall be kept on file at the PRTF. When residents are transported in a privately owned vehicle, the vehicle shall be in safe working condition.

(c) Each vehicle used by the PRTF to transport residents shall be covered by accident and liability insurance as required by the state of Kansas.

(d) A first-aid kit shall be kept in the transporting vehicle and shall include disposable nonporous gloves in various sizes, a cleansing agent, scissors, bandages of assorted sizes, adhesive tape, a roll of gauze, one package of gauze squares at least four inches by four inches in size, and one elastic bandage.

(e) Each vehicle used to transport residents shall be equipped with an individual seat belt for the driver and an individual seat belt or child safety seat for each passenger. The driver and each passenger shall be secured by a seat belt or a child safety seat when the vehicle is in motion.

(f) Seat belts and child safety seats shall be used appropriate to the age, weight, and height of each individual and the placement of each individual in the vehicle, in accordance with state statutes and regulations. Each child safety seat shall be installed and used according to manufacturer's instructions.

(g) Residents who are less than 13 years of age shall not be seated in the front seat of a vehicle that is equipped with a passenger air bag.

(h) Smoking in any vehicle owned or leased by the licensee shall be prohibited whether or not a resident is present in the vehicle.

(i) Residents shall be transported directly to the location designated by the licensee and shall make no unauthorized stops along the way, except in an emergency.

(j) Handcuffs or shackles shall not be used on any resident being transported by staff members.

(k) No 15-passenger vans shall be used to transport residents. Each licensee owning or leasing a 15-passenger van purchased or leased before the effective date of this regulation shall be exempt from the requirements of this subsection. (Authorized by and implementing K.S.A. 65-508; effective Oct. 9, 2009.)

**28-4-1300. Definitions.** For the purposes of K.A.R. 28-4-1300 through K.A.R. 28-4-1318, the following terms shall have the meanings specified in this regulation:

(a) "Apgar scores" means a measure of a newborn's physical condition at one, five, and 10 minutes after birth.

(b) "Applicant" means a person who has applied for a license but who has not yet been granted a license to operate a birth center. This term shall include an applicant who has been granted a temporary permit to operate a birth center.

(c) "Birthing room" means a room designed, equipped, and arranged to provide for the care of a patient, a newborn, and the patient's support person or persons during and following childbirth.

(d) "Certified midwife" means an individual who is educated in the discipline of midwifery and who is currently certified by the American college of nurse-midwives or the American midwifery certification board, inc.

(e) "Certified nurse-midwife" means an individual who meets the following requirements:

(1) Is educated in the two disciplines of nursing and midwifery;

(2) is currently certified by the American college of nurse-midwives or the American midwifery certification board, inc; and

(3) has a current nursing license in Kansas.

(f) "Certified professional midwife" means an individual who is educated in the discipline of midwifery and who is currently certified by the North American registry of midwives.

(g) "Clinical director" means an individual who is appointed by the licensee and is responsible for the direction and oversight of clinical services at a birth center as specified in K.A.R. 28-4-1305.

(h) "Clinical staff member" means an individual employed by or serving as a consultant to the birth center who is one of the following:

(1) The clinical director or acting clinical director;

(2) a licensed physician;

(3) a certified nurse-midwife;

(4) a certified professional midwife;

(5) a certified midwife; or

(6) a registered professional nurse.

(i) "Department" means Kansas department of health and environment.

(j) "Exception" means a waiver of an applicant's or a licensee's compliance with a specific birth center regulation or any portion of a specific birth center regulation, granted by the secretary to the applicant or licensee.

(k) "License capacity" means the maximum number of patients that can be cared for in a birth center during labor, delivery, and recovery.

(l) "Licensee" means a person who has been granted a license to operate a birth center.

(m) "Maternity center" has the meaning specified in K.S.A. 65-502, and amendments thereto, and may also be referred to as a "birth center."

(n) "Normal, uncomplicated delivery" means a delivery that results in a vaginal birth and that does not require the use of general, spinal, or epidural anesthesia.

(o) "Normal, uncomplicated pregnancy" means a pregnancy that is initially determined to be at a low risk for a poor pregnancy outcome and that remains at a low risk throughout the pregnancy.

(p) "Patient" means a woman who has been accepted for services at a birth center during pregnancy, labor, delivery, and recovery.

(q) "Poor pregnancy outcome" means any outcome other than a live, healthy patient and newborn.

(r) "Premises" means the location, including each building and any adjoining grounds, of a birth center.

(s) "Secretary" means secretary of the Kansas department of health and environment. (Authorized by K.S.A. 65-508 and 65-510; implementing K.S.A. 65-502 and 65-508; effective July 9, 2010.)

**28-4-1301. Applicant and licensee requirements.** (a) Each applicant, if an individual, shall be at least 21 years of age at the time of application.

(b) Each applicant and each licensee, if a corporation, shall be in good standing with the Kansas secretary of state. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-504 and 65-508; effective July 9, 2010.)

**28-4-1302. Application procedures.** (a) Each person, in order to obtain a license, shall submit a complete application on the form provided by the department. The application shall be submitted at least 90 calendar days before the planned opening date of the birth center and shall include all of the following:

(1) A detailed description of the services to be provided;

(2) a detailed floor plan and site plan for the premises to be licensed; and

(3) the nonrefundable license fee specified in K.A.R. 28-4-92.

(b) At the time of the initial inspection, each applicant shall have the following information on file:

(1) Written verification from the applicable local authorities showing that the premises are in compliance with all local codes and ordinances, including all building, fire, and zoning requirements;

(2) written verification from the state fire marshal showing that the premises are in compliance with all applicable fire codes and regulations;

(3) written verification from local or state authorities showing that the private water supply and sewerage systems conform to all state and local laws; and

(4) documentation of the specific arrangements that have been made for the removal of biomedical waste and human tissue from the premises.

(c) The granting of a license to any applicant may be refused by the secretary if the applicant is not in compliance with the requirements of the following:

(1) K.S.A. 65-504 through 65-508, and amendments thereto;

(2) K.S.A. 65-512 and 65-513, and amendments thereto;

(3) K.S.A. 65-531, and amendments thereto; and

(4) all regulations governing birth centers. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-501, 65-504, 65-505, and 65-508; effective July 9, 2010.)

**28-4-1303. Terms of a temporary permit or a license.** (a) License capacity. The maximum number of patients authorized by a temporary permit or a license shall not be exceeded.

(b) Posting temporary permit or license. The current temporary permit or the current license shall be posted conspicuously within the birth center.

(c) Validity of temporary permit or a license. Each temporary permit or license shall be valid for the applicant or licensee and the address specified on the temporary permit or the license. When an initial or amended license becomes effective, all temporary permits or licenses previously granted to the applicant or licensee at the same address shall become invalid.

(d) Advertising. The advertising for each birth center shall conform to the statement of services included with the application. A claim for specialized services, even if specified on the application for a birth center, shall not be made unless the birth center is staffed and equipped to offer those services. No general claim of being "state-approved" shall be made until the applicant has been issued a temporary permit or a license by the secretary.

(e) Withdrawal of application or request to close. Any applicant may withdraw the application for a license. Any licensee may, at any time, request to close a birth center. If an application is withdrawn or a birth center is closed, each temporary permit or license granted for that birth center shall become invalid. (Authorized by

K.S.A. 65-508; implementing K.S.A. 65-504 and 65-508; effective July 9, 2010.)

**28-4-1304. Temporary permit or license; amended license; exceptions; notification; renewal.** (a) Temporary permit or license required. Each person shall obtain a temporary permit or a license from the secretary to operate a birth center before providing any birth center services.

(b) New temporary permit or license required. Each applicant or licensee shall submit a new application, the required verifications and documentation, and license fee and shall obtain a temporary permit or a license from the secretary under any of the following circumstances:

(1) Before a birth center that has been closed is reopened;

(2) if there is a change in the location of the birth center; or

(3) if there is a change of ownership of the birth center.

(c) Amended license.

(1) Any licensee may submit a request for an amended license. Each licensee who intends to change the terms of the license, including the maximum number of patients to be served, shall submit a request for an amended license on a form provided by the department and a nonrefundable amendment fee of $35. An amendment fee shall not be required if the request to change the terms of the license is made at the time of the renewal.

(2) The licensee shall make no change to the terms of the license unless permission is granted, in writing, by the secretary. If granted, the licensee shall post the amended license, and the previous license shall no longer be in effect.

(d) Exceptions.

(1) Any applicant or licensee may request an exception from the secretary. Any request for an exception may be granted if the secretary determines that the exception is in the best interest of one or more patients or newborns and the exception does not violate statutory requirements.

(2) Written notice from the secretary stating the nature of the exception and the duration of the exception shall be kept on file at the birth center and shall be readily accessible to the department.

(e) Notification. Each applicant and each licensee shall notify the secretary, in writing, before changing any of the following:

(1) The clinical services or activities offered by the birth center;

(2) the physical structure of the birth center due to new construction or substantial remodeling; or

(3) the use of any part of the premises that affects the use of the space or affects the license capacity.

(f) Renewal. No earlier than 90 days before but no later than the renewal date, each licensee wishing to renew the license shall submit the following:

(1) The nonrefundable license fee specified in K.A.R. 28-4-92; and

(2) an application to renew the license on the form provided by the department.

(g) Late renewal. Failure to submit the renewal application and fee as required by subsection (f) shall result in an assessment of a late renewal fee specified in K.S.A. 65-505, and amendments thereto, and may result in closure of the birth center.

(h) Copy of current regulations. A copy of the current Kansas administrative regulations governing birth centers shall be kept on the premises and shall be available to all employees. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-504, 65-505, and 65-508; effective July 9, 2010.)

**28-4-1305. Administration.** (a) Each licensee shall be responsible for the operation of the birth center, including the following:

(1) Establishing and maintaining a written organizational plan, including an organizational chart designating the lines of authority;

(2) providing employees, facilities, equipment, supplies, and services to patients, newborns, and families;

(3) developing and implementing administrative policies and procedures for the operation of the birth center;

(4) developing and implementing policies and procedures for quality assurance;

(5) appointing an administrator to oversee the operation of the birth center;

(6) appointing a clinical director and hiring employees;

(7) appointing an acting clinical director to provide direction and oversight of clinical services in the absence of the clinical director; and

(8) documenting all of the information specified in this subsection.

(b) Each licensee shall ensure that all birth cen-

ter contracts, agreements, policies, and procedures are reviewed annually and updated as needed.

(c) Each licensee shall ensure the development and implementation of written policies that set out the necessary qualifications for each position and govern employee selection. A job description for each position shall be available at the birth center.

(d) Each licensee shall ensure that all employees are informed of and follow all written policies, procedures, and clinical protocols necessary to carry out their job duties.

(e) Each administrator shall oversee the daily operation and maintenance of the birth center and implement the policies and procedures in compliance with licensing requirements for birth centers.

(f) Each clinical director shall provide direction and oversight of clinical services, including the development and implementation of policies, procedures, and signed protocols regarding all matters related to the medical management of pregnancy, birth, postpartum care, newborn care, and gynecologic health care.

(g) Each licensee shall develop and implement written policies and procedures regarding a patient's options for the disposition or taking of fetal remains if a fetal death occurs. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-508 and K.S.A. 2009 Supp. 65-67a10; effective July 9, 2010.)

**28-4-1306. Clinical staff member qualifications; employee schedules; training.** (a) Clinical staff member qualifications. Each licensee shall ensure that the following requirements for the clinical staff members are met:

(1) The clinical director and the acting clinical director shall be one of the following:

(A) A physician with a current license to practice in Kansas; or

(B) a certified nurse-midwife.

(2) Each clinical staff member attending labor and delivery shall meet the following qualifications:

(A) Practice within the scope of the clinical staff member's training and experience; and

(B) hold, at a minimum, current certification in adult CPR equivalent to American heart association class C basic life support and current certification in neonatal CPR equivalent to that of the American academy of pediatrics or the American heart association.

(b) Employee schedules.

(1) Each licensee shall ensure that there are sufficient qualified employees on duty and on call for the safe maintenance and operation of the birth center and for the provision of clinical services.

(2) Each licensee shall ensure that a written work schedule is readily accessible to all employees.

(c) Training.

(1) Each licensee shall develop and provide an orientation for all new employees and ongoing in-service training for all employees that shall meet the following requirements:

(A) Is based on individual job duties and responsibilities;

(B) is designed to meet individual employee training needs; and

(C) is designed to maintain the knowledge and skills necessary to ensure compliance with policies, procedures, and clinical protocols of the birth center.

(2) Orientation and in-service training shall include the following:

(A) Emergency clinical procedures;

(B) recognition of the signs and symptoms of infectious diseases, infection control, and universal precautions;

(C) recognition of signs and symptoms of domestic violence; and

(D) recognition of the signs and symptoms and the reporting of child abuse and neglect.

(3) The documentation of the orientation and the in-service training shall be maintained in each employee's individual record. (Authorized by and implementing K.S.A. 65-508; effective July 9, 2010.)

**28-4-1307. Records.** (a) Policies and procedures. Each licensee shall ensure that there is an organized recordkeeping system, with policies and procedures that provide for identification, security, confidentiality, control, retrieval, and preservation of all employee records, patient records, and birth center information. All records shall be available at the birth center for review by the secretary.

(b) Employee records. Each licensee shall ensure that an individual record is maintained at the birth center for each employee that includes the following information:

(1) A description of the terms of employment or the volunteer agreement and a copy of the job description;

(2) a copy of the job application detailing the employee's qualifications and employment dates;

(3) copies of current professional licenses, certifications, or registrations;

(4) documentation of the results of any health assessments and tuberculin tests specified in K.A.R. 28-4-1312;

(5) documentation of the orientation and the in-service training specified in K.A.R. 28-4-1306; and

(6) documentation that each employee has access to the following:

(A) The current regulations governing birth centers; and

(B) the birth center policies, procedures, and clinical protocols.

(c) Patient records.

(1) Each licensee shall ensure that a current and complete clinical record for each patient accepted for care in the birth center includes the following:

(A) Identifying information, including the patient's name, address, and telephone number;

(B) documentation of the initial history and physical examination, including laboratory findings and dates;

(C) a signed and dated informed consent form;

(D) all obstetrical risk assessments, including the dates of the assessments;

(E) documentation of instruction and education related to the childbearing process;

(F) the date and time of the onset of labor;

(G) the course of labor, including all pertinent examinations and findings;

(H) the exact date and time of birth, the presenting part of the newborn's body, the sex of the newborn, the numerical order of birth in the event of more than one newborn, and the Apgar scores;

(I) the time of expulsion and the condition of the placenta;

(J) all treatments rendered to the patient and newborn, including prescribing medications and the time, type, and dose of eye prophylaxis;

(K) documentation of metabolic and any other screening tests completed by a clinical staff member;

(L) the condition of the patient and newborn, including any complications and action taken at the birth center;

(M) all medical consultations concerning the patient and the newborn;

(N) all referrals for medical care and transfers to medical care facilities, including the reasons for each referral or transfer;

(O) the results of all examinations of the newborn and of the postpartum patient; and

(P) the written instructions given to the patient regarding postpartum care, family planning, care of the newborn, arrangements for metabolic testing, immunizations, and follow-up pediatric care.

(2) Each entry in each patient's record shall be dated and signed by the attending clinical staff member.

(3) The patient record shall be confidential and shall not be released without the written consent of the patient. Nothing in this regulation shall preclude the review of patient records by the secretary.

(4) All patient records shall be retained for at least 25 years from the date of discharge.

(d) Quality assurance documentation. Each licensee shall maintain on file for at least three calendar years all documentation required for the quality assurance findings specified in K.A.R. 28-4-1309.

(e) Inventory. Each licensee shall maintain on file an inventory of the birth center furnishings, equipment, and supplies.

(f) Drills. Each licensee shall maintain on file for at least one calendar year a record of all disaster and evacuation drills.

(g) Changes. Each applicant and each licensee shall maintain on file at the birth center the documentation of any changes specified in K.A.R. 28-4-1304 and approved by the secretary. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507 and 65-508; effective July 9, 2010.)

**28-4-1308. Reporting requirements.** (a) Each licensee shall ensure that the following incidents are reported to the department by the next working day, on a form provided by the department, and to any other authorities in accordance with state statute:

(1) A stillbirth or the death of a patient or a newborn;

(2) the death of an employee while on duty;

(3) any intentional or unintentional injuries sustained by any patient, newborn, or employee while on duty;

(4) any fire damage or other damage to the premises that affects the safety of any patient, newborn, or employee; and

(5) any other incident that, in the judgment of the clinical director or the acting clinical director,

compromises the ability of the birth center to provide appropriate and safe care to patients and newborns.

(b) If a licensee, employee, patient, or newborn contracts a reportable infectious or contagious disease specified in K.A.R. 28-1-2, the licensee shall ensure that the disease is reported to the county health department as specified in K.A.R. 28-1-2. (Authorized by and implementing K.S.A. 65-508; effective July 9, 2010.)

**28-4-1309. Quality assurance.** (a) Each licensee shall develop and implement a quality assurance program to evaluate, at least annually, the quality of patient care and the appropriateness of clinical services.

(b) The quality assurance program shall include a system for the assessment of patient and newborn outcomes, clinical protocols, recordkeeping, and infection control.

(c) The quality assurance findings shall be documented and used for the ongoing assessment of clinical services, problem resolution, and plans for service improvement.

(d) All quality assurance findings shall be available at the birth center for review by the secretary. Nothing in this regulation shall preclude the review of patient records by the secretary. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507, 65-508, and 65-512; effective July 9, 2010.)

**28-4-1310. Clinical services and patient care.** (a) Each licensee shall ensure that the clinical services provided at the birth center are limited to those services associated with a normal, uncomplicated pregnancy and a normal, uncomplicated delivery.

(b) Each licensee shall ensure that only the clinical services approved by the clinical director are performed at the birth center.

(c) Each clinical staff member providing services shall work under the direction of and in consultation with the clinical director or the acting clinical director.

(d) Each clinical staff member shall have access to patient diagnostic facilities and services, including a clinical laboratory, sonography, radiology, and electronic monitoring.

(e) Each licensee shall make available to each patient, in writing, information concerning the following:

(1) The clinical services provided by the birth center;

(2) the rights and responsibilities of the patient and the patient's family, including confidentiality, privacy, and consent;

(3) information on the qualifications of the clinical staff members;

(4) the risks and benefits of childbirth at the birth center;

(5) the possibility of patient or newborn transfer if complications arise during pregnancy, labor, or delivery and the procedures for transfer; and

(6) if a fetal death occurs, the patient's options for the taking or disposition of the fetal remains.

(f) Each licensee shall limit patients to those women who are initially determined to be at low maternity risk by a clinical staff member and who are evaluated regularly throughout the pregnancy to ensure that each patient continues to be at low risk for a poor pregnancy outcome. Each clinical director shall establish a written maternity risk assessment, including screening criteria, which shall be a part of the approved policies.

(g) When conducting the maternity risk assessment, each clinical staff member shall assess the health status and maternity risk factors of each patient after obtaining a detailed medical history, performing a physical examination, and taking into account family circumstances and psychological factors.

(h) The screening criteria of the maternity risk assessment shall be used as a baseline on which the risk status of each potential patient or patient is determined. The screening criteria shall apply to each potential patient before acceptance for birth center services and throughout the pregnancy for continuation of services. The screening criteria shall include the specific qualifications of the clinical staff members and the availability of supplies and equipment needed to provide clinical services safely.

(i) The factors to be considered in the development of the maternity risk assessment shall include the following:

(1) Age of the patient as a possible factor in determining the potential additional risk of poor pregnancy outcome;

(2) major medical problems including any of the following:

(A) Chronic hypertension, heart disease, or pulmonary embolus;

(B) any congenital heart defect assessed as pathological by a cardiologist that places the patient or fetus at risk;

(C) a renal disease;

(D) a drug addiction or required use of anticonvulsant drugs;

(E) diabetes mellitus;

(F) thyroid disease; or

(G) a bleeding disorder or hemolytic disease;

(3) previous history of significant obstetrical complications, including any of the following:

(A) RH sensitization;

(B) a previous uterine wall surgery, including caesarean section;

(C) seven or more term pregnancies;

(D) a previous placental abruption; or

(E) a previous preterm birth; and

(4) medical indication of any of the following:

(A) Pregnancy-induced hypertension;

(B) polyhydramnios or oligohydramnios;

(C) a placental abruption;

(D) chorioamnionitis;

(E) a known fetal anomaly;

(F) multiple gestations;

(G) an intrauterine growth restriction;

(H) fetal distress;

(I) alcoholism or drug addiction;

(J) thrombophlebitis; or

(K) pyelonephritis.

(j) Each patient found to be at high obstetrical risk based on the maternity risk assessment shall be referred to a qualified physician.

(k) Each licensee shall ensure that the policies and procedures include a program of education that prepares patients and their families for childbirth, including the following:

(1) Anticipated changes during pregnancy;

(2) the need for prenatal care;

(3) nutritional requirements during pregnancy;

(4) the effects of smoking, alcohol, and substance use;

(5) the signs of preterm labor;

(6) preparation for labor and delivery, including pain management and obstetrical complications and procedures;

(7) breast-feeding and care of the newborn;

(8) signs of depression during pregnancy and after childbirth and instructions for treatment;

(9) instruction on understanding the patient and newborn health record information;

(10) sibling preparation; and

(11) preparation needed for discharge of the patient and the newborn following delivery.

(l) Each licensee shall ensure that the policies, procedures, and clinical protocols are followed for each patient during labor, delivery, and postpartum care.

(m) Each patient shall be admitted for labor and delivery by a physician, a certified nurse-midwife, a certified professional midwife, or a certified midwife.

(n) At least one clinical staff member shall be available for each patient in labor.

(o) At least two employees shall be available for each patient during delivery. One shall be a clinical staff member. The other shall be another clinical staff member or a licensed practical nurse (LPN) practicing within the scope of the LPN's training and experience and working under the direct supervision of a licensed physician, a certified nurse-midwife, or a registered professional nurse.

(p) A clinical staff member shall monitor the progress of the labor and the condition of each patient and fetus as clinically indicated to identify abnormalities or complications at the earliest possible time.

(q) The patient or newborn shall be transferred to a medical care facility if a clinical staff member determines that medical or surgical intervention is needed.

(r) The patient's family or support persons shall be instructed as needed to assist the patient during labor and delivery.

(s) The surgical procedures performed at the birth center shall be limited to the following:

(1) Episiotomy;

(2) repair of episiotomy or laceration; and

(3) circumcision.

(t) Each clinical director shall develop and implement policies and procedures for the discharge of postpartum patients and their newborns, which shall be followed by all clinical staff members.

(1) An individual, written discharge plan shall be developed for each patient and newborn, including follow-up visits and needed referrals. Each patient shall receive a copy of the plan at the time of discharge.

(2) Each patient and each newborn shall be discharged no later than 24 hours after birth and in accordance with policies, procedures, and clinical protocols.

(3) Each birth or death certificate shall be completed and filed as required by state law.

(4) A follow-up visit shall be conducted by a designated clinical staff member between 24 hours and 72 hours after discharge of the patient to perform the following:

(A) A health assessment of the patient;

(B) a health assessment of the newborn; and

(C) the required newborn screening tests.

(5) The policies and procedures shall include a program of postpartum education and care, including the following:

(A) Newborn care;

(B) postpartum examinations;

(C) family planning; and

(D) a plan for well-woman routine gynecologic health care. (Authorized by K.S.A. 65-508; implementing K.S.A. 65-507, K.S.A. 65-508, and K.S.A. 2009 Supp. 65-67a10; effective July 9, 2010.)

**28-4-1311. Transfers.** (a) Each licensee shall develop and implement policies, procedures, and clinical protocols for the transfer of patients and newborns. Each licensee shall ensure that these policies, procedures, and clinical protocols are readily accessible and followed.

(b) The policies, procedures, and clinical protocols shall include a written plan on file designating who will be responsible for the transfer of a patient or newborn. The plan shall include the following:

(1)(A) A written agreement with an obstetrician and a pediatrician or with a group of practitioners that includes at least one obstetrician and at least one pediatrician; or

(B) a written agreement with a medical care facility providing obstetrical and neonatal services; and

(2) a plan for transporting a patient or a newborn by an emergency medical services (EMS) entity.

(c) Each licensee shall ensure that all employees attending labor and delivery have immediate access to a working telephone or another communication device and to contact information for transferring a patient or a newborn in case of an emergency. (Authorized by and implementing K.S.A. 65-508; effective July 9, 2010.)

**28-4-1312. Health-related requirements.** (a) Tobacco use prohibited. Each licensee shall ensure that tobacco products are not used at any time in the birth center.

(b) Health of licensee and employees working in the birth center.

(1) Each licensee, if an individual, and each individual working at the birth center shall meet the following requirements:

(A) Be free from physical, mental, and emotional conditions to the extent necessary to protect the health, safety, and welfare of the patients and newborns;

(B) be free from the influence of alcohol or illegal substances, or impairment due to the use of prescription or nonprescription drugs; and

(C) be free from all infectious or contagious diseases, as specified in K.A.R. 28-1-6.

(2) Each licensee, if an individual, and each individual working in the birth center shall have a health assessment conducted within six months before employment or upon employment. Subsequent health assessments shall be given periodically in accordance with the policies of the birth center.

(3) The results of each health assessment shall be recorded on forms provided by the department, and a copy shall be kept in each licensee's or employee's record at the birth center.

(4) If an individual who works in the birth center experiences a significant change in physical, mental, or emotional health, including any indication of substance abuse, an assessment of the individual's current health status may be required by the secretary or the licensee. A licensed health care provider qualified to diagnose and treat the condition shall conduct the health assessment. A written report of the assessment shall be kept in the individual's employee record and shall be submitted to the secretary on request.

(c) Tuberculin testing of licensee and employees working in the birth center.

(1) Each licensee, if an individual, and each individual working in the birth center shall have a record of a tuberculin test or chest X-ray obtained not more than six months before employment or upon employment. The results of the tuberculin test or chest X-ray shall be recorded on the health assessment form.

(2) Additional tuberculin testing shall be required if any individual working in the birth center is exposed to an active case of tuberculosis or if the birth center serves an area identified by the local health department or the secretary as a high-risk area for tuberculosis exposure.

(d) Hepatitis B. Each licensee, if an individual, and each individual working in the birth center whose job duties include exposure to or the handling of blood shall be immunized against hepatitis B or shall provide written documentation of refusal of the immunization. (Authorized by and implementing K.S.A. 65-508; effective July 9, 2010.)

**28-4-1313. Environmental standards.** (a) Premises.

(1) Each licensee shall ensure that the birth center is connected to public water and sewerage systems where available.

(2) If a center uses a nonpublic source for the water supply, the water shall be safe for drinking and shall be tested annually by a department-certified laboratory. If a well is used, the well shall be approved by an agent of the local environmental protection program (LEPP).

(A) A copy of the test results and the approval shall be kept on file at the birth center.

(B) Each private sewerage system shall be maintained in compliance with all applicable state and local laws.

(3) Outdoor areas on the premises shall be well drained and kept free of hazards, litter, and trash.

(b) General building requirements.

(1) Each licensee shall ensure that the birth center is located in a building that meets the following criteria:

(A) Meets the requirements specified in K.S.A. 65-508 and amendments thereto, all applicable building codes, and local ordinances;

(B) is a permanent structure; and

(C) is free from known environmental hazards.

(2) Each birth center shall be accessible to and usable by individuals with disabilities.

(c) Structural requirements. Each licensee shall ensure that the following requirements are met:

(1) Space shall be provided for the services to be offered, including the following:

(A) A secure space for the storage of medical records;

(B) waiting or reception area;

(C) family area, including play space for children;

(D) designated toilet and lavatory facilities for employees, families of patients, or the public separate from designated toilet, lavatory, and bathing facilities for each patient;

(E) a birthing room or rooms;

(F) employee area;

(G) utility and work room;

(H) a designated storage area;

(I) space for the provision of laboratory services; and

(J) space for food preparation and storage.

(2) The birth center shall be heated, cooled, and ventilated for the comfort of the patients and newborns and shall be designed to maintain a minimum temperature of 68 degrees Fahrenheit and a maximum temperature of 90 degrees Fahrenheit. If natural ventilation is used, all opened windows or doors shall be screened. If mechanical ventilation or cooling systems are employed, the system shall be maintained in working order and kept clean. Intake air ducts shall be designed and installed so that dust and filters can be readily removed.

(3) Each interior door that can be locked shall be designed to permit the door to be opened from each side in case of an emergency.

(4) All floors shall be smooth and free from cracks, easily cleanable, and not slippery. All floor coverings shall be kept clean and maintained in good repair.

(5) All walls shall be smooth, easily cleanable, and sound. Lead-free paint shall be used on all painted surfaces.

(6) All areas of the birth center shall have light fixtures capable of providing at least 20 foot-candles of illumination. Additional illumination shall be available to permit observation of the patient and the newborn, cleaning, and maintenance. The light fixtures shall be maintained in working order and kept clean.

(7) Each birthing room shall have emergency lighting for use during a power outage.

(8) Each birth center shall be equipped with a scrub sink equipped with an elbow, knee, or foot control.

(9) Each birthing room shall be located on the ground level and shall provide unimpeded, rapid access to an exit of the building that will accommodate patients, newborns, emergency personnel, emergency transportation vehicles, and equipment.

(10) Each birthing room shall meet the following requirements:

(A) Have at least 180 square feet of floor space; and

(B) provide enough space for the equipment, employees, supplies, and emergency procedures necessary for the physical and emotional care of the patient and the newborn. (Authorized by and implementing K.S.A. 65-508; effective July 9, 2010.)

**28-4-1314. Birth center and birthing room furnishings, equipment, and supplies.** (a) Each licensee shall provide furnishings, equipment, and other supplies in the quantity necessary to meet the needs of patients, newborns, and employees and to provide a safe, home-like environment.

(b) Each licensee shall provide the specialized

furnishings, equipment, and supplies necessary for the clinical staff members to perform the clinical services offered by the birth center. No specialized clinical services shall be provided unless the birth center is equipped to allow the clinical staff members to safely perform those services.

(c) All furnishings, equipment, and supplies shall be kept clean and free from safety hazards.

(d) The furnishings shall include, at a minimum, the following:

(1) A bed or table for delivery;

(2) at least one chair; and

(3) a wall clock with a second hand.

(e) The equipment and supplies shall include, at a minimum, the following:

(1) An examination light;

(2) a sphygmomanometer;

(3) a stethoscope;

(4) a doppler unit or fetoscope;

(5) a clinical thermometer;

(6) disposable nonporous gloves in assorted sizes;

(7) an infant scale;

(8) a mechanical suction device or a bulb suction device;

(9) a tank of oxygen with a flowmeter and a mask, a cannula, or an equivalent;

(10) all necessary emergency medications and intravenous fluids with supplies and equipment for administration;

(11) resuscitation equipment for patients and newborns, which shall include resuscitation bags and oral airways;

(12) a laryngoscope and a supply of endotracheal tubes of assorted sizes appropriate for a newborn;

(13) a firm surface suitable for resuscitation;

(14) sterilized instruments for delivery, episiotomy, and repair of an episiotomy or a laceration;

(15) an infant warmer that provides radiant heat;

(16) a readily accessible emergency cart or tray for the patient and for the newborn that meets the following requirements:

(A) Is equipped for the clinical staff members to carry out the written emergency procedures of the birth center;

(B) is securely placed; and

(C) has a written log of routine maintenance;

(17) clean bed linens and towels; and

(18) emergency lighting.

(f) All equipment, furnishings, and supplies shall be used as intended and shall be securely stored when not in use to prevent injury or misuse. (Authorized by and implementing K.S.A. 65-508; effective July 9, 2010.)

**28-4-1315. Maintenance.** (a) Each licensee shall ensure that the building is kept clean at all times and free from accumulated dirt and from vermin infestation.

(b) Each licensee shall develop and implement a maintenance plan to ensure that all of the following conditions are met:

(1) A schedule for cleaning the birth center is established.

(2) All floors and walking surfaces are kept free of hazards, maintained in good repair, and kept clean at all times.

(3) Housekeeping services are provided to maintain a sanitary environment.

(4) Each birthing room, including equipment, is cleaned after each delivery and before reuse.

(5) The toilets, lavatories, sinks, and other facilities are clean at all times.

(6) The mops and other cleaning tools are cleaned after each use and stored in a well-ventilated place on racks.

(7) All pesticides and other poisons are used in accordance with product instructions and stored in a locked area.

(8) Safe storage for cleaning and laundry supplies is provided.

(9) Each indoor trash container is emptied, as needed, to control odor and to prevent the overflowing of contents.

(10) The methods used to dispose of trash, including biomedical waste, human tissue, and sharp instruments, are safe and sanitary.

(11) Hot and cold running water is supplied to each sink and all bathing facilities.

(12) The hot water temperature does not exceed 120 degrees Fahrenheit.

(13) Toilet paper, soap, and either paper towels or hand dryers are available in each restroom and each bathroom in the birth center. (Authorized by and implementing K.S.A. 65-508; effective July 9, 2010.)

**28-4-1316. Safety.** (a) Each licensee shall ensure the safety of all patients, newborns, employees, and visitors according to the following requirements:

(1) Each birth center shall have a working telephone on the premises and available for use at all times. Emergency telephone numbers shall be posted by each telephone or shall be readily ac-

cessible. These telephone numbers shall include telephone numbers for the fire department, hospital, ambulance, and police.

(2) Each exit shall be marked. No exit shall be blocked at any time.

(3) All drugs, chemicals, and medications shall be kept in locked storage and secured in specifically designated and labeled cabinets, drawers, closets, storerooms, or refrigerators and shall be made accessible only to authorized employees.

(b) Each licensee shall ensure the development and implementation of a disaster plan to provide for the evacuation and safety of patients, newborns, employees, and visitors in case of fire, tornadoes, storms, floods, power outages, and other types of emergencies specific to the geographic area in which the birth center is located.

(1) The disaster plan shall be posted in a conspicuous place in each indoor room.

(2) Each employee shall be informed of and shall follow the disaster plan.

(3) A review of the disaster plan, including fire and tornado drills, shall be conducted with the employees at least once every six months, and the date of each review shall be recorded.

(4) Fire and tornado drills shall be conducted with the employees at least quarterly, and the date of each drill shall be recorded.

(c) Heating appliances, when used, shall be used as intended, safely located, equipped with a protective barrier as needed to prevent injury, and maintained in operating condition. If combustible fuel is used, the appliance shall be vented to the outside.

(d) Each licensee shall develop and implement policies and procedures regarding the storage and handling of firearms and other weapons on the premises.

(e) Pets and any other animals shall be prohibited in the birth center, with the exception of service animals. (Authorized by and implementing K.S.A. 65-508; effective July 9, 2010.)

**28-4-1317. Food service.** (a) Each licensee shall ensure that the birth center has arrangements to provide patients with nutritious liquids and foods. Foods may be provided by means of any of the following:

(1) Obtained from a food service establishment or a catering service licensed by the secretary of the Kansas department of agriculture;

(2) prepared on-site by employees; or

(3) provided by any patient's family for the sole use of that patient and the patient's family.

(b) All food that is designed to be served hot and is prepared on-site by employees shall be heated, maintained, and served at a temperature of at least 140 degrees Fahrenheit. A tip-sensitive thermometer shall be used to determine whether food is cooked and held at the proper temperature.

(c) Each licensee shall ensure that the food is handled and stored in a sanitary manner, which shall include meeting all of the following requirements:

(1) All perishable foods and liquids shall be continuously maintained at 41 degrees Fahrenheit or lower in the refrigerator or 0 degrees Fahrenheit or lower in a freezer. A clearly visible, accurate thermometer shall be provided in each refrigerator and in each freezer.

(2) At least one refrigerator shall be designated for only food storage.

(3) All food stored in the refrigerator shall be covered, wrapped, or otherwise protected from cross-contamination. Raw meat shall be stored in the refrigerator in a manner that prevents meat fluids from dripping on other foods. Unused, leftover perishable foods shall be dated, refrigerated immediately after service, and eaten within three days.

(4) Surfaces used for food preparation or eating shall be made of smooth, nonporous material.

(5) All table service designed for repeat use shall be made of smooth, durable, and nonabsorbent material and shall be free from cracks or chips.

(6) All nondisposable table service shall be sanitized using either a manual method or a mechanical dishwasher.

(A) If using a manual washing method, each licensee shall meet both of the following requirements:

(i) A three-compartment sink with hot and cold running water to each compartment and a drainboard shall be used for washing, rinsing, sanitizing, and air-drying.

(ii) An appropriate chemical test kit, a thermometer, or another device shall be used for testing the sanitizing solution and the water temperature.

(B) If using a mechanical dishwashing machine, each licensee shall ensure that the machine is installed and operated in accordance with the man-

ufacturer's instructions and shall be maintained in good repair.

(d) Prepackaged, disposable formula units shall be used when newborns are not breast-fed. (Authorized by and implementing K.S.A. 65-508; effective July 9, 2010.)

**28-4-1318. Laundry.** Each licensee shall ensure that all of the following requirements are met:

(a) If laundry is done at the birth center, the laundry sinks, appliances, and countertops or tables used for laundry shall be located in an area separate from food preparation areas and shall be installed and used in a manner that safeguards the health and safety of the patients, newborns, employees, and visitors.

(b) Space shall be provided and areas shall be designated for the separation of clean and soiled clothing, linen, and towels.

(c) If laundry facilities are not available at the birth center, all laundry shall be cleaned by a commercial laundry. (Authorized by and implementing K.S.A. 65-508; effective July 9, 2010.)

## Article 16.—WATER POLLUTION CONTROL

**28-16-28g. Surface water register.** The classification and use designations of surface waters of the state shall be those identified in the department's "Kansas surface water register," dated December 15, 2010, which is hereby adopted by reference. (Authorized by K.S.A. 2010 Supp. 82a-2010; implementing K.S.A. 2010 Supp. 82a-2001, 82a-2002, 82a-2003, 82a-2004, and 82a-2005; effective Jan. 28, 2005; amended May 20, 2005; amended Sept. 15, 2006; amended May 25, 2007; amended June 6, 2008; amended Feb. 26, 2010; amended Aug. 5, 2011.)

## Article 17.—DIVISION OF VITAL STATISTICS

**28-17-6. Fees for copies, abstracts, and searches.** (a)(1) Subject to the requirements of K.S.A. 65-2417 and K.S.A. 65-2418 (a)(2) and amendments thereto, certified copies or abstracts of certificates or parts of certificates shall be furnished by the state registrar upon request by an authorized applicant and payment of the required fee.

(2)(A) The fees for making and certifying copies or abstracts of birth, stillbirth, marriage, and divorce certificates shall be $15.00 for the first copy or abstract and $15.00 for each additional copy or abstract of the same record requested at the same time.

(B) The fees for making and certifying copies or abstracts of death certificates shall be $15.00 for the first copy or abstract and $15.00 for each additional copy or abstract of the same record requested at the same time.

(b) For any search or verification of the files and records for birth, death, stillbirth, marriage, or divorce certificates if no certified copy or abstract is made, the fee shall be $15.00 for each five-year period for which a search is requested, or for each fractional part of a five-year period.

(c) For any search of the files necessary for preparing an amendment to a birth, stillbirth, death, marriage, or divorce certificate or abstract already on file, the fee shall be $15.00.

(d) For non-certified copies or abstracts of certificates or parts of certificates requested for statistical research purposes, the following fees shall be charged:

(1)(A) $10.00 for each copy of a birth, marriage, divorce, or stillbirth certificate, if the state certificate number is provided; and

(B) $15.00 for each copy of a birth, marriage, divorce, or stillbirth certificate, if the state certificate number is not provided; and

(2)(A) $10.00 for each copy of a death certificate, if the state certificate number is provided; and

(B) $15.00 for each copy of a death certificate, if the state certificate number is not provided.

(e) For each certified copy of an heirloom certificate, the fee shall not exceed $40.00. (Authorized by K.S.A. 2008 Supp. 65-2418; implementing K.S.A. 23-110 and 65-2417 and K.S.A 2008 Supp. 65-2418 and 65-2422d; effective Jan. 1, 1966; amended Jan. 1, 1968; amended, E-78-18, July 7, 1977; amended May 1, 1978; amended May 1, 1983; amended, T-84-13, July 1, 1983; amended May 1, 1984; amended May 1, 1988; amended Oct. 7, 1991; amended, T-28-9-25-92, Sept. 25, 1992; amended Nov. 16, 1992; amended Aug. 16, 1993; amended, T-28-7-2-01, July 2, 2001; amended Oct. 12, 2001; amended, T-28-6-27-02, July 1, 2002; amended Oct. 18, 2002; amended, T-28-7-1-03, July 1, 2003; amended Oct. 17, 2003; amended, T-28-11-5-04, Nov. 5, 2004; amended Feb. 25, 2005; amended Jan. 15, 2010.)

**28-17-12. Delayed certificate of birth;**

**filing fee.** Each application for a delayed certificate of birth shall be accompanied by a fee of $20.00 for the filing and registration of the birth certificate. A certified copy may be issued in accordance with K.A.R. 28-17-6. (Authorized by and implementing K.S.A. 65-2420; effective Jan. 1, 1966; amended Jan. 1, 1968; amended May 1, 1983; amended Oct. 22, 1990; amended Oct. 7, 1991; amended, T-28-9-25-92, Sept. 25, 1992; amended Nov. 16, 1992; amended Jan. 15, 2010.)

## Article 19.—AMBIENT AIR QUALITY STANDARDS AND AIR POLLUTION CONTROL

**28-19-200a. General provisions; definitions to implement the federal greenhouse gas tailoring rule.** (a) The definition of "major source," as adopted by reference in this regulation, shall supersede the definition of "major source" in K.A.R. 28-19-200 for the purposes of the following regulations:

(1) K.A.R. 28-19-500 through K.A.R. 28-19-502;

(2) K.A.R. 28-19-510 through K.A.R. 28-19-518;

(3) K.A.R. 28-19-540 through K.A.R. 28-19-546; and

(4) K.A.R. 28-19-561 through K.A.R. 28-19-564.

(b) "Major source," as defined in 40 C.F.R. 70.2 and as revised on July 1, 2009 and amended by 75 fed. reg. 31607 (2010), is adopted by reference.

(c) "Subject to regulation," as defined by 75 fed. reg. 31607 (2010), which amends 40 C.F.R. 70.2, is adopted by reference. This definition of "subject to regulation" shall apply only to that term as used in the definition of "major source," which is adopted by reference in subsection (b) of this regulation.

This regulation shall be effective on and after January 2, 2011. (Authorized by and implementing K.S.A. 2009 Supp. 65-3005; effective Jan. 2, 2011.)

**28-19-202. Annual emissions fee.** (a) The owner or operator of each stationary source of air emissions that has actual emissions of the types and quantities specified in subsection (b) shall pay an annual emissions fee to the department. Actual emissions shall be calculated for a calendar year according to K.A.R. 28-19-210.

(b) Annual emissions fees shall be assessed for all air emissions of any of the following pollutants from each stationary source for which the owner or operator is required to obtain a permit under K.A.R. 28-19-500(a):

(1) Sulfur oxides measured as sulfur dioxide;

(2) particulate matter calculated as $PM_{10}$, except if no emission factor or approvable method for calculating $PM_{10}$ is available, annual emissions fees shall be assessed for total particulate emissions;

(3) nitrogen oxides expressed as nitrogen dioxide;

(4) total volatile organic compounds; or

(5) hazardous air pollutants.

For purposes of this subsection, actual emissions shall include fugitive emissions from federally designated fugitive emissions sources and fugitive hazardous air pollutant emissions.

(c) The annual emissions fee for calendar year 2010 and for each subsequent year shall equal the sum of the actual emissions of the pollutant or pollutants specified in subsection (b), rounded to the nearest ton, multiplied by $37.00, subject to the following:

(1) The owner or operator shall not be required to include any pollutant emitted from the stationary source more than one time in the fee calculation.

(2) The owner or operator shall not be required to include the following in the emissions fee calculation:

(A) Emissions of any pollutant of 500 pounds per year or less from any emissions source, unless the total emissions from similar sources at the stationary source equal or exceed 2,000 pounds per year;

(B) emissions in excess of 4,000 tons per year of any single pollutant from any stationary source; and

(C) for a portable emissions unit or stationary source that operates both in Kansas and out of state, emissions from the unit or source while operating out of state.

(d) Each owner or operator shall complete the calculations of actual emissions and calculation of the annual emissions fee on forms provided by the department.

(1) A responsible official or the person most directly responsible for the compilation of the submitted information shall sign the completed forms.

(2) The owner or operator shall submit the annual emissions fee payment to the department on or before the due date for the annual emissions

inventory specified in K.A.R. 28-19-517. Timeliness of submissions shall be determined by the postmark if submitted by mail.

(3) The owner or operator shall make annual emissions fee payments by check, draft, credit card, or money order payable to the Kansas department of health and environment.

(4) Payment of emissions fees to the department shall be the responsibility of the person or persons who are the owners or operators of the emissions unit or stationary source on the date the emissions fee is due. For purposes of calculating actual emissions for a period in which someone other than the current owner or operator was the owner or operator of the stationary source, the owner or operator responsible for paying the fee may assume that the operation of the facility was identical to the operation of the facility by the current owner or operator if the current owner or operator has been unable, after reasonable and diligent inquiry, to obtain the actual operating information from the previous owner or operator.

(e) Each owner or operator who fails to pay the annual emissions fee by the due date for the annual emissions inventory specified in K.A.R. 28-19-517 shall pay a late fee. The late fee shall be $20 per day or 0.10% of the annual emissions fee per day, whichever is greater. The timeliness of the submission from the owner or operator shall be determined by the postmark if the fee is submitted by mail.

(f) Any overpayment in an amount equal to or greater than the fee equivalent of one ton of emissions made by the owner or operator of a stationary source may be refunded or credited to the next year's annual emissions fee. Any owner or operator may apply overpayments of emissions fees paid for one source to the fees applicable to any other source for which the owner or operator is responsible for payment. A refund shall be issued by the department if a credit has not been used or if the department determines that, based on the source's past emissions, a credit will not be used. Overpayments in an amount less than the fee equivalent of one ton of emissions shall not be credited or refunded. (Authorized by K.S.A. 2009 Supp. 65-3005 and 65-3024; implementing K.S.A. 65-3024; effective Nov. 22, 1993; amended Jan. 23, 1995; amended March 15, 1996; amended Feb. 21, 1997; amended Feb. 13, 1998; amended March 23, 2001; amended Jan. 30, 2004; amended Nov. 5, 2010.)

**28-19-325. Compressed air energy storage.** (a) The terms "compressed air energy storage" and "CAES," as used in this regulation, shall mean the compression and storage of air that is released and converted to energy for the production of electricity.

(b) Each person who proposes to construct, modify, or operate a CAES facility with a potential-to-emit that equals or exceeds the emissions thresholds, emissions limitations, or standards specified in K.A.R. 28-19-300 shall comply with the following upon application for a construction permit or approval:

(1) All applicable provisions of the Kansas air quality act and the Kansas air quality regulations as directed by the secretary; and

(2) for underground CAES facilities, any applicable regulations adopted by the Kansas corporation commission pursuant to K.S.A. 66-1274, and amendments thereto.

(c) Each person who proposes to construct or modify a CAES facility that includes underground storage and does not include energy production utilizing combustion shall meet the following requirements:

(1) Upon application for a construction permit or approval, the person shall comply with any applicable regulations adopted by the Kansas corporation commission pursuant to K.S.A. 66-1274, and amendments thereto.

(2) The person shall develop and submit to the department for approval, with the application for a construction permit or approval, a site emissions characterization plan that determines the types and quantities of any regulated pollutants that reasonably could be present. The site emissions characterization plan shall include the following:

(A) A list of volatile organic compounds and hazardous air pollutants, as defined in K.A.R. 28-19-201, that are or reasonably could be present in the proposed storage formation within the facility and that could be emitted as a result of the facility's operations;

(B) the spatial characteristics of the proposed storage formation, including existing and proposed injection and withdrawal wells;

(C) a site characterization sampling plan that includes plans, either maps or diagrams, and a rationale for the following:

(i) Proposed sample types;

(ii) sampling locations;

(iii) number of samples; and

(iv) test methodologies;

(D) a quality assurance plan;

(E) the use of a laboratory approved by the secretary;

(F) any additional information that may be required by the department to fully characterize the site's emissions;

(G) a schedule that includes a timeline for implementing the requirements prescribed in paragraph (c)(2); and

(H) existing information or knowledge about the proposed site or an adjacent site, as approved by the secretary, to complete, supplement, or take the place of any or all elements of the site emissions characterization plan prescribed in paragraph (c)(2).

(3)(A) If the site emissions characterization plan results indicate that emissions equal or exceed the emissions thresholds, emissions limitations, or standards specified in K.A.R. 28-19-300, the person proposing to construct or modify the CAES facility shall be subject to the applicable provisions of K.A.R. 28-19-300 through 28-19-350 for obtaining a construction permit or approval before commencing construction.

(B) If the person decides to proceed with the proposed CAES facility, the person shall submit the site emissions characterization plan results with an application for a construction permit or approval to the department.

(d)(1) The owner or operator of each CAES facility operating pursuant to a permit or approval issued by the department shall conduct emissions testing once every four calendar quarters in accordance with a sampling plan approved by the secretary. A certified copy of the test results signed by the person conducting the tests shall be provided to the department not later than 60 days after the end of the calendar quarter in which the emissions testing was conducted.

(2) The owner or operator may be required by the secretary to increase test frequency if emissions test results are close to or exceed an emissions limitation or an emissions threshold specified in a permit or approval issued by the secretary to the CAES facility.

(3) Upon written request by the owner or operator, decreased or suspended emissions testing may be approved by the secretary if the source demonstrates emissions test results significantly below emissions limitations or emissions thresholds specified in a permit or approval for three consecutive years.

(e)(1) The owner or operator of each CAES facility operating pursuant to a permit or approval issued by the department shall inspect the aboveground components of each CAES well and storage facility for liquid and vapor leaks at least once each calendar quarter. The owner or operator shall visually inspect for liquid leaks and shall test for vapor leaks using test methods consistent with USEPA method 21 in 40 C.F.R. part 60, appendix A, as adopted by reference in K.A.R. 28-19-720, or an alternate method as demonstrated to the satisfaction of the secretary to be equivalent. Leak detection points to be inspected and tested shall include the following:

(A) Valves;

(B) flanges and other connections;

(C) pumps and compressors;

(D) pressure-relief devices;

(E) process drains;

(F) open-ended lines or valves;

(G) seal system degassing vents and accumulator vents; and

(H) access door seals.

(2) The owner or operator shall record the following information and keep the information available at the CAES facility for at least five years for department inspection or for submittal upon request by the department, which may include submittal with the emissions test results specified in subsection (d):

(A) The total number and the locations of the leak detection points;

(B) the date of each inspection;

(C) the number of leak detection points inspected and the number of leaks detected for each inspection date;

(D) the location of leaks detected for each inspection date; and

(E) the date and type of each corrective action taken. (Authorized by K.S.A. 2009 Supp. 65-3005 and 66-1275; implementing K.S.A. 2009 Supp. 65-3005, K.S.A. 65-3007, 65-3008, 65-3010, and K.S.A. 2009 Supp. 66-1275; effective Nov. 29, 2010.)

**28-19-350. Prevention of significant deterioration (PSD) of air quality.** (a) PSD requirements. The requirements of this regulation shall apply to the construction of major stationary sources and major modifications of stationary sources as defined in 40 C.F.R. 52.21 in areas of the state designated as attainment areas or unclassified areas for any pollutant under the

procedures prescribed by section 107(d) of the federal clean air act, 42 U.S.C. 7407(d).

(b) Adoption by reference; exceptions.

(1) 40 C.F.R 52.21, as revised on July 1, 2007 and as amended by 75 fed. reg. 31606-31607 (2010), is adopted by reference, except as specified in paragraphs (b)(2) and (3).

(2) The following subsections of the federal regulation adopted in paragraph (b)(1) are excluded from adoption:

(A) Plan disapproval, 52.21(a)(1);

(B) stack heights, 52.21(h);

(C) air quality analysis, 52.21(m)(1)(v);

(D) visibility monitoring, 52.21(o)(3);

(E) public participation, 52.21(q);

(F) environmental impact statements, 52.21(s);

(G) disputed permits or redesignations, 52.21(t);

(H) delegation of authority, 52.21(u); and

(I) permit rescission, 52.21(w).

(3) The following subsections of the federal regulation adopted in paragraph (b)(1), which are subject to a federal court order of stay or remand or have been vacated, are excluded from adoption:

(A) Routine maintenance, repair, and replacement:

(i) The second sentence of 52.21(b)(2)(iii)(a);

(ii) 52.21(b)(55-58); and

(iii) 52.21(cc); and

(B) recordkeeping requirements for projected actual emissions: the clause "in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase" in 52.21(r)(6).

(c) Provisions adopted by reference; term usage. When used in any provision adopted from 40 C.F.R. 52.21, each reference to "administrator" shall mean the "secretary of health and environment or an authorized representative of the secretary," except for the following:

(1) In subsections 52.21(b)(3)(iii)(a) and 52.21(b)(48)(ii), "administrator" shall mean both the "secretary of health and environment" and the "administrator of USEPA."

(2) In subsections 52.21(b)(17), 52.21(b)(37)(i), 52.21(b)(43), 52.21(b)(48)(ii)(c), 52.21(b)(50)(i), 52.21(b)(51), 52.21(g), 52.21(i)(6-8), 52.21(l)(2), and 52.21(m)(1)(vii - viii), "administrator" shall mean only the "administrator of USEPA."

(d) Internal references. The following portions of 40 C.F.R. part 51 are hereby adopted by reference:

(1) Subpart I, as revised on July 1, 2007 and as amended by 75 fed. reg. 31606 (2010); and

(2) appendices S and W, as revised on July 1, 2007.

(e) Definitions. For the purposes of this regulation, the following definitions shall apply:

(1) "Act" shall mean the federal clean air act, 42 U.S.C. 7401 et seq.

(2) "Class I, II or III area" shall mean a classification assigned to any area of the state under the provisions of sections 162 and 164 of the act, 42 U.S.C. 7472 and 7474, and amendments thereto.

(3) "State" shall mean the state of Kansas, unless the context clearly indicates otherwise.

(f) Ambient air ceiling protection. In relation to ambient air ceilings, the following requirements shall apply:

(1) Except as stated in paragraph (f)(2) of this regulation, a permit shall not be issued for any new major stationary source or major modification as defined in 40 C.F.R. 52.21(b) if the source or modification will be located in an attainment area or an unclassifiable area for any national ambient air quality standard and if the source or modification would cause or contribute to a violation of any national ambient air quality standard. A major source or major modification shall be considered to cause or contribute to a violation of a national ambient air quality standard if the air quality impact of the source or modification would exceed the following levels at any locality that does not or would not meet the applicable national standard:

| | Averaging Time | | | | |
|---|---|---|---|---|---|
| **Pollutant** | **Annual** | **24 hrs.** | **8 hrs.** | **3 hrs.** | **1 hr.** |
| Sulphur dioxide | 1.0 μg/m³ | 5 μg/m³ | -------- | 25 μg/m³ | -------- |
| $PM_{10}$ | 1.0 μg/m³ | 5 μg/m³ | -------- | -------- | -------- |
| Nitrogen dioxide | 1.0 μg/m³ | -------- | -------- | -------- | -------- |
| Carbon monoxide | -------- | -------- | 0.5 mg/m³ | -------- | 2 mg/m³ |

(2) A permit may be granted for a major stationary source or major modification as identified in paragraph (f)(1) of this regulation if the impact of the major stationary source's or major modification's emissions upon air quality is reduced by a sufficient amount to compensate for any adverse impact at the location where the major source or modification would otherwise cause or contribute to a violation of any national ambient air quality standard. Subsection (f) shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that the source is located in

an area that has been identified as not meeting either the national primary or secondary ambient air quality standard for that particular pollutant.

(g) Stack height requirements. K.A.R. 28-19-18 through K.A.R. 28-19-18f, regarding stack height requirements, shall apply to the sources subject to this regulation.

(h) Application required. Each application for a PSD permit shall be submitted by the owner or operator on the forms provided or approved by the department. K.A.R. 28-19-300 through K.A.R. 28-19-304, regarding construction permit and approval requirements, shall apply to the sources subject to this regulation.

(i) Impact on federal class I areas; notification required. If the emissions from any proposed major stationary source or major modification subject to this regulation will affect any air quality-related values in any federal class I area, a copy of the permit application for the source or modification shall be transmitted by the secretary or an authorized representative of the secretary to the administrator of USEPA through the appropriate regional office. The administrator, through the appropriate regional office, shall also be notified of every action taken concerning the application.

(j) Permit suspension or revocation. Any permit issued under this regulation may be suspended or revoked by the secretary upon a finding that the owner or operator has failed to comply with any requirement specified in the permit or with any other statutory or regulatory requirement. This subsection shall not be interpreted to preclude any other remedy provided by law to the secretary.

(k) Public participation requirements. In addition to the requirements of K.A.R. 28-19-204, the following public participation requirements shall be met before issuance of the permit:

(1) The public notice shall include the following:

(A) A statement specifying the portion of the applicable maximum allowable increment that is expected to be consumed by the source or modification; and

(B) a statement that the federal land manager of any adversely impacted federal class I area has the opportunity to provide the secretary with a demonstration that the emissions from the proposed source or modification will have an adverse impact on air quality-related values in the federal class I area.

(2) A copy of the public notice shall be mailed to the following:

(A) The applicant;

(B) the administrator of USEPA through the appropriate regional office;

(C) any state or local air pollution control agency having jurisdiction in the air quality control region in which the new or modified installation will be located;

(D) the chief executives of the city and county where the source will be located;

(E) any comprehensive regional land use planning agency having jurisdiction where the source will be located; and

(F) any state, federal land manager, or Indian governing body whose lands will be affected by emissions from the new construction or modification.

(3) In addition to those materials required to be available for public review at the appropriate district office or local agency, a summary analysis and discussion of those materials as they relate to establishing compliance with the requirements of this regulation shall be made available for public review.

(4) Copies of all comments received and the written determination of the secretary shall be made available for public inspection at the appropriate district office or local agency. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 2009 Supp. 65-3005 and K.S.A. 65-3008; effective Nov. 22, 2002; amended June 30, 2006; amended Oct. 23, 2009; amended Nov. 29, 2010.)

**28-19-517. Class I operating permits; annual emissions inventory.** (a) Each owner or operator of a stationary source that is required by these regulations to apply for a class I operating permit shall, on or before April 1 of each year, submit to the department all operating information and any other relevant information deemed necessary by the secretary to estimate the actual air emissions from the stationary source for the preceding year. If April 1 falls on a Saturday, Sunday, or legal holiday, then the submissions shall be due on or before the next business day following April 1. The timeliness of the submissions shall be determined by the postmark if submitted by mail.

(b) The information required by subsection (a) shall be submitted on forms provided by the department or approved by the secretary. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing

K.S.A. 65-3007; effective Jan. 23, 1995; amended Feb. 20, 1998; amended Sept. 23, 2005; amended Nov. 5, 2010.)

**28-19-645a. Restrictions on open burning operations for certain counties during the month of April.** This regulation shall supersede K.A.R. 28-19-645 during the month of April for the counties listed in subsection (a) below.

(a) A person shall not cause or permit open burning operations of any waste, including vegetation and wood waste, structures, or any other materials on any premises during the month of April in Butler, Chase, Chautauqua, Cowley, Elk, Geary, Greenwood, Johnson, Lyon, Marion, Morris, Pottawatomie, Riley, Sedgwick, Wabaunsee, and Wyandotte counties, except as authorized by subsections (b) through (d).

(b) The following activities shall be exempt from the prohibition in subsection (a):

(1) Open burning operations for the purpose of range or pasture management and conservation reserve program (CRP) burning activities meeting the requirements in K.A.R. 28-19-648 (a)(1) through (a)(4); and

(2) open burning operations listed in K.A.R. 28-19-647 (a)(1) and (a)(2).

(c) A person may obtain approval by the secretary to conduct an open burning operation that is not otherwise exempt if the conditions and requirements of the following are met:

(1) K.A.R. 28-19-647 (b)(1) through (b)(3); and

(2) K.A.R. 28-19-647 (d) and (e).

(d) Open burning operations that shall require approval by the secretary and are deemed necessary and in the public interest shall include the open burning operations listed in K.A.R. 28-19-647 (c)(1) through (c)(3).

(e) In Johnson, Wyandotte, and Sedgwick counties, the open burning operations listed in K.A.R. 28-19-647 (c)(4) and (c)(5) shall require approval by the local authority.

(f) Nothing in this regulation shall restrict the authority of local jurisdictions to adopt more restrictive ordinances or resolutions governing agricultural open burning operations. (Authorized by K.S.A. 2010 Supp. 65-3005; implementing K.S.A. 2010 Supp. 65-3005 and K.S.A. 65-3010; effective, T-28-3-1-11, March 1, 2011; effective Sept. 9, 2011.)

**28-19-712. Definitions.** The following terms shall apply to K.A.R. 28-19-712 through K.A.R. 28-19-712d.

(a) "Auxiliary power unit" means an integrated system that provides heat, air conditioning, engine warming, or electricity to components of a heavy-duty diesel vehicle and is certified by the administrator of the USEPA under 40 C.F.R. part 89 as meeting applicable emission standards.

(b) "Commercial vehicle" means any motor vehicle, other than a passenger vehicle, and any trailer, semitrailer, or pole trailer drawn by the motor vehicle that is designed, used, and maintained for the transportation of persons or property for hire, compensation, or profit or in the furtherance of a commercial enterprise.

(c) "Gross vehicle weight rating" means the weight specified by the manufacturer as the loaded weight of a single vehicle.

(d) "Heavy-duty diesel vehicle" means any motor vehicle that meets the following conditions:

(1) Has a gross vehicle weight rating of more than 14,001 pounds;

(2) is powered by a diesel engine; and

(3) is designed primarily for transporting persons or property on a public street or highway.

(e) "Idling" means the operation of an engine in the operating mode during either of the following situations:

(1) When the engine is not in gear; or

(2) when the engine operates at the revolutions per minute specified by the engine or vehicle manufacturer, the accelerator is fully released, and there is no load on the engine.

(f) "Institutional vehicle" means any motor vehicle, other than a passenger vehicle, and any trailer, semitrailer, or pole trailer drawn by the motor vehicle that is designed, used, and maintained for the transportation of persons or property for an organization, establishment, foundation, or society.

(g) "Load or unload location" means any site where a driver idles a heavy-duty diesel vehicle while waiting to load or unload. This term shall include the following:

(1) Distribution centers;

(2) warehouses;

(3) retail stores;

(4) railroad facilities; and

(5) ports.

(h) "Passenger vehicle" means any motor vehicle designed for carrying not more than 10 passengers and used for the transportation of persons.

(i) "Public vehicle" means any motor vehicle, other than a passenger vehicle, and any trailer,

semitrailer, or pole trailer drawn by the motor vehicle that is designed, used, and maintained for the transportation of persons or property at the public expense and under public control. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

**28-19-712a. Applicability.** K.A.R. 28-19-712 through K.A.R. 28-19-712d shall apply only in Johnson and Wyandotte counties to any person who owns or operates either of the following:

(a) Any heavy-duty diesel vehicle that is also a commercial vehicle, institutional vehicle, or public vehicle; or

(b) any load or unload location. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

**28-19-712b. General requirement for heavy-duty diesel vehicles.** No person who owns or operates a heavy-duty diesel vehicle specified in K.A.R. 28-19-712a(a) shall cause that vehicle to idle for more than five minutes in any 60-minute period, except as provided in K.A.R. 28-19-712c and K.A.R. 28-19-712d. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

**28-19-712c. General requirement for load or unload locations.** No person who owns or operates a load or unload location for freight shall cause any heavy-duty diesel vehicle that is also a commercial vehicle to idle for a period longer than 30 minutes in any 60-minute period while waiting to load or unload at that location. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

**28-19-712d. Exemptions.** K.A.R. 28-19-712b shall not apply to the following:

(a) Any heavy-duty diesel vehicle specified in K.A.R. 28-19-712a(a) that idles in any of the following conditions:

(1) While forced to remain motionless because of road traffic or an official traffic control device or signal or at the direction of a law enforcement official;

(2) when operating defrosters, heaters, air conditioners, safety lights, or other equipment solely for safety or health reasons and not as part of a rest period;

(3) during a state or federal inspection to verify that all equipment is in good working order, if idling is required as part of the inspection; or

(4) during mechanical difficulties over which the driver has no control;

(b) a police, fire, ambulance, military, utility, emergency, or law enforcement vehicle or any vehicle being used in an emergency capacity that idles while in an emergency or training mode and not for the convenience of the vehicle operator;

(c) an armored vehicle that idles when a person remains inside the vehicle to guard the contents or while the vehicle is being loaded or unloaded;

(d) an occupied vehicle with a sleeper berth compartment that idles for purposes of air conditioning or heating during government-mandated rest periods;

(e) a vehicle that is used exclusively for agricultural operations and only incidentally operated or moved upon the highway;

(f) a primary propulsion engine that idles for maintenance, servicing, repairing, or diagnostic purposes if idling is necessary for the activity;

(g) a primary propulsion engine that idles when necessary to power mechanical or electrical operations other than propulsion, including mixing, refrigerating, or processing cargo, or the operation of a hydraulic lift. This exemption shall not apply when idling for cabin comfort or operating nonessential onboard equipment;

(h) an auxiliary power unit or generator that is operated as an alternative to idling the main engine; and

(i) a bus that is also a commercial vehicle, institutional vehicle, or public vehicle that idles a maximum of 15 minutes in any 60-minute period to maintain passenger comfort while nondriver passengers are on board. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

**28-19-713. Applicability.** K.A.R. 28-19-713 through K.A.R. 28-19-713d shall apply to the owner or operator of each stationary source located in Wyandotte or Johnson county that annually emits at least 1,000 tons of nitrogen oxides from the entire facility, based on an average of the total emissions for the 2005, 2006, and 2007 calendar years. The total emissions shall be the sum of the actual emissions and the potential-to-emit emissions for each calendar year. The actual emissions shall be calculated pursuant to K.A.R. 28-19-210. If the actual emissions are more than 1,000 tons of nitrogen oxides for each calendar year, the potential-to-emit emissions may be excluded from the total emissions calculation. The

potential-to-emit emissions shall be used for periods exceeding two weeks of operational inactivity due to maintenance, construction, or modification. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

**28-19-713a. Emission limitation requirements.** No owner or operator subject to K.A.R. 28-19-713 shall allow any emission unit to emit nitrogen oxides in excess of the following emission limitations based on a 30-day rolling average:

(a) From electric generating units, for the purposes of K.A.R. 28-19-713 through K.A.R. 28-19-713d, the following:

(1) 0.26 pounds per million British thermal units (lbs/MMBtu) for unit 1, a turbo wall-fired Riley Stoker boiler located at the Nearman Creek power station in Kansas City, Kansas; and

(2) 0.20 lbs/MMbtu for unit 2, a wall-fired Riley Stoker boiler located at the Quindaro power station in Kansas City, Kansas; and

(b) from flat glass furnaces, 7.0 pounds per ton of glass produced. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

**28-19-713b. Alternate emissions limit.** Each owner or operator of an emission unit subject to an emissions limit for nitrogen oxides specified in K.A.R. 28-19-713a(a) that is also subject to a more stringent Kansas or USEPA emissions limit for nitrogen oxides shall comply with the more stringent emissions limit for that emission unit. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

**28-19-713c. Control measures and equipment.** Each owner or operator of any emission unit subject to an emissions limit specified in K.A.R. 28-19-713a or K.A.R. 28-19-713b shall implement control measures and install, operate, and maintain equipment necessary to achieve these limits no later than 18 months after the effective date of this regulation. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

**28-19-713d. Compliance demonstration, monitoring, and reporting requirements.** No later than 24 months after the effective date of this regulation, each owner or operator of any emission unit subject to the nitrogen oxide emission limits specified in K.A.R. 28-19-713a or K.A.R. 28-19-713b shall meet the following requirements:

(a) Demonstrate compliance with the applicable emissions limit by performing an emissions test in accordance with 40 C.F.R. 60.8, as adopted by reference in K.A.R. 28-19-720, and either of the following:

(1) Test method 7, 7A, 7C, 7D, or 7E in appendix A-4 to 40 C.F.R. part 60, as adopted by reference in K.A.R. 28-19-720; or

(2) any other USEPA test method approved by the department;

(b) ensure continuous compliance with the applicable emissions limit by installing, calibrating, maintaining, and operating a continuous emission monitoring system (CEMS) for nitrogen oxides that meets the requirements of 40 C.F.R. 60.13 and performance specification 2 in appendix B to 40 C.F.R. part 60, as adopted by reference in K.A.R. 28-19-720;

(c) certify the CEMS at least three months before the compliance demonstration required by subsection (a) pursuant to either of the following:

(1) The quality assurance procedures in appendix F to 40 C.F.R. part 60, as adopted by reference in K.A.R. 28-19-720; or

(2) an equivalent quality assurance procedure approved by the department; and

(d) document compliance by continuously monitoring and maintaining records of nitrogen oxide emissions. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 25, 2010.)

**28-19-720. New source performance standards.** (a) 40 C.F.R. part 60 and its appendices, as revised on July 1, 2008, are adopted by reference except for the following:

(1) The following sections in subpart A:

(A) 60.4;

(B) 60.9;

(C) 60.10; and

(D) 60.16;

(2) subpart B;

(3) the following mercury provisions in subpart Da:

(A) 60.45Da;

(B) in 60.48Da(c), the phrase "and the Hg emission standards under §60.45Da";

(C) 60.48Da(l);

(D) in 60.49Da(l), the phrase "or §60.45Da";

(E) 60.49Da(p), (q), and (r);

(F) 60.50Da(g) and (h);

(G) in 60.51Da(a), the phrase "and Hg emissions";

(H) 60.51Da(g);

(I) in 60.51Da(k), the phrase "and/or Hg"; and

(J) 60.52Da;

(4) the following provisions in subpart Ja:

(A) 60.100a(c);

(B) in 60.101a, the definition of "flare";

(C) 60.102a(g); and

(D) 60.107a(d) and (e);

(5) in 60.2265 and 60.2875, the definitions of "commercial and industrial solid waste incineration (CISWI) unit," "commercial or industrial waste," and "solid waste"; and

(6) subpart HHHH.

(b) The definitions of "commercial and industrial solid waste incineration (CISWI) unit," "commercial or industrial waste," and "solid waste" in 40 C.F.R. 60.2265 and 40 C.F.R. 60.2875, as in effect on July 1, 2005, are adopted by reference.

(c) Unless the context clearly indicates otherwise, the following meanings shall be given to these terms as they appear in 40 C.F.R. part 60, as adopted by reference in subsection (a):

(1) The term "administrator" shall mean the secretary or the secretary's authorized representative.

(2) The term "United States environmental protection agency" and any term referring to the United States environmental protection agency shall mean the department.

(3) The term "state" shall mean the state of Kansas.

(d) The owner or operator of each source that is subject to this regulation shall submit to the department any required annual reports specified in 40 C.F.R. part 60 within 180 days of the last day of the year for which the report is required, unless the owner or operator is required in this article to submit annual reports on a different schedule. (Authorized by K.S.A. 2008 Supp. 65-3005, as amended by L. 2009, ch. 141, sec. 23; implementing K.S.A. 65-3008 and 65-3010; effective Jan. 23, 1995; amended June 6, 1997; amended June 11, 1999; amended Dec. 3, 2004; amended June 15, 2007; amended Nov. 5, 2010.)

**28-19-728 through 28-19-728e.** (Authorized by K.S.A. 2006 Supp. 65-3005; implementing K.S.A. 65-3010; effective June 15, 2007; revoked Nov. 5, 2010.)

**28-19-728f.** (Authorized by K.S.A. 2006 Supp. 65-3005 and K.S.A. 65-3007; implementing K.S.A. 65-3007 and 65-3010; effective June 15, 2007; revoked Nov. 5, 2010.)

**28-19-735. National emission standards for hazardous air pollutants.** (a) 40 C.F.R. part 61 and its appendices, as in effect on July 1, 2008, are adopted by reference except for the following:

(1) The following sections in subpart A:

(A) 61.04;

(B) 61.16; and

(C) 61.17;

(2) subpart H;

(3) subpart I; and

(4) subpart K.

(b) Unless the context clearly indicates otherwise, the following meanings shall be given to these terms as they appear in 40 C.F.R. part 61:

(1) The term "administrator" shall mean the secretary or the secretary's authorized representative.

(2) The term "United States environmental protection agency" and any term referring to the United States environmental protection agency shall mean the department.

(3) The term "state" shall mean the state of Kansas. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3008 and 65-3010; effective Jan. 23, 1995; amended June 6, 1997; amended June 11, 1999; amended Dec. 3, 2004; amended June 15, 2007; amended Nov. 5, 2010.)

**28-19-750. Hazardous air pollutants; maximum achievable control technology.** (a) 40 C.F.R. part 63 and its appendices, as in effect on July 1, 2008, are adopted by reference, except for the following:

(1) The following sections in subpart A:

(A) 63.6(f)(1) and (h)(1);

(B) 63.12;

(C) 63.13;

(D) in 63.14(b)(27), the phrase "and table 5 to subpart DDDDD of this part";

(E) 63.14(b)(35), (39) through (53), and (55) through (62);

(F) in 63.14(i)(1), the phrase "table 5 to subpart DDDDD of this part"; and

(G) 63.15;

(2) the following sections in subpart B:

(A) 63.40;

(B) 63.41;

(C) 63.42;

(D) 63.43; and

(E) 63.44;

(3) subpart E; and

(4) subpart DDDDD.

(b) Unless the context clearly indicates otherwise, the following meanings shall be given to these terms as they appear in 40 C.F.R. part 63:

(1) The term "administrator" shall mean the secretary or the secretary's authorized representative.

(2) The term "United States environmental protection agency" and any term referring to the United States environmental protection agency shall mean the department.

(3) The term "state" shall mean the state of Kansas. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3008 and 65-3010; effective Jan. 23, 1995; amended June 6, 1997; amended June 11, 1999; amended Dec. 3, 2004; amended June 15, 2007; amended Nov. 5, 2010.)

**28-19-750a. Consolidated federal air regulations; synthetic organic chemical manufacturing industry.** (a) 40 C.F.R. part 65 and its appendices, as in effect on July 1, 2008, are adopted by reference except for the following sections in subpart A:

(1) 65.9;

(2) 65.10;

(3) 65.12; and

(4) 65.14.

(b) Unless the context clearly indicates otherwise, the following meanings shall be given to these terms as they appear in 40 C.F.R. part 65:

(1) The term "administrator" shall mean the secretary or the secretary's authorized representative.

(2) The term "United States environmental protection agency" and any term referring to the United States environmental protection agency shall mean the department.

(3) The term "state" shall mean the state of Kansas. (Authorized by K.S.A. 2009 Supp. 65-3005; implementing K.S.A. 65-3008 and 65-3010; effective Dec. 3, 2004; amended Nov. 5, 2010.)

## Article 21.—FOOD, DRUGS AND COSMETICS

**28-21-1.** (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966; revoked June 4, 2010.)

**28-21-6.** (Authorized by K.S.A. 65-665 (e), K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966; revoked June 4, 2010.)

**28-21-7.** (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966; revoked June 4, 2010.)

**28-21-8.** (Authorized by K.S.A. 65-663, K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966; revoked June 4, 2010.)

**28-21-9.** (Authorized by K.S.A. 65-665 (i) (2), K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966; revoked June 4, 2010.)

**28-21-10.** (Authorized by K.S.A. 65-665 (j), K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966; revoked June 4, 2010.)

**28-21-11.** (Authorized by K.S.A. 65-665 (k), K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966; revoked June 4, 2010.)

**28-21-20a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-21a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-22a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-23a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-24a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-25a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-26a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-27a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-28a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-29a.** (Authorized by K.S.A. 1979

Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-30a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-31a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-32a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-33a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-34a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-35a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-40a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-41a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-42a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-43a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-44a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-50a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-51a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-52a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-53a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-54a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-55a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-56a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-57a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-58a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-59a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-60a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-61a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-62a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-63 and 28-21-64.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-70a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-71a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-72a.** (Authorized by K.S.A. 1979 Supp. 65-663; effective May 1, 1980; revoked June 4, 2010.)

**28-21-82 through 28-21-85.** (Authorized by K.S.A. 65-663, K.S.A. 1972 Supp. 65-673; effective Jan. 1, 1973; revoked June 4, 2010.)

## Article 23.—SANITATION; FOOD AND DRUG ESTABLISHMENTS

**28-23-4.** (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

**28-23-9.** (Authorized by K.S.A. 65-625, K.S.A. 1979 Supp. 65-626; effective Jan. 1, 1966; amended May 1, 1980; revoked June 4, 2010.)

**28-23-10.** (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

**28-23-20 through 28-23-24.** (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

**28-23-26 through 28-23-32.** (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

**28-23-34 through 28-23-36.** (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

**28-23-41.** (Authorized by K.S.A. 65-663, K.S.A. 1968 Supp. 65-673; effective Jan. 1, 1969; revoked June 4, 2010.)

**28-23-42 through 28-23-55.** (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

**28-23-70 and 28-23-71.** (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

**28-23-73.** (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

**28-23-75.** (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

**28-23-78 through 28-23-80.** (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966; revoked June 4, 2010.)

## Article 29.—SOLID WASTE MANAGEMENT

**28-29-1a. Modification of obsolete references and text.** The following modifications shall be made to article 29:

(a) In K.A.R. 28-29-23(t), "K.A.R. 28-31-3" shall be replaced with "K.A.R. 28-31-261."

(b) In K.A.R. 28-29-23a(c)(8), the phrase "K.A.R. 28-31-3 and K.A.R. 28-29-4" shall be replaced with "K.A.R. 28-31-261."

(c) In K.A.R. 28-29-27(g)(3), "K.A.R. 28-31-9" shall be replaced with "K.A.R. 28-31-270."

(d) In K.A.R. 28-29-102, the following modifications shall be made:

(1) In paragraph (l)(2)(A), "K.A.R. 28-15-11" shall be replaced with "K.A.R. 28-16-28b(fff)."

(2) In paragraph (l)(2)(B), "K.A.R. 28-15-11" shall be replaced with "K.S.A. 65-162a, and amendments thereto."

(e) In K.A.R. 28-29-108, the following modifications shall be made:

(1) In subsection (a), the phrase "K.A.R. 28-31-3 and K.A.R. 28-31-4" shall be replaced with "K.A.R. 28-31-261."

(2) In paragraph (h)(1), "K.A.R. 28-19-47" shall be replaced with "K.A.R. 28-19-647."

(f) In K.A.R. 28-29-109(b)(6) and (7)(B)(i), "K.A.R. 28-31-3" shall be replaced with "K.A.R. 28-31-261."

(g) In K.A.R. 28-29-300(a)(5), "K.A.R. 28-31-4" shall be replaced with "K.A.R. 28-31-261."

(h) In K.A.R. 28-29-1100, the following modifications shall be made:

(1) In paragraph (b)(1), "K.A.R. 28-31-4 (b)" shall be replaced with "K.A.R. 28-31-261."

(2) In paragraph (b)(3), the following modifications shall be made:

(A) " 'Small quantity generator' " shall be replaced with " 'Conditionally exempt small quantity generator.' "

(B) "K.A.R. 28-31-2" shall be replaced with "K.A.R. 28-31-260a."

(3) In paragraph (b)(4), the phrase "defined by the United States department of transportation and adopted by reference in K.A.R. 28-31-4 (e)" shall be replaced with "as listed in 49 CFR 173.2, as in effect on October 1, 2009, which is hereby adopted by reference."

(4) In subsection (c), each occurrence of the term "K.A.R. 28-31-16" shall be replaced with "K.A.R. 28-31-279 and K.A.R. 28-31-279a."

(5) In subsection (d), "[s]mall quantity generator" shall be replaced with "Conditionally exempt small quantity generator."

(6) In subsections (d) and (e), each occurrence of the term "SQG" shall be replaced with "CESQG."

(i) In K.A.R. 28-29-1102, the following modifications shall be made:

(1) Paragraphs (b)(2)(C), (b)(2)(C)(i), and (b)(2)(C)(ii) shall be replaced with the following

text: "All HHW that is transferred for treatment, storage, or disposal shall be manifested as hazardous waste. All applicable hazardous waste codes for each waste shall be listed on the manifest, using all available information. HHW facilities shall not be required to submit samples for laboratory testing in order to determine hazardous waste codes."

(2) In paragraph (b)(2)(D), "K.A.R. 28-31-14" shall be replaced with "K.A.R. 28-31-268."

(3) Paragraph (b)(2)(E) shall be replaced with the following text: "All HHW that is transferred for treatment, storage, or disposal shall be prepared for transportation off-site as hazardous waste."

(4) In paragraph (b)(2)(F)(i), "K.A.R. 28-31-15" shall be replaced with "K.A.R. 28-31-273."

(j) In K.A.R. 28-29-1103(c), the phrase "meeting the USDOT manufacturing and testing specifications for transportation of hazardous materials, as adopted by reference in K.A.R. 28-31-4 (e)" shall be replaced with "that are compatible with the waste."

(k) In K.A.R. 28-29-1107(a)(2)(D), "small quantity generator" shall be replaced with "conditionally exempt small quantity generator." (Authorized by and implementing K.S.A. 65-3406; effective Nov. 28, 2011.)

**28-29-501. Uncontaminated soil.** For the purposes of K.S.A. 65-3402 and amendments thereto, "uncontaminated soil" shall mean soil that meets all the following conditions:

(a) The soil meets the definition of "construction and demolition waste" in K.S.A. 65-3402, and amendments thereto.

(b) The soil has not been generated at a facility that is under state or federal oversight for the investigation or cleanup of contamination, unless the state or federal project manager who is providing the oversight approves the use of the soil as clean rubble, as defined in K.S.A. 65-3402 and amendments thereto.

(c) The soil exhibits no characteristic that would be expected to create either of the following if the soil is managed as clean rubble:

(1) An odor or other nuisance that would be offensive to a reasonable person; or

(2) an obvious risk to human health or safety or the environment, due to any physical or chemical property of the soil.

(d) The soil is determined to be suitable for use as clean rubble by one of the following methods:

(1) The generator of the soil determines that there is no indication of contamination in the soil. Indication of contamination shall be based on information readily available to the generator of the soil, including the following:

(A) The visual appearance of the soil;

(B) the odor of the soil; and

(C) all known past activities at the site from which the soil is being removed.

(2) The generator of the soil obtains analytical data from representative soil samples according to the requirements in subsection (e) and all of the following criteria are met:

(A) The soil is not a hazardous waste.

(B) Total nitrate plus ammonia is less than 40 mg/kg.

(C) The level of total petroleum hydrocarbons is less than N=1, as described in section 5.0 of "risk-based standards for Kansas" ("RSK manual"), published in June 2007 by the department and hereby adopted by reference, including all appendices. The GRO tier 2 value shall be 39 mg/kg and the DRO tier 2 value shall be 2000 mg/kg.

(D) If the analyte is a chemical other than nitrate, ammonia, or a petroleum hydrocarbon, all of the following criteria are met:

(i) There is no more than one anthropogenic analyte present in the soil. For the purposes of this regulation, the term "anthropogenic analyte" shall mean a chemical or substance present in the environment due to human activity.

(ii) The anthropogenic analyte is listed in the KDHE tier 2 risk-based summary table in appendix A of the RSK manual.

(iii) The concentration of the anthropogenic analyte is less than the level listed in the KDHE tier 2 risk-based summary table for residential scenarios for the soil pathway or for the soil to ground water protection pathway, whichever is lower.

(3) The secretary determines that if the soil is used as clean rubble, the soil will not present a risk to human health or safety or the environment, based on information provided by the generator of the soil. The generator of the soil shall submit the following information to the department:

(A) Analytical reports from representative soil samples; and

(B) the following information, if requested by the department:

(i) Analytical reports indicating naturally occurring background concentrations at the site from which the soil is being removed;

(ii) the cumulative cancer risk level of all analytes;

(iii) the hazard index value, as defined in K.A.R. 28-71-1, of all analytes; and

(iv) any other information required by the department to evaluate the potential risk to human health or safety or the environment.

(e) If analytical data is used to meet the conditions of this regulation, the following requirements are met:

(1) At least one representative sample shall be collected and analyzed for each 500 cubic yards of soil.

(2) Each analysis shall be performed and reported by a laboratory that has departmental certification, if this certification is available, for that analysis.

(3) Each analytical report shall include the following information:

(A) The results of each analysis;

(B) quality control data;

(C) a copy of the chain of custody for each sample; and

(D) a statement signed by the generator that the analytical results are representative of the soil.

(4) The generator shall maintain each analytical report on file for at least three years after the report is received and shall make the report available to the department upon request. (Authorized by K.S.A. 65-3406; implementing K.S.A. 2008 Supp. 65-3402; effective Jan. 15, 2010.)

## Article 31.—HAZARDOUS WASTE MANAGEMENT STANDARDS AND REGULATIONS

**28-31-1.** (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

**28-31-2.** (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

**28-31-3.** (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

**28-31-4. EPA identification numbers; notification requirement for hazardous waste, universal waste, and used oil activities.** Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279.

(a) Each person who is required to obtain an EPA identification number by 40 CFR part 124 or 40 CFR parts 260 through 279 and each Kansas small quantity generator shall notify the department of their hazardous waste, universal waste, and used oil activities and shall obtain an EPA identification number by submitting to the department KDHE form 8700-12 or another form approved by the secretary.

(b) Each person that is newly subject to these notification requirements due to promulgation of a statute or regulation shall notify the department of that person's hazardous waste, universal waste, and used oil activities within 60 days of the effective date of the statute or regulation, unless a different date is specified in that statute or regulation.

(c) Each person shall update the information associated with that person's EPA identification number if there is a change in the information. The person shall submit these changes to the department on KDHE form 8700-12 or another form approved by the secretary, no more than 60 days after the change occurs. (Authorized by and implementing K.S.A. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended March 22, 1996; amended June 4, 1999; amended Sept. 20, 2002; amended April 29, 2011.)

**28-31-5.** (Authorized by and implementing K.S.A. 65-3431 and K.S.A. 65-3458; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-86-6, March 22, 1985; amended, T-86-32, Sept. 24, 1985; amended, May 1, 1986; amended May 1, 1987; amended Feb. 5, 1990; amended April 25, 1994; revoked April 29, 2011.)

**28-31-6. Registration and insurance requirements for transporters of hazardous waste and used oil.** Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279. (a) Applicability. This regulation shall apply to the following:

(1) Each person that transports hazardous waste and is subject to the requirements of K.A.R. 28-31-263a; and

(2) each person that transports used oil and is subject to the requirements of 40 CFR part 279, subpart E.

(b) Registration. Each transporter shall register with the secretary according to the following requirements:

(1) The transporter shall submit the registration application on forms provided by the department.

(2) The transporter shall obtain written acknowledgment from the secretary that registration is complete before transporting hazardous waste or used oil within, into, out of, or through Kansas.

(3) The transporter shall carry a copy of the written acknowledgment in all vehicles transporting hazardous waste or used oil and shall provide the written acknowledgment for review upon request.

(4) The transporter shall update the registration information if there is a change in that information. The transporter shall submit these changes on forms provided by the department within 60 days of the date of the change.

(c) Insurance requirements. Each transporter shall secure and maintain liability insurance on each of the transporter's vehicles transporting hazardous waste or used oil in Kansas.

(1) The limits of insurance shall not be less than $1 million per person and $1 million per occurrence for bodily injury or death and $1 million for all damage to the property of others. When combined bodily injury or death and property damage coverage are provided, the total limits shall not be less than $1 million.

(2) If any coverage is reduced or canceled, the transporter shall notify the secretary in writing at least 35 days before the effective date of the reduction or cancellation.

(3) The transporter shall, before the expiration date of the insurance policy, provide the secretary with proof of periodic renewal in the form of a certificate of insurance showing the monetary coverage and the expiration date.

(d) Denial or suspension of registration.

(1) Any application may be denied and any transporter's registration may be suspended if the secretary determines that one or more of the following apply:

(A) The transporter failed or continues to fail to comply with any of the following:

(i) Provisions of the air, water, or waste statutes relating to environmental protection or to the protection of public health or safety, including regulations issued by Kansas or by the federal government; or

(ii) any condition of any permit or order issued to the transporter by the secretary.

(B) Any state or territory or the District of Columbia has found that the applicant or transporter has violated that government's hazardous waste or used oil transporter laws or regulations.

(C) One or more of the following is a principal of another corporation that would not be eligible for registration:

(i) The transporter;

(ii) a person who holds an interest in the transporter;

(iii) a person who exercises total or partial control of the transporter; or

(iv) a person who is a principal of the parent corporation.

(2) Each notice of denial or suspension shall be issued in writing by the secretary and shall inform the applicant or transporter of the procedures for requesting a hearing pursuant to K.S.A. 65-3456a and amendments thereto. (Authorized by and implementing K.S.A. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb.5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; amended April 29, 2011.)

**28-31-7.** (Authorized by and implementing K.S.A. 1984 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-

85-42, Dec. 19, 1984; amended May 1, 1985; revoked April 29, 2011.)

**28-31-8.** (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

**28-31-8b.** (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

**28-31-9.** (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-84-5, Feb. 10, 1983; amended May 1, 1984; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

**28-31-10. Hazardous waste monitoring fees.** Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279. (a) Each of the following persons shall pay an annual monitoring fee to the department according to the requirements of subsections (b) through (e):

(1) Each owner or operator of a hazardous waste treatment, storage, or disposal facility;

(2) each hazardous waste transporter; and

(3) each hazardous waste generator.

(b) Hazardous waste treatment, storage, or disposal facilities. The owner or operator of each facility shall pay the annual monitoring fee before January 1 of each year.

(1) The fee for each active facility shall be based on the following schedule:

(A) On-site storage facility ..... $7,500

(B) Off-site storage facility ..... $8,000

(C) On-site nonthermal treatment facility ..... $7,500

(D) Off-site nonthermal treatment facility ..... $8,000

(E) On-site thermal treatment facility $8,000

(F) Off-site thermal treatment facility $12,000

(G) Incinerator facility ..... $12,000

(H) On-site landfill or underground injection well ..... $10,000

(I) Off-site landfill or underground injection well ..... $15,000

(2) The fee for each facility subject to postclosure care shall apply upon receipt by the department of the certification of closure specified in 40 CFR 264.115 or 40 CFR 265.115. This fee shall be $10,000.

(3) The owner or operator of each facility conducting more than one of the hazardous waste activities specified in paragraphs (a)(1) and (2) shall pay a single fee. This fee shall be in the amount specified for the activity having the highest fee of those conducted.

(c) Hazardous waste transporters. Each hazardous waste transporter shall pay the annual monitoring fee when the transporter registers with the department in accordance with K.A.R. 28-31-6, and before January 1 of each subsequent year. This fee shall be $300.

(d) Hazardous waste generators.

(1) Each large quantity generator shall pay the annual monitoring fee before March 1 of each year.

(A) The fee shall be based on all hazardous waste generated during the previous calendar year according to the following schedule:

| Total Yearly Quantity Generated | Monitoring Fee |
|---|---|
| Less than or equal to 5 tons | $250 |
| Greater than 5 tons but less than or equal to 50 tons | $750 |
| Greater than 50 tons but less than or equal to 500 tons | $2,500 |
| Greater than 500 tons | $7,500 |

(B) Each large quantity generator that reclaims hazardous waste on-site to recover substantial amounts of energy or materials shall be exempt from payment of monitoring fees for the amount of hazardous waste reclaimed. This exemption shall not apply to hazardous waste residues produced during reclamation.

(2) Each small quantity generator and each Kansas small quantity generator shall pay the annual monitoring fee of $100 before April 1 of each year.

(e) Monitoring fee payments. Each monitoring fee payment that is made by check or money order shall be made payable to the "hazardous waste management fund - Kansas department of health and environment." (Authorized by and imple-

menting K.S.A. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-85-2, Jan. 13, 1984; amended May 1, 1984; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended, T-87-49, Dec. 19, 1986; amended May 1, 1987; amended May 1, 1988; amended April 25, 1994; amended March 22, 1996; amended June 4, 1999; amended Sept. 20, 2002; amended Oct. 29, 2004; amended April 29, 2011.)

**28-31-12. Inspections.** (a) Upon presentation of credentials and stating the purpose of the visit, the following actions may be performed during the regular business hours of the facility by the secretary or the secretary's designee:

(1) Entering any factory, plant, construction site, hazardous waste storage, treatment, or disposal facility, or other location where hazardous wastes could potentially be generated, stored, treated, or disposed of, and inspecting the premises to gather information regarding existing conditions and procedures;

(2) obtaining samples of actual or potential hazardous waste from any person or from the property of any person, including samples from any vehicle in which hazardous wastes are being transported;

(3) stopping and inspecting any vehicle, if there is reasonable cause to believe that the vehicle is transporting hazardous wastes;

(4) conducting tests, analyses, and evaluations of wastes and waste-like materials to determine whether or not the wastes or materials are hazardous and whether or not the requirements of these regulations are being met;

(5) obtaining samples from any containers;

(6) making reproductions of container labels;

(7) inspecting and copying any records, reports, information, or test results relating to wastes generated, stored, transported, treated, or disposed of;

(8) photographing or videotaping any hazardous waste management facility, device, structure, or equipment;

(9) drilling test wells or groundwater monitoring wells on the property of any person where hazardous wastes are generated, stored, transported, treated, disposed of, discharged, or migrating offsite and obtaining samples from the wells; and

(10) conducting tests, analyses, and evaluations of soil, groundwater, surface water, and air to determine whether the requirements of these regulations are being met.

(b) If, during the inspection, unsafe or unpermitted hazardous waste management procedures are discovered, the operator of the facility may be instructed by the secretary or the secretary's designee to retain and properly store hazardous wastes, pertinent records, samples, and other items. These materials shall be retained by the operator until the waste has been identified and the secretary determines the proper procedures to be used in handling the waste.

(c) When obtaining samples, the facility operator shall be allowed to collect duplicate samples for separate analyses.

(d) During the inspection, all reasonable security, safety, and sanitation measures employed at the facility shall be followed by the secretary or the secretary's designee.

(e) A written report listing all deficiencies found during the inspection and stating the measures required to correct the deficiencies shall be prepared and sent to the operator. (Authorized by and implementing K.S.A. 65-3431; effective May 1, 1982; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended June 4, 1999; amended April 29, 2011.)

**28-31-13. Variances.** (a) Application. Any person may apply for a variance from one or more specific provisions of these regulations according to the following criteria:

(1) An application for a variance may be submitted for any provision that is determined by the U.S. environmental protection agency to be more stringent or broader in scope than the federal hazardous waste regulations.

(2) The application shall be submitted to the department on a form provided by the department.

(3) The applicant shall state the reasons and circumstances that support the application and shall submit all other pertinent data to support the application.

(b) Review and public comment. A tentative decision to grant or deny a variance shall be made by the secretary according to the following criteria:

(1) A tentative decision shall be made within 60 days of receipt of the application by the department.

(2) A notice of the tentative decision and the opportunity for written public comment shall be

published by the department in the following publications:

(A) The Kansas register; and

(B) the official county newspaper of the county in which the variance is requested or, if there is no official county newspaper, a newspaper published as provided in K.S.A. 64-101, and amendments thereto.

(3) Upon the written request of any person, a public meeting may be held to consider comments on the tentative decision. The person requesting a public meeting shall state the issues to be raised and shall explain why written comments would not suffice to communicate the person's views.

(c) Final decision. After all public comments have been evaluated, a final decision shall be made by the secretary according to the following criteria:

(1) A variance may be granted by the secretary if the variance meets the following requirements:

(A) The variance shall not be any less stringent than the federal hazardous waste regulations.

(B) The variance shall be protective of public health and safety and the environment.

(2) A notice of the final decision shall be published by the department in the Kansas register.

(A) If the variance is granted, all conditions and time limitations needed to comply with state or federal laws or to protect public health or safety or the environment shall be specified by the secretary.

(B) The date the variance expires shall be provided in the final decision.

(d) Extension of a prior or existing variance. Any person may submit a request in writing to extend a prior or existing variance that meets the requirements of this regulation, according to the following criteria:

(1) The person shall demonstrate the need for continuation of the variance.

(2) The variance may be reissued or extended for another period upon a finding by the secretary that the reissuance or extension of the variance would not endanger public health or safety or the environment.

(3) The review, public comment, and the final decision procedures shall be the same as those specified in subsections (b) and (c).

(e) Termination of a variance. Any variance granted pursuant to this regulation may be terminated, if the secretary finds one or more of the following conditions:

(1) Violation of any requirement, condition, schedule, or limitation of the variance;

(2) operation under the variance that fails to meet the minimum requirements established by state or federal law or regulations; or

(3) operation under the variance that is unreasonably threatening public health or safety or the environment. Written notice of termination shall be provided by the secretary to the person granted the variance. (Authorized by and implementing K.S.A. 65-3431; effective May 1, 1982; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended June 4, 1999; amended April 29, 2011.)

**28-31-14.** (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective May 1, 1988; amended Feb. 5, 1990; amended April 25, 1994; amended June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

**28-31-15.** (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

**28-31-16.** (Authorized by and implementing K.S.A. 2001 Supp. 65-3431; effective June 4, 1999; amended Sept. 20, 2002; revoked April 29, 2011.)

**28-31-100. Substitution of state terms for federal terms; internal references to federal regulations.** When used in any provision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the following substitutions shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279:

(a) References to federal regulations that are adopted by reference. Each reference to 40 CFR parts 124, 260 through 268, 270, 273, and 279 shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through K.A.R. 28-31-279.

(b) References to federal regulations that are not adopted by reference.

(1) 40 CFR part 124.

(A) Each reference to 40 CFR part 124 in its entirety shall be replaced with "K.A.R. 28-31-124 through 28-31-124e."

(B) Each reference to 40 CFR 124, subpart A in its entirety shall be replaced with "K.A.R. 28-31-124 through 28-31-124e."

(C) Each reference to 40 CFR 124.2 or any

portion of 40 CFR 124.2 shall be replaced with "40 CFR 270.2."

(D) Each reference to 40 CFR 124.3 or any portion of 40 CFR 124.3 shall be replaced with "K.A.R. 28-31-124a."

(E) Each reference to 40 CFR 124.5 or any portion of 40 CFR 124.5 shall be replaced with "K.A.R. 28-31-124b."

(F) Each reference to 40 CFR 124.6 or any portion of 40 CFR 124.6 shall be replaced with "K.A.R. 28-31-124c."

(G) Each reference to 40 CFR 124.8 or any portion of 40 CFR 124.8 shall be replaced with "K.A.R. 28-31-124d."

(H) Each reference to 40 CFR 124.10 or any portion of 40 CFR 124.10 shall be replaced with "K.A.R. 28-31-124e," except in 40 CFR 124.204(d)(10), where the phrase "§§ 124.10(c)(1)(ix) and (c)(1)(x)(A)" shall be replaced with "K.A.R. 28-31-124e(e)(1)(D) and (E)."

(I) The following phrases shall be replaced with "in accordance with K.S.A. 65-3440, and amendments thereto,":

(i) "[A]ccording to the procedures of § 124.19";

(ii) "pursuant to 40 CFR 124.19";

(iii) "under § 124.19";

(iv) "under § 124.19 of this chapter";

(v) "under § 124.19 of this part"; and

(vi) "under the permit appeal procedures of 40 CFR 124.19."

(2) 40 CFR 260.20 through 260.23. Each reference to 40 CFR 260.20, 260.21, 260.22, or 260.23, or any combination of these references, shall be replaced with the phrase "EPA's rulemaking petition program." (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

**28-31-100a. Substitution of state terms for federal terms; administrator.** When used in any provision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the following substitutions shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279:

(a) The following terms and phrases shall be replaced with "secretary," except as noted in subsection (b):

(1) "Administrator";

(2) "[a]dministrator or State Director";

(3) "applicable EPA Regional Administrator";

(4) "appropriate Regional Administrator or state Director";

(5) "[a]ssistant Administrator";

(6) "[a]ssistant Administrator for Solid Waste and Emergency Response";

(7) "EPA Regional Administrator";

(8) "EPA Regional Administrator(s)";

(9) "EPA Regional Administrator (or his designated representative) or State authorized to implement part 268 requirements";

(10) "EPA Regional Administrator for the Region in which the generator is located";

(11) "EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located";

(12) "EPA Regional Administrator(s) of the EPA Region(s) in which the bonded facility(ies) is (are) located";

(13) "EPA Regional Administrators of the Regions in which the facilities are located, or their designees";

(14) "[r]egional Administrator";

(15) "[r]egional Administrator(s)";

(16) "[r]egional Administrator of every Region in which facilities for which financial responsibility is to be demonstrated through the financial test are located";

(17) "[r]egional Administrator or state Director";

(18) "[r]egional Administrator, or State Director, as the context requires, or an authorized representative ('director' as defined in 40 CFR 270.2)";

(19) "[r]egional Administrator, or State Director (if located in an authorized state)";

(20) "[r]egional Administrator(s) of the EPA Region(s) in which the facility(ies) is(are) located"; and

(21) "USEPA Regional Administrator for Region [Region #]."

(b) The terms listed in subsection (a) shall not be replaced with "secretary" in the following federal regulations:

(1) 40 CFR 260.10, in the following definitions:

(A) "Administrator";

(B) "equivalent method";

(C) "hazardous waste constituent";

(D) "industrial furnace"; and

(E) "regional administrator";

(2) 40 CFR part 261, in the following locations:

(A) 40 CFR 261.10;

(B) 40 CFR 261.11; and

(C) 40 CFR 261.21;

(3) 40 CFR part 262, subparts E and H and the appendix;

(4) 40 CFR part 264, in the following locations:

(A) 40 CFR 264.12(a);

(B) 40 CFR 264.151(b), in the first paragraph of the financial guarantee bond;

(C) 40 CFR 264.151(c), in the first paragraph of the performance bond; and

(D) 40 CFR 265.12(a);

(5) 40 CFR part 268, in the following locations:

(A) 40 CFR 268.5;

(B) 40 CFR 268.6;

(C) 40 CFR 268.40(b);

(D) 40 CFR 268.42(b); and

(E) 40 CFR 268.44; and

(6) 40 CFR part 270, in the following locations:

(A) 40 CFR 270.2, in the following definitions:

(i) "Administrator";

(ii) "corrective action management unit or CAMU";

(iii) "director";

(iv) "major facility";

(v) "regional administrator"; and

(vi) "state/EPA agreement";

(B) 270.5;

(C) 270.10(e)(2) and (3);

(D) 270.10(f)(3); and

(E) 270.11(a)(3). (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

**28-31-100d. Substitution of state terms for federal terms; DOT, director.** When used in any provision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the following substitutions shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279:

(a) Department of transportation. The terms "Department of Transportation" and "DOT" shall be replaced with "U.S. department of transportation," except in the following instances:

(1) In an address;

(2) in the term "DOT hazard class";

(3) in the term "U.S. Department of Transportation (DOT)"; and

(4) in the term "U.S. DOT."

(b) Director.

(1) The following terms shall be replaced with "secretary" except as noted in paragraphs (b)(2) through (4):

(A) "Director" and "Directors";

(B) "[d]irector of an EPA permitting agency";

(C) "[r]egional or State Directors to whom the claim was submitted";

(D) "[r]egional or State RCRA and CAA Directors, in whose jurisdiction the exclusion is being claimed and where the comparable/syngas fuel will be burned";

(E) "[s]tate and Regional Directors"; and

(F) "[s]tate Director."

(2) The term "Director" shall not be replaced with "secretary" when used in the following terms:

(A) "Director of the Federal Register";

(B) "[d]irector, Office of Hazardous Materials Regulations"; and

(C) "EPA Director of the Office of Solid Waste."

(3) The term "directors" shall not be replaced with "secretary" in the term "Board of Directors."

(4) The terms "Director," "Directors," and "State Director" shall not be replaced with "secretary" in the following locations:

(A) 40 CFR part 262, in the appendix;

(B) 40 CFR 266.201 and 266.210, in the definition of "director"; and

(C) 40 CFR 270.2, in the following definitions:

(i) "Director"; and

(ii) "state director." (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

**28-31-100e. Substitution of state terms for federal terms; engineer, environmental appeals board, EPA.** When used in any provision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the following substitutions shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279:

(a) Engineer. The following terms shall be replaced with "Kansas professional engineer":

(1) "[G]eotechnical engineer";

(2) "PE";

(3) "professional engineer";

(4) "qualified engineer";

(5) "qualified Professional Engineer";

(6) "qualified registered professional engineer";

(7) "qualified, registered professional engineer"; and

(8) "registered professional engineer."

(b) Environmental appeals board.

(1) The term "Environmental Appeals Board" shall be replaced with "secretary."

(2) The term "EPA's Environmental Appeals Board" shall be replaced with "the secretary."

(c) Environmental protection agency.

(1) The following terms shall be replaced with "department" or "the department" except as noted in paragraphs (2) through (6) of this subsection:

(A) "Agency";

(B) "applicable EPA Regional Office, Hazardous Waste Division";

(C) "appropriate regional EPA office";

(D) "[e]nvironmental Protection Agency";

(E) "[e]nvironmental Protection Agency (EPA)";

(F) "EPA";

(G) "EPA Headquarters";

(H) "EPA region";

(I) "EPA region or authorized state";

(J) "EPA regional office";

(K) "regulatory agency";

(L) "United States Environmental Protection Agency";

(M) "United States Environmental Protection Agency (EPA)";

(N) "U.S. Environmental Protection Agency"; and

(O) "U.S. Environmental Protection Agency (EPA)."

(2) The terms listed in paragraph (1) of this subsection shall not be replaced with "the department" in the following instances:

(A) Where the term is used in an address; and

(B) where the term is part of an EPA document name or number.

(3) The term "Agency" shall not be replaced with "the department" when used as part of the following terms in the singular or plural:

(A) "Agency of the Federal government";

(B) "agency of the Federal or State government";

(C) "[f]ederal Agency";

(D) "oversight agency"; and

(E) "[s]tate agency."

(4) The term "Environmental Protection Agency" shall not be replaced with "the department" when used as part of the term "Environmental Protection Agency identification number."

(5) The term "EPA" shall not be replaced with "the department" when used as part of the following terms in the singular or plural:

(A) "EPA Acknowledgment of Consent";

(B) "EPA Director of the Office of Solid Waste";

(C) "EPA facility ID number";

(D) "EPA Form";

(E) "EPA guidance";

(F) "EPA Hazardous Waste";

(G) "EPA Hazardous Waste Code";

(H) "EPA Hazardous Waste No.";

(I) "EPA Hazardous Waste Number";

(J) "EPA identification number";

(K) "EPA Manual";

(L) "EPA Publication";

(M) "EPA Protocol";

(N) "EPA standard method";

(O) "EPA test method";

(P) "EPA waste code"; and

(Q) "U.S. EPA Identification Number."

(6) The terms listed in paragraph (c)(1) shall not be replaced with "the department" in the following locations:

(A) 40 CFR part 124, in the following locations:

(i) 124.200; and

(ii) 124.207;

(B) 40 CFR 260.10, in the following definitions:

(i) "Administrator";

(ii) "EPA hazardous waste number";

(iii) "EPA identification number";

(iv) "EPA region";

(v) "federal agency";

(vi) "regional administrator"; and

(vii) "replacement unit";

(C) 40 CFR part 261, appendix I;

(D) 40 CFR part 262, in the following locations:

(i) 40 CFR 262.21;

(ii) 40 CFR 262.32(b); and

(iii) 40 CFR part 262, subparts E, F, and H and the appendix;

(E) 40 CFR part 264, in the following locations:

(i) In 40 CFR 264.151, where only the term "agency" shall not be replaced; and

(ii) in 40 CFR 264.1082(c)(4)(ii), the second occurrence of "EPA";

(F) in 40 CFR 265.1083(c)(4)(ii), the second occurrence of "EPA";

(G) 40 CFR part 266, appendix IX, sections 4 through 9, except that the first occurrence of the term "EPA" in section 8.0 shall be replaced with "the department";

(H) 40 CFR 267.143;

(I) 40 CFR part 268, in the following locations:

(i) 40 CFR 268.1(e)(3);

(ii) 40 CFR 268.2(j);

(iii) 40 CFR 268.5;

(iv) 40 CFR 268.7(e); and

(v) 40 CFR 268.44;

(J) 40 CFR part 270, in the following locations:

(i) 40 CFR 270.2, in the definitions of "administrator," "application," "approved program or approved state," "director," "environmental protection agency (EPA)," "EPA," "final authorization," "interim authorization," "permit," "regional administrator," and "state/EPA agreement";

(ii) 40 CFR 270.5;

(iii) 40 CFR 270.10(e)(2);

(iv) 40 CFR 270.11(a)(3);

(v) 40 CFR 270.51(d);

(vi) 40 CFR 270.72(a)(5) and (b)(5); and

(vii) 40 CFR 270.225; and

(K) 40 CFR part 273, in the following locations:

(i) 40 CFR 273.32(a)(3); and

(ii) 40 CFR 273.52.

(d) EPA form 8700-12. The term "EPA Form 8700-12" shall be replaced with "KDHE form 8700-12."

(e) EPA form 8700-13B. The term "EPA form 8700-13B" shall be replaced with "KDHE form 8700-13b." (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

**28-31-100f. Substitution of state terms for federal terms; federal register.** When used in any provision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the substitutions specified in this regulation shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279. The term "Federal Register" shall be replaced with "Kansas register" except in the following locations:

(a) 40 CFR 266.203(c) and 266.205(e);

(b) 40 CFR 268.5(e);

(c) 40 CFR 268.6(j);

(d) 40 CFR part 268, subpart D; and

(e) 40 CFR 270.10(e)(2). (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

**28-31-100p. Substitution of state terms for federal terms; part B, permitting agency or authority.** When used in any provision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the following substitutions shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279:

(a) Part B. The following phrases shall be replaced with "part B application":

(1) "[P]art B of the RCRA application"; and

(2) "RCRA part B application."

(b) Permitting agency or authority. The following terms shall be replaced with "department" or "the department":

(1) "[P]ermitting agency";

(2) "permitting authority";

(3) "permitting authority for the facility";

(4) "permitting authority of the state or territory where the facility is located"; and

(5) "permitting authority of the state or territory where the facility(ies) is(are) located." (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

**28-31-100q. Substitution of state terms for federal terms; qualified geologist, qualified soil scientist.** When used in any provision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the following substitutions shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279:

(a) Qualified geologist. The term "qualified geologist" shall be replaced with "Kansas licensed geologist."

(b) Qualified soil scientist. The term "qualified soil scientist" shall be replaced with "Kansas licensed geologist." (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

**28-31-100r. Substitution of state terms for federal terms; RCRA.** When used in any provision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the following substitutions shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279:

(a) General references to the RCRA program and subtitle C.

(1) The following terms shall be replaced with "Kansas hazardous waste program" or "the Kansas hazardous waste program" except as noted in paragraphs (2) and (3) and subsections (o) through (q):

(A) "RCRA";

(B) "RCRA hazardous waste";

(C) "RCRA hazardous waste management";

(D) "RCRA program";

(E) "RCRA subtitle C";

(F) "[r]esource Conservation and Recovery Act";

(G) "[r]esource Conservation and Recovery Act as amended (RCRA)";

(H) "[r]esource Conservation and Recovery Act of 1976 as amended";

(I) "[s]ubtitle C";

(J) "subtitle C of RCRA"; and

(K) "subtitle C of the Resource Conservation and Recovery Act (RCRA)."

(2) The term "RCRA" shall not be replaced with "Kansas hazardous waste program" when used in the following terms, in the singular or plural:

(A) "RCRA facility ID number";

(B) "RCRA hazardous waste code";

(C) "RCRA ID number";

(D) "RCRA identification number";

(E) "non-RCRA tank";

(F) "RCRA/Superfund Hotline";

(G) "RCRA waste code"; and

(H) "RCRA Subtitle D."

(3) The terms listed in paragraph (1) of this subsection shall not be replaced with "Kansas hazardous waste program" when used in the following locations:

(A) The parenthetical authority cited at the end of a section;

(B) 40 CFR 260.10, in the definition of " 'act' or 'RCRA' ";

(C) 40 CFR part 261, in the following locations:

(i) 40 CFR 261.4(e)(2)(iv); and

(ii) 40 CFR 261.38(c)(1)(ii);

(D) 40 CFR part 262, in the following locations:

(i) Subpart H; and

(ii) the appendix;

(E) 40 CFR part 266, in the following locations:

(i) 40 CFR 266.202(d); and

(ii) 40 CFR 266.210 and 266.240, where "RCRA hazardous waste" shall be replaced with "hazardous waste"; and

(F) 40 CFR 270.2, in the definition of "RCRA."

(b) References to specific sections, subsections, or paragraphs of RCRA.

(1) Section 3010. The following phrases shall be replaced with "K.A.R. 28-31-4":

(A) "RCRA section 3010";

(B) "section 3010 of RCRA";

(C) "section 3010 of the Act"; and

(D) "section 3010(a) of RCRA."

(2) Section 7003. The following terms shall be replaced with "K.S.A. 65-3443 and 65-3445":

(A) "[S]ection 7003"; and

(B) "section 7003 of RCRA."

(c) References to RCRA and subtitle C facilities and disposal units.

(1) The term "RCRA hazardous waste land disposal unit" shall be replaced with "Kansas hazardous waste land disposal unit."

(2) The term "RCRA hazardous waste management facility" shall be replaced with "Kansas hazardous waste management facility."

(3) The term "Subtitle C landfill cell" shall be replaced with "Kansas hazardous waste landfill cell."

(4) The term "Subtitle C monofill" shall be replaced with "Kansas hazardous waste monofill."

(d) References to permits. The following substitutions shall apply in the singular and plural:

(1) The following phrases shall be replaced with "Kansas hazardous waste facility permit" except as noted in paragraph (d)(2):

(A) "Permit issued under section 3005 of this act";

(B) "permit under RCRA 3005(c)";

(C) "permit under RCRA section 3005(c)";

(D) "permit under section 3005 of this act";

(E) "RCRA hazardous waste permit";

(F) "RCRA operating permit";

(G) "RCRA permit";

(H) "RCRA permit under RCRA section 3005(c)";

(I) "RCRA, UIC, or NPDES permit";

(J) "RCRA, UIC, PSD, or NPDES permit"; and

(K) "[s]tate RCRA permit."

(2) In 40 CFR 270.51(d), the first occurrence of the phrase "RCRA permit" shall not be replaced with "Kansas hazardous waste facility permit."

(3) The phrase "RCRA-permitted" shall be replaced with "Kansas-permitted."

(4) The following phrases shall be replaced with "Kansas hazardous waste facility standardized permit":

(A) "RCRA standardized permit"; and

(B) "RCRA standardized permit (RCRA)."

(5) The phrase "a final permit under RCRA section 3005" shall be replaced with "a final permit issued by EPA under RCRA section 3005 or a Kansas hazardous waste facility permit" in the following locations:

(A) 40 CFR 264.1030(c);

(B) 40 CFR 264.1050(c);

(C) 40 CFR 264.1080(c); and

(D) 40 CFR 265.1080(c). (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

**28-31-100s. Substitution of state terms for federal terms; state.** When used in any pro-

vision of 40 CFR part 124, parts 260 through 266, or part 268, 270, 273, or 279, as adopted by reference by K.A.R. 28-31-124 through 28-31-279, the following substitutions shall be made unless otherwise specified in K.A.R. 28-31-124 through 28-31-279:

(a) The following terms when used in the singular shall be replaced with "state of Kansas" or "the state of Kansas" except as noted in subsections (b) and (c):

(1) "State" and "a State" when referring to a political entity;

(2) "approved State" and "an approved State"; and

(3) "authorized State" and "an authorized State."

(b) The term "State" shall not be replaced when used in the following terms in the singular or plural:

(1) "Agreement State"; and

(2) "[s]tate agency."

(c) The terms listed in subsection (a) shall not be replaced in the following locations:

(1) 40 CFR 124.207(a)(3);

(2) 40 CFR 260.10, in the following definitions:

(A) "Designated facility";

(B) "explosives or munitions emergency response specialist";

(C) "person";

(D) "publicly owned treatment works"; and

(E) "state";

(3) 40 CFR part 261, in the following locations:

(A) 40 CFR 261.4(g)(2)(i); and

(B) 40 CFR 261.5;

(4) 40 CFR part 262;

(5) 40 CFR part 264, in the following locations:

(A) 40 CFR part 264, subparts C and D;

(B) 40 CFR 264.71(e); and

(C) 40 CFR part 264, subpart H;

(6) 40 CFR part 265, in the following locations:

(A) 40 CFR part 265, subparts C and D;

(B) 40 CFR 265.71(e); and

(C) 40 CFR 265.147;

(7) 40 CFR 266.210, in the following definitions:

(A) "Agreement state"; and

(B) "naturally occurring and/or accelerator-produced radioactive material (NARM)";

(8) 40 CFR part 267, subparts C, D, and H;

(9) 40 CFR part 270, in the following locations:

(A) 40 CFR 270.2, in the following definitions:

(i) "Approved program or approved state";

(ii) "director";

(iii) "final authorization";

(iv) "interim authorization";

(v) "person";

(vi) "POTW";

(vii) "state";

(viii) "state director"; and

(ix) "state/EPA agreement";

(B) 40 CFR 270.10(g)(1)(ii), where only the term "approved State" shall not be replaced;

(C) 40 CFR 270.11(a)(3); and

(D) 40 CFR 270.13;

(10) 40 CFR 273.14(c)(1)(iii); and

(11) 40 CFR 279.24(a)(3). (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

**28-31-124. Procedures for permitting; adoption and modification of federal regulations.** (a) Adoption. The provisions of 40 CFR 124.11 through 124.17 and 40 CFR part 124, subparts B and G, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

(1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;

(2) the exclusions from adoption listed in subsection (b); and

(3) the modifications listed in subsection (c).

(b) Exclusions. The following portions of 40 CFR 124.12 through 124.17 and 40 CFR part 124, subpart G shall be excluded from adoption:

(1) 40 CFR 124.12(b);

(2) 40 CFR 124.16(b)(2);

(3) 40 CFR 124.17(b);

(4) 40 CFR 124.204(d)(1), (4) through (7), and (9); and

(5) 40 CFR 124.205(a), (c), and (i) through (l).

(c) Modifications. The following modifications shall be made to 40 CFR 124.11 through 124.17 and 40 CFR part 124, subparts B and G:

(1) Each occurrence of the term "decisionmaking" shall be replaced with "permitting."

(2) Each parenthetical statement starting with "Applicable to State programs" shall be deleted.

(3) In 40 CFR 124.11, the text "or the permit application for 404 permits when no draft permit is required (see § 233.39)" shall be deleted.

(4) In 40 CFR 124.12(a)(3), the phrase "For RCRA permits only," shall be deleted.

(5) In 40 CFR 124.13, the term "EPA documents" shall be replaced with "EPA or department documents."

(6) The first sentence of 40 CFR 124.14(a)(4) shall be deleted.

(7) In 40 CFR 124.14(b)(2), the phrase "a revised statement of basis under § 124.7," shall be deleted.

(8) The following text shall be added to the end of 40 CFR 124.15(b)(2): "by a person who filed comments on the draft permit or participated in the public hearing through written or oral comments. Stays of contested permit conditions are subject to § 124.16."

(9) In 40 CFR 124.16(a)(1), the following text shall be deleted:

(A) "(No stay of a PSD permit is available under this section.)";

(B) "or new injection well, new source, new discharger or a recommencing discharger"; and

(C) ", injection well, source or discharger pending final agency action. See also § 124.60."

(10) In 40 CFR 124.16(a)(2)(i), the following text shall be deleted:

(A) ", injection wells, and sources"; and

(B) ", injection well, or source."

(11) In 40 CFR 124.16(a)(2)(ii), the following text shall be deleted:

(A) "[R]eceiving notification from the EAB of";

(B) "the EAB,"; and

(C) "[f]or NPDES permits only, the notice shall comply with the requirements of § 124.60(b)."

(12) In 40 CFR 124.16(b), the text "and he or she has accepted each appeal" shall be deleted.

(13) In 40 CFR 124.17(a), the text "States are" shall be replaced with "The department is."

(14) In 40 CFR 124.17(a)(2), the phrase "or the permit application (for section 404 permits only)" shall be deleted.

(15) In 40 CFR 124.31(a), 124.32(a), and 124.33(a), the following sentence shall be deleted: "For the purposes of this section only, 'hazardous waste management units over which EPA has permit issuance authority' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271."

(16) In 40 CFR 124.204(d)(3), the sentence shall be replaced with "All subsections shall apply."

(17) In 40 CFR 124.205(d), the text "(b)," shall be deleted.

(18) In 40 CFR 124.208(e), the phrase "§ 124.12(b), (c), and (d)" shall be replaced with "§ 124.12(c) and (d)." (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3440; effective April 29, 2011.)

**28-31-124a. Procedures for permitting; application for a permit.** Each reference in this regulation to 40 CFR part 270 shall mean 40 CFR part 270 as adopted by reference in K.A.R. 28-31-270. (a) Each person that is required to have a Kansas hazardous waste facility permit, as specified in 40 CFR part 270, K.S.A. 65-3433 and amendments thereto, or K.S.A. 65-3437 and amendments thereto, shall submit a completed, signed application to the department.

(b) Before submitting the application, the applicant shall submit to the department a disclosure statement that contains all information necessary for the secretary to conduct the background investigation required by K.S.A. 65-3437, and amendments thereto.

(1) The disclosure statement shall be submitted on forms provided by the department.

(2) If there is a parent company, the parent company shall submit a separate disclosure statement to the department on forms provided by the department.

(c) The application shall be reviewed by the department after the applicant has fully complied with the requirements of 40 CFR 270.10 and 270.13.

(d) The application signature and certification shall meet the requirements of 40 CFR 270.11.

(e) Applications shall not be required for permits by rule. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431, 65-3433, and 65-3437; effective April 29, 2011.)

**28-31-124b. Procedures for permitting; modification, revocation and reissuance, or termination of permits.** Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279. (a) Reasons for modification, revocation and reissuance, or termination of a permit. A permit may be modified, revoked and reissued, or terminated by the secretary only for the reasons specified in 40 CFR 270.41, 40 CFR 270.43, and K.S.A. 65-3439 and amendments thereto.

(b) Request for modification, revocation and reissuance, or termination of a permit. Any person, including the permittee or the secretary, may request that a permit be modified, revoked and reissued, or terminated. Each request shall be submitted to the department in writing and shall

contain the facts and reasons supporting the request.

(c) Procedures for modification or for revocation and reissuance of a permit. Modification of a permit, and revocation and reissuance of a permit, shall be subject to the following requirements:

(1) A draft permit shall be prepared by the department if either of the following occurs:

(A) The secretary tentatively decides to modify or to revoke and reissue a permit according to the criteria specified in 40 CFR 270.41, other than 40 CFR 270.41(b)(3).

(B) The permittee requests a modification in accordance with 40 CFR 270.42(c).

(2) The draft permit shall be prepared by the department according to the following criteria:

(A) The draft permit shall incorporate the proposed changes.

(B) Additional information from the permittee may be requested by the secretary.

(C) If a permit is modified, the permittee may be required by the secretary to submit an updated application.

(D) If a permit is revoked and reissued for a cause not listed in 40 CFR 270.41(b)(3), the permittee shall submit a new application to the department.

(E) If a permit is revoked and reissued in accordance with 40 CFR 270.41(b)(3), the requirements in 40 CFR part 124, subpart G for standardized permits shall be met by the secretary and the permittee.

(3) If a permit is modified, only those conditions to be modified shall be reopened by the department when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit.

(4) If a permit is revoked and reissued, the entire permit shall be reopened by the department as if the permit had expired and was being reissued. During the revocation and reissuance proceedings, the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(5) "Class 1 modifications" and "Class 2 modifications," as defined in 40 CFR 270.42 (a) and (b), shall not be subject to the requirements of this regulation.

(d) Termination of permit. If the secretary tentatively decides to terminate a permit in accordance with 40 CFR 270.43 and the permittee objects, a notice of intent to terminate shall be issued by the secretary. Each notice of intent to terminate shall be deemed a type of draft permit and shall be subject to the procedures specified in K.A.R. 28-31-124c and in K.S.A. 65-3440 and amendments thereto. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431, 65-3437, and 65-3439; effective April 29, 2011.)

**28-31-124e. Procedures for permitting; draft permits.** Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279. (a) Each permit application shall be reviewed by the secretary to determine compliance with the requirements of the hazardous waste regulations.

(b) If the permit application does not meet the requirements of this article, the application shall be denied by the secretary.

(c) If the application meets the requirements of this article, a draft permit shall be prepared by the secretary according to the following criteria:

(1) The draft permit shall contain the following information:

(A) All conditions specified in 40 CFR 270.30 and 270.32;

(B) all compliance schedules specified in 40 CFR 270.33;

(C) all monitoring requirements specified in 40 CFR 270.31; and

(D) standards for treatment, storage, or disposal, or any combination of these activities, and other permit conditions under 40 CFR 270.30.

(2) The draft permit shall be accompanied by a fact sheet that meets the requirements of K.A.R. 28-31-124d.

(3) Public notice shall be given as specified in K.A.R. 28-31-124e.

(4) The draft permit shall be made available for public comment as specified in 40 CFR 124.11.

(5) Notice of opportunity for a public hearing shall be given as specified in 40 CFR 124.12.

(d) A final decision to issue the permit shall be issued by the secretary if the findings of fact show that the facility or activity will be protective of human health and safety and the environment. A final decision to deny the permit shall be issued by the secretary if the findings of fact show that the facility or activity will not be protective of human health and safety and the environment.

(e) A response to comments shall be issued by the secretary in accordance with 40 CFR 124.17.

(f) Any person may appeal the decision in ac-

cordance with K.S.A. 65-3440 and K.S.A. 65-3456a(b), and amendments thereto. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431, 65-3433, 65-3437, and 65-3439; effective April 29, 2011.)

**28-31-124d. Procedures for permitting; fact sheet.** A fact sheet for each draft permit shall be prepared and distributed by the department according to the following requirements:

(a) The fact sheet shall be sent by the department to the applicant and to each person who requests the fact sheet.

(b) The fact sheet shall briefly describe the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit.

(c) The fact sheet shall include the following information:

(1) A brief description of the type of facility or activity that is the subject of the draft permit;

(2) the type and quantity of wastes, fluids, or pollutants that are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

(3) the reasons why each requested variance or alternative to required standards do or do not appear justified;

(4) a description of the procedures for reaching a final decision on the draft permit, including the following information:

(A) The beginning and ending dates of the comment period as specified in K.A.R. 28-31-124e and the address where comments will be received;

(B) the procedures for requesting a hearing and the nature of that hearing; and

(C) all other procedures by which the public may participate in the final decision; and

(5) the name and telephone number of a person to contact for additional information. (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

**28-31-124e. Procedures for permitting; public notice of permit actions and public comment period.** Public notices shall be given by the department according to the following criteria:

(a) A public notice shall be given if one or more of the following actions have occurred:

(1) A permit application has been tentatively denied under K.A.R. 28-31-124c.

(2) A draft permit has been prepared under K.A.R. 28-31-124c.

(3) A hearing has been scheduled under 40 CFR 124.12, as adopted by reference in K.A.R. 28-31-124.

(b) No public notice shall be required if a request for permit modification, revocation and reissuance, or termination is denied under K.A.R. 28-31-124b. Written notice of the denial shall be provided by the department to the person who made the request and to the permittee.

(c) The public notice may describe more than one permit or permit action.

(d) The public notice shall be given in accordance with the following time frames:

(1) The public notice of the preparation of a draft permit, including a notice of intent to deny a permit application, required under subsection (a) shall allow at least 45 days for public comment.

(2) The public notice of the public hearing shall be given at least 30 days before the hearing.

(3) The public notice of the hearing may be given at the same time as the public notice of the draft permit and the two notices may be combined.

(e) Public notice of the activities described in subsection (a) shall be given using the following methods:

(1) Mailing a copy of the notice to the following persons, except to any person that has waived the right to receive notices for the class or category of the permit described in the notice:

(A) The applicant;

(B) each agency that has issued or is required to issue a permit for the same facility or activity, including EPA;

(C) all federal and state agencies with jurisdiction over fish, shellfish, or wildlife resources, the advisory council on historic preservation, state historic preservation officers, and all affected states and Indian tribes;

(D) each person on the mailing list, which shall be developed by the department using the following methods:

(i) Each person who requests in writing to be on the mailing list shall be added to the mailing list;

(ii) participants in past proceedings in that area shall be solicited for inclusion on the mailing list;

(iii) the public shall be notified of the opportunity to be put on the mailing list through periodic publication in the public press and in publications which may include regional and state-funded newsletters, environmental bulletins, and state law journals; and

(iv) the mailing list may be updated by the department by requesting written indication of continued interest from persons on the list. The name of any person who fails to respond to such a request may be deleted from the list by the department;

(E) each unit of local government having jurisdiction over the area where the facility is proposed to be located; and

(F) each state agency having any authority under state law with respect to the construction or operation of the facility;

(2) publishing a notice in the official newspaper of the county in which the facility is located or proposed to be located or, if there is no official county newspaper, a newspaper published as provided in K.S.A. 64-101, and amendments thereto;

(3) broadcasting over local radio stations;

(4) giving notice in a manner constituting legal notice to the public under state of Kansas law; and

(5) using any other method chosen by the department to give notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(f) Each public notice shall contain the following information:

(1) The name and address of the office processing the permit;

(2) the name and address of the permittee or the permit applicant and, if different, of the facility or activity regulated by the permit;

(3) a brief description of the business conducted at the facility or the activities described in the permit application or the draft permit;

(4) the name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, the fact sheet, and the application;

(5) a brief description of the comment procedures required by 40 CFR 124.11 and 124.12, as adopted by reference in K.A.R. 28-31-124;

(6) the time and place of each hearing that has been scheduled;

(7) a statement of the procedures to request a hearing, unless a hearing has already been scheduled;

(8) all other procedures required for public participation in the final permit decision;

(9) the times when the record will be open for public inspection and a statement that all data submitted by the applicant is available as part of the administrative record; and

(10) any additional information necessary to allow full public participation in the final permit decision.

(g) The public notice of each hearing held pursuant to 40 CFR 124.12, as adopted by reference in K.A.R. 28-31-124, shall contain all of the information described in subsection (f) of this regulation plus the following information:

(1) Reference to the date of previous public notices relating to the permit;

(2) the date, time, and place of the hearing; and

(3) a brief description of the nature and purpose of the hearing, including the rules and procedures.

(h) In addition to the general public notice described in subsection (f), a copy of each of the following documents shall be mailed by the department to all persons identified in paragraphs (e)(1)(A) through (D):

(1) The fact sheet; and

(2) the permit application or the draft permit. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3433; effective April 29, 2011.)

**28-31-260. General provisions and definitions; adoption and modification of federal regulations.** (a) Adoption. The provisions of 40 CFR part 260, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

(1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;

(2) the exclusions from adoption listed in subsection (b); and

(3) the modifications listed in subsection (c).

(b) Exclusions. The following portions of 40 CFR part 260 shall be excluded from adoption:

(1) All comments and all notes;

(2) 40 CFR 260.1;

(3) in 40 CFR 260.10, the definition of "performance track member facility";

(4) 40 CFR 260.11;

(5) 40 CFR 260.20 through 260.23;

(6) 40 CFR 260.40 and 260.41; and

(7) appendix I.

(c) Modifications. The following modifications shall be made to 40 CFR part 260:

(1) The text of 40 CFR 260.2 shall be replaced with the following: "The Kansas open records act and K.S.A. 65-3447 shall apply to all information provided to the department."

(2) The following definitions in 40 CFR 260.10 shall be modified as follows:

(A) The definition of "existing tank system or existing component" shall be modified by replacing "on or prior to July 14, 1986" with "on or before July 14, 1986 for HSWA tanks and on or before May 1, 1987 for non-HSWA tanks."

(B) The definition of "facility" shall be modified by deleting the phrase "under RCRA Section 3008(h)."

(C) The definition of "new tank system or new tank component" shall be modified by replacing both occurrences of "July 14, 1986" with "July 14, 1986 for HSWA tanks and May 1, 1987 for non-HSWA tanks."

(D) The definition of "qualified ground-water scientist" shall be replaced with the following definition: " 'qualified ground-water scientist' means a licensed geologist or professional engineer who has sufficient training and experience in groundwater hydrology and related fields. Sufficient training may be demonstrated by a professional certification or by the completion of an accredited university program that enables the individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action."

(E) The definition of "small quantity generator" shall be replaced by the following definition: " 'Small quantity generator' means a generator who meets all of the following criteria:

"(i) Generates more than 100 kilograms (220 pounds) of hazardous waste in any single calendar month;

"(ii) generates less than 1,000 kilograms (2,200 pounds) of hazardous waste in any single calendar month; and

"(iii) generates and accumulates acutely hazardous waste and other waste listed in 40 CFR 261.5(e) in quantities less than the generation limits listed in 40 CFR 261.5(e)."

(d) Differences between state and federal definitions. If the same term is defined differently both in K.S.A. 65-3430 et seq. and amendments thereto or this article and in any federal regulation adopted by reference in this article, the definition prescribed in the Kansas statutes or regulations shall control, except for the term "solid waste." (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

**28-31-260a. General provisions and definitions; additional state definitions.** Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279. (a) State definitions. The following definitions shall apply to K.A.R. 28-31-4 through 28-31-279:

(1) "Conditionally exempt small quantity generator" means a generator who meets both of the following criteria:

(A) Generates less than 25 kilograms (55 pounds) of hazardous waste in any single calendar month; and

(B) generates and accumulates acutely hazardous waste and other waste listed in 40 CFR 261.5(e) in quantities less than the generation limits listed in 40 CFR 261.5(e).

(2) "HSWA drip pad" means a drip pad associated with the handling of waste designated as F032 waste in 40 CFR 261.31.

(3) "HSWA tank" means any of the following tanks:

(A) A tank owned or operated by a generator of less than 1,000 kilograms (2,200 pounds) of hazardous waste in any single calendar month;

(B) a new underground tank; or

(C) an existing underground tank that cannot be entered for inspection.

(4) "Kansas hazardous waste facility permit" means a permit issued under the Kansas hazardous waste program.

(5) "Kansas hazardous waste program" means the hazardous waste management program operated by the state of Kansas in lieu of the U.S. environmental protection agency, authorized by and implementing K.S.A. 65-3430 et seq. and amendments thereto.

(6) "Kansas licensed geologist" means a person who has a current license to practice geology from the state board of technical professions pursuant to K.S.A. 74-7001 et seq., and amendments thereto.

(7) "Kansas professional engineer" means a person who has a current license to practice engineering from the state board of technical professions pursuant to K.S.A. 74-7001 et seq., and amendments thereto.

(8) "Kansas small quantity generator" means a generator that meets all of the following criteria:

(A) Generates 25 kilograms (55 pounds) or more of hazardous waste in any single calendar month;

(B) generates no more than 100 kilograms (220 pounds) of hazardous waste in any single calendar month; and

(C) generates and accumulates acutely hazardous waste and other waste listed in 40 CFR 261.5(e) in quantities less than the generation limits listed in 40 CFR 261.5(e).

(9) "Large quantity generator" means a generator who meets either or both of the following criteria:

(A) Generates 1,000 kilograms (2,200 pounds) or more of hazardous waste in any single calendar month; or

(B) generates or accumulates acutely hazardous waste and other waste listed in 40 CFR 261.5(e) in quantities equal to or greater than the generation limits listed in 40 CFR 261.5(e).

(10) "Non-HSWA drip pad" means a drip pad for handling wastes designated as F034 and F035 wastes in 40 CFR 261.31.

(11) "Non-HSWA tank" means any tank except the following tanks:

(A) Tanks owned or operated by a generator of less than 1,000 kilograms (2,200 pounds) of hazardous waste in any single calendar month;

(B) new underground tanks; and

(C) existing underground tanks that cannot be entered for inspection.

(b) Differences between state and federal definitions. If the same term is defined differently both in K.S.A. 65-3430 et seq. and amendments thereto or this article and in any federal regulation adopted by reference in this article, the definition prescribed in the Kansas statutes or regulations shall control, except for the term "solid waste." (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3451; effective April 29, 2011.)

**28-31-261. Identification and listing of hazardous waste; adoption and modification of federal regulations.** (a) Adoption. The provisions of 40 CFR part 261, including appendices I, VII, and VIII, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

(1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;

(2) the exclusions from adoption listed in subsection (b); and

(3) the modifications listed in subsection (c).

(b) Exclusions. The following portions of 40 CFR part 261 shall be excluded from adoption:

(1) All comments and all notes;

(2) 40 CFR 261.4(b)(16) through (18); and

(3) 40 CFR 261.6(a)(2)(v).

(c) Modifications. The following modifications shall be made to 40 CFR part 261:

(1) Each occurrence of the following phrases shall be deleted:

(A) "(incorporated by reference, see § 260.11)";

(B) ", and as incorporated by reference in § 260.11 of this chapter"; and

(C) ", as incorporated by reference in § 260.11 of this chapter."

(2) In 40 CFR 261.1(b)(2), the phrase "under sections 3007, 3013, and 7003 of RCRA" shall be deleted.

(3) In 40 CFR 261.1(b)(2)(i), the following replacements shall be made:

(A) The phrase "sections 3007 and 3013" shall be replaced with "K.S.A. 65-3431, 65-3437 and 65-3441, and K.A.R. 28-31-12."

(B) The phrase "section 1004(27) of RCRA" shall be replaced with "40 CFR 261.2."

(C) The phrase "section 1004(5) of RCRA" shall be replaced with "K.S.A. 65-3430."

(4) In 40 CFR 261.4(e)(3)(iii), the text "in the Region where the sample is collected" shall be deleted.

(5) 40 CFR 261.5(a) shall be replaced by the definition of "conditionally exempt small quantity generator" in K.A.R. 28-31-260a.

(6) In 40 CFR 261.5(e), (f)(2), and (g)(2), the phrases "that acute hazardous waste" and "those accumulated wastes" shall be replaced with the phrase "the generator's hazardous waste and acute hazardous waste."

(7) In 40 CFR 261.5(g), the phrase "100 kilograms" shall be replaced with the phrase "25 kilograms (55 pounds)."

(8) In 40 CFR 261.5(g)(2), the phrase "generators of between 100 kg and 1000 kg of hazardous waste in a calendar month" shall be replaced with the phrase "small quantity generators."

(9) In 40 CFR 261.5(g)(3), the phrase "or ensure delivery" shall be replaced with "or, subject to the restrictions of K.A.R. 28-31-262a, ensure delivery."

(10) In 40 CFR 261.21(a)(3), the phrase "an ignitable compressed gas as defined in 49 CFR 173.300" shall be replaced with the phrase "a flammable gas as defined in 49 CFR 173.115(a)."

(11) In 40 CFR 261.21(a)(4), the phrase "49 CFR 173.151" shall be replaced with "49 CFR 173.127(a)."

(12) 40 CFR 261.23(a)(8) shall be replaced with the following: "It is a forbidden explosive as defined in 49 CFR 173.54, or it is a division 1.1, 1.2,

or 1.3 explosive, as defined in 49 CFR 173.50 and 173.53."

(13) In 40 CFR 261.33(e), the text "be the small quantity exclusion defined in" shall be deleted.

(14) In 40 CFR 261.33(f), the phrase "the small quantity generator exclusion defined in" shall be deleted.

(15) In 40 CFR 261.38(c)(1)(i), the introductory paragraph shall be replaced with "Notice to the secretary."

(16) In 40 CFR part 261, appendix VII, the entries in both columns for "K064," "K065," "K066," "K090," and "K091" shall be deleted. (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

**28-31-261a. Identification and listing of hazardous waste; additional state requirements.** Each conditionally exempt small quantity generator shall comply with K.A.R. 28-31-262a. (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

**28-31-262. Generators of hazardous waste; adoption and modification of federal regulations.** (a) Adoption. The provisions of 40 CFR part 262, including the appendix, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

(1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;

(2) the exclusions from adoption listed in subsection (b); and

(3) the modifications listed in subsection (c).

(b) Exclusions. The following portions of 40 CFR part 262 shall be excluded from adoption:

(1) All comments and all notes, except in the appendix;

(2) 40 CFR 262.10(j) and (k);

(3) 40 CFR 262.34(g) through (l);

(4) 40 CFR 262.89(e); and

(5) subparts I and J.

(c) Modifications. The following modifications shall be made to 40 CFR part 262:

(1) In 40 CFR 262.10(g), the phrase "and K.S.A. 65-3441(b) and (c) and 65-3444 through 65-3446" shall be inserted after the phrase "section 3008 of the Act."

(2) 40 CFR 262.11(c)(1) shall be replaced with the following text: "Submitting the waste for testing according to the methods in 40 CFR part 261, subpart C, by a laboratory that is certified for these analyses by the department; or."

(3) The first paragraph in 40 CFR 262.20(e) shall be replaced with the following text: "The requirements of this subpart do not apply to hazardous waste produced by Kansas small quantity generators and small quantity generators if all of the following criteria are met:".

(4) In 40 CFR 262.27(b), the phrase "or a Kansas small quantity generator" shall be inserted at the end of the first sentence.

(5) In 40 CFR 262.34(a)(2), the phrase "and tank" shall be inserted after the phrase "each container."

(6) In 40 CFR 262.34(c)(1), the text "A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in § 261.33(e) in containers" shall be replaced with the following text: "Any generator may accumulate 55 gallons or less, in no more than one container, of each type of hazardous waste and one quart or less, in no more than one container, of each type of acutely hazardous waste listed in § 261.33(e)."

(7) 40 CFR 262.34(c)(1)(ii) shall be replaced with the following text: "Marks the containers with the words 'Hazardous Waste.'"

(8) At the end of 40 CFR 262.34(d)(5)(ii)(C), the following text shall be inserted as new subparagraph (D): "If the generator relies solely on cell phones, the generator shall meet the following requirements: *(1)* Post the information addressed by subparagraphs (A) through (C) on walls so that they can be readily seen by employees; *(2)* train all employees that manage hazardous waste on the locations of these postings; and *(3)* program the telephone numbers into the cell phones of management personnel."

(9) In 40 CFR 262.42(b), the phrase "greater than 100 kilograms" shall be replaced with the phrase "25 kilograms or more."

(10) In 40 CFR 262.43, the text ", as he deems necessary under sections 2002(a) and 3002(6) of the Act," shall be deleted.

(11) In 40 CFR 262.44, the following modifications shall be made:

(A) In the title, the number "100" shall be replaced with the number "25."

(B) In the first paragraph, the phrase "greater than 100 kilograms" shall be replaced with the phrase "25 kilograms or more." (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3451; effective April 29, 2011.)

**28-31-262a. Generators of hazardous waste; additional state requirements.** Each

reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279.

(a) Transportation requirements.

(1) Each generator that transports hazardous waste shall comply with K.A.R. 28-31-263a.

(2) Each generator that uses another person to transport hazardous waste shall use only a transporter who has registered with the department in accordance with K.A.R. 28-31-6.

(b) Reporting requirements. Each generator of hazardous waste, except conditionally exempt small quantity generators (CESQGs), shall submit a report to the department that indicates whether the generator is a large quantity generator (LQG), a small quantity generator (SQG), or a Kansas small quantity generator (KSQG). The generator shall comply with the following requirements:

(1) Submit the report on a form provided by the department;

(2) submit the monitoring fee required by K.A.R. 28-31-10 with the report;

(3) submit the report according to the following schedule:

(A) Each LQG report shall be due on or before March 1 of each year that the biennial report is not required;

(B) each SQG report shall be due on or before April 1 of each year; and

(C) each KSQG report shall be due on or before April 1 of each year; and

(4) keep a copy of each report for at least three years after the date of the signature on the report.

(c) Additional requirement for LQGs. Each LQG shall comply with 40 CFR 265.15(d).

(d) Additional requirements for SQGs.

(1) In addition to meeting the requirements of 40 CFR 262.34(d)(5)(iii), each SQG shall meet the following requirements:

(A) Provide the training to each employee no more than six months after the employee is hired or transferred to a new position;

(B) repeat the training at least annually;

(C) record the name of each employee, the date of the training, and the topics covered in the training; and

(D) keep training records for each employee that has received the training for at least three years from the date of the training. Training records may accompany personnel transferred within the same company.

(2) Each SQG shall comply with the following regulations:

(A) 40 CFR 265.15(d);

(B) 40 CFR 265.111(a) and (b); and

(C) 40 CFR 265.114.

(e) Additional requirements for KSQGs.

(1) In the waste minimization certification found in item 15 of the uniform hazardous waste manifest, the phrase "small quantity generator" shall include KSQGs.

(2) Each KSQG shall inspect each area where one or more hazardous waste containers are stored at least once every 31 days and shall look for deterioration and leaks.

(3) Each KSQG shall comply with the following regulations:

(A) 40 CFR part 262, subpart A;

(B) 40 CFR part 262, subpart B, except KSQGs that are exempt from the transporter requirements of K.A.R. 28-31-263a;

(C) 40 CFR 262.30 through 262.33;

(D) 40 CFR 262.34(a)(2) and (3), (c), and (d)(5);

(E) 40 CFR 262.44;

(F) 40 CFR part 262, subparts E through H;

(G) 40 CFR 265.15(d);

(H) 40 CFR part 265, subpart C;

(I) 40 CFR 265.171 through 265.173 and 265.177;

(J) 40 CFR 265.201; and

(K) 40 CFR 268.7(a)(5).

(4) In addition to meeting the requirements of 40 CFR 262.34(d)(5)(iii), each KSQG shall meet the following requirements:

(A) Provide the training to each employee no more than six months after the employee is hired or transferred to a new position;

(B) repeat the training at least annually;

(C) record the name of each employee, the date of the training, and the topics covered in the training; and

(D) keep training records for each employee that has received the training for at least three years from the date of the training. Training records may accompany personnel transferred within the same company.

(5) Each KSQG that accumulates more than 1,000 kilograms (2,200 pounds) of hazardous waste shall comply with all of the requirements for SQGs.

(f) Additional requirements for CESQGs.

(1) No person shall send CESQG hazardous waste to a construction and demolition landfill located in Kansas.

(2) Each CESQG that accumulates 25 kilo-

grams (55 pounds) or more of hazardous waste shall comply with all of the following requirements:

(A) The CESQG shall inspect each area where one or more hazardous waste containers are stored at least once every 31 days looking for deterioration and leaks.

(B) If the CESQG sends 25 kilograms (55 pounds) or more of hazardous waste at any one time to an off-site facility in Kansas, that waste shall be sent only to one of the following facilities:

(i) A Kansas household hazardous waste facility that has a permit issued by the secretary and is approved by the secretary to accept CESQG waste; or

(ii) a disposal facility that meets the requirements of 40 CFR 261.5(g)(3)(i), (ii), (iii), or (vii).

(C) The CESQG shall comply with the following regulations:

(i) 40 CFR 262.30 through 262.33;

(ii) 40 CFR 262.34(a)(2) and (3);

(iii) 40 CFR 265.15(d);

(iv) 40 CFR 265.171 through 265.173 and 265.177; and

(v) 40 CFR 265.201, if 25 kilograms (55 pounds) or more of hazardous waste is accumulated in one or more tanks. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3451; effective April 29, 2011.)

**28-31-263. Transporters of hazardous waste; adoption and modification of federal regulations.** (a) Adoption. The provisions of 40 CFR part 263, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

(1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;

(2) the exclusions from adoption listed in subsection (b); and

(3) the modifications listed in subsection (c).

(b) Exclusions. All notes shall be excluded from adoption.

(c) Modifications. The following modifications shall be made to 40 CFR part 263:

(1) In 40 CFR 263.10(a), the following modifications shall be made:

(A) The phrase "the United States" shall be replaced with "Kansas."

(B) The phrase "or K.A.R. 28-31-262a" shall be inserted at the end of the sentence.

(2) In 40 CFR 263.20(h), the phrase "greater than 100 kilograms" shall be replaced with "25 kilograms (55 pounds) or more." (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3451; effective April 29, 2011.)

**28-31-263a. Transporters of hazardous waste; additional state requirements.** Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279.

(a) Applicability. Each person that transports hazardous waste within, into, out of, or through Kansas shall comply with this regulation, except Kansas small quantity generators (KSQGs) and conditionally exempt small quantity generators (CESQGs) that meet the following conditions:

(1) The generator is transporting the generator's own hazardous waste to a household hazardous waste (HHW) facility that meets one of the following conditions:

(A) If the generator is a KSQG, the HHW facility is permitted to accept KSQG waste.

(B) If the generator is a CESQG, the HHW facility is permitted to accept CESQG waste.

(2) The generator obtains a receipt for each load of hazardous waste delivered to the HHW facility.

(3) The generator keeps a copy of each receipt for a minimum of three years after the date of delivery.

(b) Registration and insurance. Each transporter of hazardous waste shall comply with the requirements of K.A.R. 28-31-6.

(c) Transportation restrictions. Each transporter shall transport hazardous waste only for hazardous waste generators and facilities that are in compliance with the requirement to obtain an EPA identification number for the state in which the generator or facility is located.

(d) Routing restrictions.

(1) Each transporter of hazardous waste shall ensure that each vehicle containing hazardous waste is operated over a preferred route that minimizes risk to public health and safety and the environment. To select a preferred route, the transporter shall consider the following information, if available:

(A) Accident rates;

(B) the transit time;

(C) population density and activities; and

(D) the day of the week and the time of day during which transportation will occur.

(2) Each transporter shall confine the transportation of hazardous wastes to preferred routes.

Unless notice to the contrary is published in the Kansas register, all portions of the major highway system may be used. For the purposes of this subsection, the major highway system shall be considered to be all interstate routes, U.S. highways, state highways, and temporary detours designated by the Kansas department of transportation. An interstate system bypass or beltway around a city shall be used when available.

(3) Any transporter of hazardous waste may deviate from a preferred route under any of the following circumstances:

(A) Emergency conditions that make continued use of the preferred route unsafe;

(B) rest, fuel, and vehicle repair stops; or

(C) deviations that are necessary to pick up, deliver, or transfer hazardous wastes. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3451; effective April 29, 2011.)

**28-31-264. Hazardous waste treatment, storage, and disposal facilities; adoption and modification of federal regulations.** (a) Adoption. The provisions of 40 CFR part 264, including appendices I, IV, V, VI, and IX, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

(1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;

(2) the exclusions from adoption listed in subsection (b); and

(3) the modifications listed in subsection (c).

(b) Exclusions. The following portions of 40 CFR part 264 shall be excluded from adoption:

(1) All comments and all notes;

(2) 40 CFR 264.1(f) and (g)(12);

(3) 40 CFR 264.15(b)(5);

(4) 40 CFR 264.149 and 264.150;

(5) 40 CFR 264.195(e);

(6) 40 CFR 264.301(l);

(7) 40 CFR 264.1030(d);

(8) 40 CFR 264.1050(g); and

(9) 40 CFR 264.1080(e), (f), and (g).

(c) Modifications. The following modifications shall be made to 40 CFR part 264:

(1) Each occurrence of the following text shall be deleted:

(A) "(incorporated by reference, see § 260.11)";

(B) "(incorporated by reference as specified in § 260.11)";

(C) "(incorporated by reference under 40 CFR 260.11)";

(D) "40 CFR 260.11(11)"; and

(E) "as incorporated by reference in § 260.11 of this chapter."

(2) In 40 CFR 264.1(g)(8)(D)(iii), the phrase "and K.A.R. 28-31-124a through 28-31-124e" shall be inserted after the phrase "through 124 of this chapter."

(3) In 40 CFR 264.15(b)(4), the following text shall be deleted: ", except for Performance Track member facilities, that must inspect at least once each month, upon approval by the Director, as described in paragraph (b)(5) of this section."

(4) In 40 CFR 264.112(d)(3), the phrase "under section 3008 of RCRA" shall be deleted.

(5) In 40 CFR 264.113(d)(2), the phrase "required under RCRA section 3019" shall be deleted.

(6) The phrase "determination pursuant to section 3008 of RCRA" shall be replaced with "determination by EPA pursuant to section 3008 of RCRA or by the state of Kansas under K.S.A. 65-3441, 65-3443, 65-3445, or 65-3439(e)" in the following locations:

(A) 40 CFR 264.143(c)(5);

(B) 40 CFR 264.143(d)(8);

(C) 40 CFR 264.145(c)(5); and

(D) 40 CFR 264.145(d)(9).

(7) The phrase "licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States" shall be replaced with "licensed to transact the business of insurance in Kansas or eligible to provide insurance as an excess or surplus lines insurer in Kansas" in the following locations:

(A) 40 CFR 264.143(e)(1);

(B) 40 CFR 264.145(e)(1);

(C) 40 CFR 264.147(a)(1)(ii) and (b)(1)(ii); and

(D) 40 CFR 264.151(i) and (j).

(8) In 40 CFR 264.143(h) and 264.145(h), the text "If the facilities covered by the mechanism are in more than one Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such regions" shall be replaced with the following: "If the facilities covered by the mechanism are in more than one state, identical evidence of financial assurance shall be submitted to and maintained with the state agency regulating hazardous waste, or with the appropriate regional administrator if the facility is located in an unauthorized state."

(9) In 40 CFR 264.144(b) and (c), the phrase "and the post-closure period" shall be inserted af-

ter the phrase "During the active life of the facility."

(10) In 40 CFR 264.144(b), the phrase "§ 264.145(b)(1) and (2)" shall be replaced with "paragraphs (b)(1) and (2) of this section."

(11) In 40 CFR 264.147(a)(1)(i) and (b)(1)(i), the phrase "Regional Administrator, or Regional Administrators" shall be replaced with "secretary, and regional administrators."

(12) In 40 CFR 264.151(a)(1), (m)(1), and (n)(1), the phrase "United States Environmental Protection Agency, 'EPA,' an agency of the United States Government," shall be replaced with the phrase "Kansas department of health and environment, or 'department.' "

(13) In 40 CFR 264.151(b) and (c), the phrase "U.S. Environmental Protection Agency (hereinafter called EPA)" shall be replaced with "Kansas department of health and environment (hereinafter called 'department')."

(14) In 40 CFR 264.151(d) and (k), the text between the title "Irrevocable Standby Letter of Credit" and "Dear Sir or Madam:" shall be replaced with the following:

"Name and address of issuing institution: _____
"Secretary
"Kansas department of health and environment."

(15) In 40 CFR 264.151(d), the following text shall be deleted: "[insert, if more than one Regional Administrator is a beneficiary, 'by any one of you']."

(16) In 40 CFR 264.151(f) and (g), in section 3 of the "Letter From Chief Financial Officer," the text "In States where EPA is not administering the financial requirements of subpart H of 40 CFR part 264 or 265," shall be deleted.

(17) In 40 CFR 264.151(l), in paragraph (1) of the "Governing Provisions" of the "Payment Bond," the phrase "Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended" shall be replaced with "40 CFR 264.147 and 265.147."

(18) In 40 CFR 264.174, the following text shall be deleted: ", except for Performance Track member facilities, that may conduct inspections at least once each month, upon approval by the Director. To apply for reduced inspection frequencies, the Performance Track member facility must follow the procedures identified in § 264.15(b)(5) of this part."

(19) In 40 CFR 264.191(a), the phrase "January 12, 1988" shall be replaced with "January 12, 1988 for HSWA tanks or by May 1, 1988 for non-HSWA tanks."

(20) In 40 CFR 264.191(c), the text "July 14, 1986, must conduct this assessment within 12 months after the date that the waste becomes a hazardous waste" shall be replaced with the following text: "July 14, 1986 for HSWA tanks, or May 1, 1987 for non-HSWA tanks, shall conduct this assessment within 12 months after the date that the waste becomes a hazardous waste regulated by the state."

(21) The phrase "or RCRA Section 3008(h)" shall be deleted from the following locations:

(A) 40 CFR 264.551(a); and

(B) 40 CFR 264.552(a).

(22) In 40 CFR 264.553(a), the phrase "or RCRA 3008(h)" shall be deleted.

(23) In 40 CFR 264.555(a), the term "RCRA" shall be deleted.

(24) In 40 CFR 264.570(a), the following replacements shall be made:

(A) Each occurrence of the text "December 6, 1990" shall be replaced with "December 6, 1990 for HSWA drip pads and April 25, 1994 for non-HSWA drip pads."

(B) Each occurrence of the text "December 24, 1992" shall be replaced with "December 24, 1992 for HSWA drip pads and April 25, 1994 for non-HSWA drip pads."

(25) In 40 CFR 264.570(c)(1)(iv), the term "Federal regulations" shall be replaced with "federal and state regulations."

(26) In 40 CFR 264.1033(a)(2)(iii) and 264.1060(b)(3), the term "EPA" shall be deleted.

(27) In 40 CFR 264.1080(b)(5), the text "required under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h); CERCLA authorities; or similar Federal or State authorities" shall be replaced with the following: "required by EPA under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h) or under CERCLA authorities; required by the state under K.S.A. 65-3443, 65-3445, and 65-3453; or required under similar federal or state authorities."

(28) In 40 CFR 264.1101(c)(4), the following text shall be deleted:

(A) ", except for Performance Track member facilities that must inspect at least once each month, upon approval by the Director,"; and

(B) "[t]o apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in §

264.15(b)(5)." (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3443; effective April 29, 2011.)

**28-31-264a. Hazardous waste treatment, storage, and disposal facilities; additional state requirements.** Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279. (a) Financial assurance.

(1) For the purposes of this subsection, the following definitions shall apply:

(A) "Captive insurance company" shall mean an insurance company that is established with the specific objective of financing risks emanating from its parent group or groups and that could or could not also insure risks of the parent groups' customers.

(B) "Financial institution" shall mean a bank, an insurance company, a surety company, or a trust company.

(C) "Purchased financial instrument" shall mean a trust fund, a letter of credit, a surety bond, or an insurance policy.

(D) "Unrelated" shall mean that neither party has any ownership of the other party, or any controlling interest in the other party.

(2) Each financial institution that provides financial assurance for a hazardous waste facility in Kansas shall meet the following requirements, in addition to meeting the requirements of 40 CFR part 264, subpart H:

(A) Each bank and each trust company shall have the authority to issue letters of credit in Kansas or to act as trustee for the facility in Kansas, or both.

(B) Each insurance company shall meet the following criteria:

(i) Have a current minimum rating in the secure or investment grade category by the A.M. Best insurance rating agency; and

(ii) not be a captive insurance company.

(C) Each surety company shall meet the following criteria:

(i) Have a current minimum rating in the secure or investment grade category by the A.M. Best insurance rating agency; and

(ii) be licensed in Kansas.

(3) If the financial assurance required by 40 CFR part 264, 265, or 267 is a purchased financial instrument, the financial institution that provides the purchased financial instrument shall be unrelated to both the owner and the operator of the facility.

(4) Each person that is required to submit the information listed in one or more of the following regulations shall also submit a copy of the most recent corporate annual report:

(A) 40 CFR 264.143(f)(3);

(B) 40 CFR 264.145(f)(3);

(C) 40 CFR 265.143(e)(3);

(D) 40 CFR 265.145(e)(3); or

(E) 40 CFR 267.143(f)(2).

(5) The corporate annual report required by paragraph (a)(4) shall be submitted for both publicly and privately owned facilities and shall contain the following items:

(A) Financial statements;

(B) notes to financial statements; and

(C) a copy of the independent certified public accountant's report, including an unqualified opinion.

(b) Notice in deed to property. Each owner of property on which a hazardous waste treatment, storage, or disposal facility is located shall record, in accordance with Kansas law, a notice with the register of deeds in the county where the property is located. The notice shall include the following information:

(1) The land has been used to manage hazardous waste.

(2) All records regarding permits, closure, or both are available for review at the department.

(c) Restrictive covenant and easement. Any owner of property on which a hazardous waste treatment, storage, or disposal facility is or has been located may be required by the secretary to execute a restrictive covenant or easement, or both, according to the following requirements:

(1) The restrictive covenant shall be filed with the county register of deeds, shall specify the uses that may be made of the property after closure, and shall include the following requirements:

(A) All future uses of the property after closure shall be conducted in a manner that preserves the integrity of waste containment systems designed, installed, and used during operation of the disposal areas, or installed or used during the post-closure maintenance period.

(B) The owner or tenant and all subsequent owners or tenants shall preserve and protect all permanent survey markers and benchmarks installed at the facility.

(C) The owner or tenant and all subsequent owners or tenants shall preserve and protect all

environmental monitoring stations installed at the facility.

(D) The owner or tenant, all subsequent property owners or tenants, and any person granted easement to the property shall provide written notice to the secretary during the planning of any improvement to the site and shall commence any of the following activities only after receiving approval from the secretary:

(i) Excavating or constructing any permanent structures or drainage ditches;

(ii) altering the contours;

(iii) removing any waste materials stored on the site;

(iv) changing the vegetation grown on areas used for waste disposal;

(v) growing food chain crops on land used for waste disposal; or

(vi) removing any security fencing, signs, or other devices installed to restrict public access to waste storage or disposal areas.

(2) The easement shall state that the department, its duly authorized agents, or contractors employed by or on behalf of the department may enter the premises to accomplish any of the following tasks:

(A) Complete items of work specified in the site closure plan;

(B) perform any item of work necessary to maintain or monitor the area during the postclosure period; or

(C) sample, repair, or reconstruct environmental monitoring stations constructed as part of the site operating or postclosure requirements.

(3) Each offer or contract for the conveyance of easement, title, or other interest to real estate used for treatment, storage, or disposal of hazardous waste shall disclose all terms, conditions, and provisions for care and subsequent land uses that are imposed by these regulations or the site permit authorized and issued under K.S.A. 65-3431, and amendments thereto. Conveyance of title, easement, or other interest in the property shall contain provisions for the continued maintenance of waste containment and monitoring systems.

(4) All covenants, easements, and other documents related to this regulation shall be permanent, unless extinguished by agreement between the property owner and the secretary.

(5) The owner of the property shall pay all recording fees.

(d) Marking requirements. Each operator of a hazardous waste container storage facility or a tank storage facility shall mark all containers and tanks in accordance with 40 CFR 262.34(a)(2) and (3).

(e) Environmental monitoring. All samples analyzed in accordance with 40 CFR part 264, subpart F or G or 40 CFR part 265, subpart F or G shall be conducted by a laboratory certified for these analyses by the secretary, except that analyses of time-sensitive parameters, including pH, temperature, and specific conductivity, shall be conducted at the time of sampling if possible.

(f) Laboratory certification. For hazardous waste received at a treatment, storage, or disposal facility with the intent of burning for destruction or energy recovery, all quantification analyses performed for the purpose of complying with permit conditions shall be performed by a laboratory certified for these analyses by the secretary, if this certification is available.

(g) Hazardous waste injection wells. The owner or operator of each hazardous waste injection well shall comply with the requirements of article 46 of these regulations. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3443; effective April 29, 2011.)

**28-31-265. Interim status hazardous waste treatment, storage, and disposal facilities; adoption and modification of federal regulations.** (a) Adoption. The provisions of 40 CFR part 265, including appendices I and III, IV, V, and VI, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

(1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;

(2) the exclusions from adoption listed in subsection (b); and

(3) the modifications listed in subsection (c).

(b) Exclusions. The following portions of 40 CFR part 265 shall be excluded from adoption:

(1) All comments and all notes;

(2) 40 CFR 265.1(c)(4) and (15);

(3) 40 CFR 265.15(b)(5);

(4) 40 CFR 265.149 and 265.150;

(5) 40 CFR 265.195(d);

(6) 40 CFR 265.201(e);

(7) 40 CFR 265.1030(c);

(8) 40 CFR 265.1050(f); and

(9) 40 CFR 265.1080(e), (f), and (g).

(c) Modifications. The following modifications shall be made to 40 CFR part 265:

(1) Each occurrence of the following phrases shall be deleted:

(A) "(incorporated by reference, see § 260.11)";

(B) "(incorporated by reference—refer to § 260.11 of this chapter)";

(C) "(incorporated by reference as specified in § 260.11)";

(D) "(incorporated by reference under § 260.11)";

(E) "(incorporated by reference under § 260.11 of this chapter)";

(F) "as incorporated by reference in § 260.11"; and

(G) "as incorporated by reference in § 260.11 of this chapter."

(2) In 40 CFR 265.1(b), the phrase "issued under section 3005 of RCRA" shall be replaced with "issued by EPA under section 3005 of RCRA or a Kansas hazardous waste facility permit is issued by the department."

(3) In 40 CFR 265.1(c)(11)(iii), the phrase "and K.A.R. 28-31-124a through 28-31-124e" shall be inserted after the phrase "through 124 of this chapter."

(4) In 40 CFR 265.15(b)(4), the following text shall be deleted: ", except for Performance Track member facilities, that must inspect at least once each month, upon approval by the Director, as described in paragraph (b)(5) of this section."

(5) In 40 CFR 265.90(e), the term "qualified professional" shall be replaced with "Kansas professional engineer."

(6) In 40 CFR 265.112(d)(3)(ii), the phrase "under section 3008 of RCRA" shall be deleted.

(7) In 40 CFR 265.113(d)(2), the phrase "required under RCRA section 3019" shall be deleted.

(8) In 40 CFR 265.118(e)(2), the phrase "under section 3008 of RCRA" shall be deleted.

(9) In 40 CFR 265.143(c)(8) and 265.145(c)(9), the phrase "determination pursuant to section 3008 of RCRA" shall be replaced by "determination by EPA pursuant to section 3008 of RCRA or by the state under K.S.A. 65-3441, 65-3443, 65-3445, or 65-3439(e)."

(10) In 40 CFR 265.143(g) and 265.145(g), the text "If the facilities covered by the mechanism are in more than one Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions" shall be replaced with the following: "If the facilities covered by the mechanism are in more than one state, identical evidence of financial assurance shall be submitted to and maintained with the state agency regulating hazardous waste, or with the appropriate regional administrator if the facility is located in an unauthorized state."

(11) In 40 CFR 265.144(b) and (c), the phrase "and the post-closure period" shall be inserted after the phrase "During the active life of the facility."

(12) In 40 CFR 265.144(b), the following replacements shall be made:

(A) The phrase "§ 265.145(d)(5)" shall be replaced with "§ 265.145(e)(5)."

(B) The phrase "§ 265.145(b)(1) and (2)" shall be replaced with "paragraphs (b)(1) and (2) of this section."

(13) In 40 CFR 265.147(a)(1)(i), the text "Regional Administrator, or Regional Administrators" shall be replaced with "secretary, and regional administrators."

(14) In 40 CFR 265.174, the following language shall be deleted: ", except for Performance Track member facilities, that must conduct inspections at least once each month, upon approval by the Director. To apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5) of this part."

(15) In 40 CFR 265.191(a), the text "January 12, 1988" shall be replaced with "January 12, 1988 for HSWA tanks, and May 1, 1988 for non-HSWA tanks."

(16) In 40 CFR 265.191(c), the text "July 14, 1986 must conduct this assessment within 12 months after the date that the waste becomes a hazardous waste" shall be replaced with the following: "July 14, 1986 for HSWA tanks, or May 1, 1987 for non-HSWA tanks, shall conduct this assessment within 12 months after the date that the waste becomes a hazardous waste regulated by the state."

(17) In 40 CFR 265.201, the following modifications shall be made:

(A) In the title, the phrase "between 100 and 1,000 kg/mo" shall be replaced with "less than 1,000 kg/mo."

(B) Paragraph (a) shall be replaced with the following: "The requirements of this section shall apply to each small quantity generator, and to each Kansas small quantity generator and conditionally exempt small quantity generator that accumulates 25 kg (55 pounds) or more of hazardous waste in one or more tanks."

(C) In paragraphs (b), (f), (g), and (h), the phrases "generators of between 100 and 1,000 kg/

mo hazardous waste" and "generators of between 100 and 1,000 kg/mo" shall be replaced with "generators identified in paragraph (a) of this section."

(D) In paragraphs (c) and (d), the number "100" shall be replaced with "25."

(18) In 40 CFR 265.340(b)(2), the phrase "§ 264.351" shall be replaced with "§ 265.351."

(19) In 40 CFR 265.440(a), the following replacements shall be made:

(A) Each occurrence of the text "December 6, 1990" shall be replaced with "December 6, 1990 for HSWA drip pads and April 25, 1994 for non-HSWA drip pads."

(B) Each occurrence of the text "December 24, 1992" shall be replaced with "December 24, 1992 for HSWA drip pads and April 25, 1994 for non-HSWA drip pads."

(20) In 40 CFR 265.440(c)(1)(iv), the term "Federal regulations" shall be replaced with "federal and state regulations."

(21) In 40 CFR 265.1080(b)(5), the text "required under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h); CERCLA authorities; or similar federal or state authorities" shall be replaced by the following: "required by EPA under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h) or under CERCLA authorities; required by the state under K.S.A. 65-3443, 65-3445, and 65-3453; or required under similar Federal or State authorities."

(22) In 40 CFR 265.1101(c)(4), the following text shall be deleted:

(A) ", except for Performance Track member facilities, that must inspect up to once each month, upon approval of the director,"; and

(B) "[t]o apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5)." (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3443; effective April 29, 2011.)

**28-31-265a. Interim status hazardous waste treatment, storage, and disposal facilities; additional state requirements.** Each owner or operator of an interim status hazardous waste treatment, storage, or disposal facility shall comply with K.A.R. 28-31-264a. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3443; effective April 29, 2011.)

**28-31-266. Specific hazardous wastes and specific types of hazardous waste management facilities; adoption and modification of federal regulations.** (a) Adoption. The provisions of 40 CFR part 266, including appendices I through IX and XI through XIII, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

(1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;

(2) the exclusions from adoption listed in subsection (b); and

(3) the modifications listed in subsection (c).

(b) Exclusions. The following portions of 40 CFR part 266 shall be excluded from adoption:

(1) All notes, except in appendix IX;

(2) 40 CFR 266.103;

(3) in 40 CFR 266.210, the definition of "we or us"; and

(4) subpart O.

(c) Modifications. The following modifications shall be made to 40 CFR part 266:

(1) Each occurrence of the following phrases shall be deleted:

(A) "(incorporated by reference, see § 260.11)";

(B) "(incorporated by reference, in § 260.11)";

(C) "(incorporated by reference in § 260.11)";

(D) ", as incorporated by reference in § 260.11 of this chapter"; and

(E) ", incorporated by reference in §260.11,".

(2) In 40 CFR 266.23(a), the phrase "subparts A through N of parts 124, 264, 265, 268, and 270 of this chapter" shall be replaced with "subparts A through N of 40 CFR parts 264 and 265, 40 CFR parts 268 and 270, K.A.R. 28-31-124 through 124e,".

(3) In 40 CFR 266.202(d), the following modifications shall be made:

(A) The phrase "For the purposes of RCRA section 1004(27)," shall be deleted.

(B) The text "or imminent and substantial endangerment authorities under section 7003" shall be replaced with "and the Kansas enforcement authorities at K.S.A. 65-3441(b) and (c), 65-3443, and 65-3445."

(4) In 40 CFR 266.210 in the definition of "naturally occurring and/or accelerator-produced radioactive material (NARM)," the phrase "by the States" shall be replaced with "by the state of Kansas."

(5) In 40 CFR part 266, subpart N, the following replacements shall be made:

(A) The term "us" shall be replaced with "the department."

(B) The term "we" shall be replaced with "the

secretary." (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

**28-31-267. Hazardous waste facilities operating under a standardized permit; adoption and modification of federal regulations.** (a) Adoption. The provisions of 40 CFR part 267, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

(1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;

(2) the exclusions from adoption listed in subsection (b); and

(3) the modifications listed in subsection (c).

(b) Exclusions. The following portions of 40 CFR part 267 shall be excluded from adoption:

(1) All comments and all notes; and

(2) 40 CFR 267.150.

(c) Modifications. The following modifications shall be made to 40 CFR part 267:

(1) Each occurrence of the following phrases shall be deleted:

(A) ", as incorporated by reference in 40 CFR 260.11"; and

(B) "(incorporated by reference, see 40 CFR 260.11)."

(2) In 40 CFR 267.12, the text "your state hazardous waste regulatory agency or from your EPA regional office" shall be replaced with "the department."

(3) In 40 CFR 267.112(d)(3), the phrase "under section 3008 of RCRA" shall be deleted.

(4) In 40 CFR 267.151(a) and (b), the text "[insert 'subpart H of 40 CFR part 267' or the citation to the corresponding state regulation]" shall be replaced with "K.A.R. 28-31-267." (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3443; effective April 29, 2011.)

**28-31-267a. Hazardous waste facilities operating under a standardized permit; additional state requirements.** Each owner or operator of hazardous waste management facility that has been issued a standardized permit shall comply with K.A.R. 28-31-264a. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431 and 65-3443; effective April 29, 2011.)

**28-31-268. Land disposal restrictions; adoption and modification of federal regulations.** (a) Adoption. The provisions of 40 CFR part 268, including appendices III, IV, VI through IX, and XI, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

(1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;

(2) the exclusions from adoption listed in subsection (b); and

(3) the modifications listed in subsection (c).

(b) Exclusions. The following portions of 40 CFR part 268 shall be excluded from adoption:

(1) All comments and all notes, except in subpart D and appendix IX;

(2) 40 CFR 268.13; and

(3) 40 CFR 268.44(o).

(c) Modifications. The following modifications shall be made to 40 CFR part 268:

(1) Each occurrence of the following phrases shall be deleted:

(A) "(incorporated by reference, see § 260.11 of this chapter)";

(B) "as incorporated by reference in § 260.11";

(C) "as incorporated by reference in § 260.11 of this chapter";

(D) "as incorporated by reference in 40 CFR 260.11"; and

(E) "as referenced in § 260.11 of this chapter."

(2) In 40 CFR 268.1(e)(1), the term "small quantity" shall be deleted and the phrase "100 kilograms" shall be replaced with "25 kilograms."

(3) In 40 CFR 268.3(a), the phrase "RCRA section 3004" shall be replaced with "40 CFR part 268."

(4) In 40 CFR 268.7(a)(9)(iii), the phrase "except for D009" shall be added to the end of the sentence.

(5) In 40 CFR 268.7(a)(10), the phrase "and Kansas small quantity generators" shall be inserted after the term "Small quantity generators."

(6) In 40 CFR 268.7(d), the phrase "§ 261.3(e)" shall be replaced with "§ 261.3(f)."

(7) 40 CFR 268.7(d)(1) shall be replaced with the following: "A one-time notification, including the following information, shall be submitted to the department:".

(8) In 40 CFR 268.14(b) and (c), the phrase "section 3001" shall be replaced with "40 CFR part 261."

(9) In 40 CFR 268.44(i), the phrase "in § 260.20(b)(1)-(4)" shall be replaced with "required by EPA's rulemaking petition program."

(10) In 40 CFR 268.50(a), the phrase "of RCRA section 3004" shall be deleted.

(11) In 40 CFR 268.50(e), the phrase "or RCRA section 3004" shall be deleted. (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

**28-31-270. Hazardous waste permits; adoption and modification of federal regulations.** (a) Adoption. The provisions of 40 CFR part 270, including appendix I to §270.42, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

(1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;

(2) the exclusions from adoption listed in subsection (b); and

(3) the modifications listed in subsection (c).

(b) Exclusions. The following portions of 40 CFR part 270 shall be excluded from adoption:

(1) In 40 CFR 270.1, subsections (a) and (b) and paragraphs (c)(1)(iii) and (c)(2)(ix);

(2) 40 CFR 270.3;

(3) 40 CFR 270.6;

(4) 40 CFR 270.10(g)(1)(i);

(5) 40 CFR 270.14(b)(18);

(6) 40 CFR 270.42(i) and (l);

(7) 40 CFR 270.60(a); and

(8) 40 CFR 270.64.

(c) Modifications. The following modifications shall be made to 40 CFR part 270:

(1) In 40 CFR 270.1(c)(7), the following text shall be deleted: "including, but not limited to, a corrective action order issued by EPA under section 3008(h), a CERCLA remedial action, or a closure or post-closure plan."

(2) In 40 CFR 270.2, the following definitions shall be modified as follows:

(A) Corrective action management unit.

(i) The phrase "or secretary" shall be inserted after the term "Regional Administrator."

(ii) The word "and" shall be replaced with the term "or by the regional administrator under."

(B) Emergency permit. The term "RCRA permit" shall be replaced with "RCRA or Kansas hazardous waste facility permit."

(C) Permit.

(i) The reference to "124 of this chapter" shall be replaced with "124 of this chapter or K.A.R. 28-31-124 through 28-31-124e and 28-31-270."

(ii) The term "RCRA" shall be deleted.

(iii) The term "agency" shall be replaced with the phrase "EPA or department."

(D) Remedial action plan. The term "RCRA permit" shall be replaced with "RCRA or Kansas hazardous waste facility permit."

(E) Standardized permit.

(i) The term "RCRA permit" shall be replaced with "RCRA or Kansas hazardous waste facility permit."

(ii) The term "Director's" shall be replaced with "director's or secretary's."

(3) In 40 CFR 270.10(a), the following language shall be inserted after the title "Applying for a permit.": "Each person that wants to apply for a permit to dispose of hazardous waste shall first petition the secretary for an exception to the Kansas prohibition against underground land burial under the requirements of K.A.R. 28-31-5."

(4) In 40 CFR 270.10(e)(3), the text ", or the secretary may under the authority of K.S.A. 65-3445," shall be inserted after the phrase "section 3008 of RCRA."

(5) In 40 CFR 270.10(e)(4), the second sentence shall be deleted.

(6) In 40 CFR 270.10(f)(2), the second sentence shall be replaced with the following: "The application shall be filed with the secretary."

(7) In 40 CFR 270.10(g)(1)(ii), the text "if the facility is located in a State which has obtained interim authorization or final authorization," shall be deleted.

(8) In 40 CFR 270.10(g)(1)(iii), the text "if the State in which the facility in question is located does not have interim authorization or final authorization; otherwise it shall be filed with the State Director (if the State has an analogous provision)" shall be deleted.

(9) 40 CFR 270.12 shall be replaced with "K.S.A. 65-3447 shall apply to all information claimed as confidential."

(10) In 40 CFR 270.13(k)(1), the term "RCRA" shall be replaced with "RCRA or the Kansas hazardous waste program."

(11) In 40 CFR 270.14(b)(20), the phrase "Federal laws as required in § 270.3 of this part" shall be replaced with "laws."

(12) In 40 CFR 270.24(d)(3) and 270.25(e)(3), the phrase "(incorporated by reference as specified in § 270.6)" shall be deleted.

(13) In 40 CFR 270.32(a) the text ", and for EPA issued permits only, 270.33(b) (alternate schedules of compliance) and 270.3 (considerations under Federal law)" shall be deleted.

(14) In 40 CFR 270.32(c), the following language shall be deleted:

(A) The second sentence, which starts "For a permit issued by EPA";

(B) the term "EPA"; and

(C) the phrase "and EPA administered programs."

(15) In 40 CFR 270.43(b), the phrase "or part 22" shall be deleted.

(16) In 40 CFR 270.51(a), the title shall be replaced with "Kansas hazardous waste facility permits" and the phrase "under 5 U.S.C. 558(c)" shall be deleted.

(17) In 40 CFR 270.51(d), the title shall be replaced with "State continuation of an EPA permit" and the phrase "In a State with a hazardous waste program authorized under 40 CFR part 271," shall be deleted.

(18) In 40 CFR 270.60, the phrase "facilities in Kansas" shall be inserted after the word "following" in the introductory paragraph.

(19) In 40 CFR 270.70(a) and 270.73(d), the phrase "under the Act" shall be deleted.

(20) 40 CFR 270.115 shall be replaced with the following: "K.S.A. 65-3447 shall apply to all information claimed as confidential."

(21) In 40 CFR 270.155(a), the following phrases shall be deleted:

(A) "[T]o EPA's Environmental Appeals Board";

(B) "[i]nstead of the notice required under §§ 124.19(c) and 124.10 of this chapter,";

(C) "by the Environmental Appeals Board";

(D) "as provided by the Board"; and

(E) "with the Board."

(22) In 40 CFR 270.195, the phrase "in RCRA sections 3004 and 3005" shall be deleted.

(23) In 40 CFR 270.255(a)(3), each occurrence of the term "we" shall be replaced with "the secretary."

(24) In 40 CFR 270.310(d)(3), the phrase "(incorporated by reference as specified in 40 CFR 260.11)" shall be deleted. (Authorized by K.S.A. 65-3431; implementing K.S.A. 65-3431, 65-3433, 65-3437, and 65-3439; effective April 29, 2011.)

**28-31-270a. Hazardous waste permits; petition to be granted an exception to the prohibition against underground burial of hazardous waste.** This regulation shall apply to each person that wants to apply for a permit for the underground burial of hazardous waste. For the purposes of this regulation, this person shall be called a "potential applicant."

(a) Exception petition. Before applying for a permit according to the requirements of K.A.R. 28-31-124 through 28-31-124e and 28-31-270, each potential applicant shall submit to the secretary a petition for an exception to the prohibition against the underground burial of hazardous waste, as specified in K.S.A. 65-3458 and amendments thereto.

(b) Contents of the exception petition. Each exception petition shall include the following items:

(1) A complete chemical and physical analysis of the waste;

(2) a list and description of all technologically feasible methods that could be considered to treat, store, or dispose of the waste;

(3) for each method described in paragraph (b)(2), an economic analysis based upon a 30-year time period. The analysis shall determine the costs associated with treating, storing, disposing of, and monitoring the waste during this time period; and

(4) a demonstration that underground burial is the only economically reasonable or technologically feasible methodology for the disposal of that specific hazardous waste.

(c) Review and public notice for exception petitions. The review and public notice shall be conducted according to the following requirements:

(1) The potential applicant shall submit the exception petition to the department. If the exception petition is not complete, the potential applicant shall be notified of the specific deficiencies by the department.

(2) Upon receipt of a complete exception petition, a public notice shall be published by the department once each week for three consecutive weeks according to the following requirements:

(A) The notice shall be published in the following publications:

(i) The Kansas register; and

(ii) the official county newspaper of the county in which the proposed underground burial would occur or, if there is no official county newspaper, a newspaper published as provided in K.S.A. 64-101 and amendments thereto.

(B) The public notice shall include the following information:

(i) The name of the potential applicant;

(ii) a description of the specific waste;

(iii) a description of the proposed disposal methods;

(iv) a map indicating the location of the proposed underground burial;

(v) the address of the location where the exception petition and related documents can be reviewed;

(vi) the address of the location where copies of the exception petition and related documents can be obtained;

(vii) a description of the procedure by which the exception petition will be reviewed; and

(viii) the date and location of the public hearing.

(3) A copy of the public notice shall be transmitted by the department to the clerk of each city that is located within three miles of the proposed underground burial site.

(d) Public hearing and public comment period. The public hearing and public comment period shall be conducted according to the following requirements:

(1) The public hearing shall be conducted in the same county as that of the proposed underground burial facility.

(2) The public hearing shall be scheduled no earlier than 30 days after the date of the first public notice.

(3) A hearing officer shall be designated by the secretary.

(4) At the hearing, any person may submit oral comments, written comments, or data concerning the exception petition. Reasonable limits may be set by the hearing officer on the time allowed for oral statements, and the submission of statements in writing may be required by the hearing officer.

(5) The public comment period shall end no earlier than the close of the public hearing. The hearing officer may extend the public comment period at the hearing.

(6) A recording or written transcript of the hearing shall be made available to the public by the department upon request.

(7) A report shall be submitted by the hearing officer to the secretary detailing all written and oral comments submitted during the public comment period. The hearing officer may also recommend findings and determinations.

(e) Approval or denial of the exception petition. The following procedures shall be followed by the secretary and the department:

(1) If the secretary determines, based on the criteria specified in K.S.A. 65-3458 and amendments thereto, that the exception petition should be approved, an order shall be issued by the secretary. The order may require conditions that the secretary deems necessary to protect public health and safety and the environment.

(2) If the secretary determines that there is not sufficient evidence to approve the exception petition, the potential applicant shall be notified by the department of the reasons why the exception petition is denied.

(3) A public notice of the final decision to approve or deny the exception petition shall be published by the department in the following publications:

(A) The Kansas register; and

(B) the official county newspaper of the county in which the proposed underground burial would occur or, if there is no official county newspaper, a newspaper published as provided in K.S.A. 64-101 and amendments thereto.

(4) A copy of the final decision shall be transmitted by the department to the clerk of each city that is located within three miles of the proposed underground burial site. (Authorized by K.S.A. 65-3431; implementing K.S.A. 2010 Supp. 65-3458; effective April 29, 2011.)

**28-31-273. Universal waste; adoption and modification of federal regulations.** (a) Adoption. The provisions of 40 CFR part 273, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

(1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s; and

(2) the exclusions from adoption listed in subsection (b).

(b) Exclusions. The following portions of 40 CFR part 273 shall be excluded from adoption:

(1) All comments and all notes; and

(2) subpart G. (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

**28-31-279. Used oil; adoption and modification of federal regulations.** (a) Adoption. The provisions of 40 CFR part 279, as in effect on July 1, 2006, are hereby adopted by reference subject to the following:

(1) The substitution of terms listed in K.A.R. 28-31-100 through 28-31-100s;

(2) the exclusions from adoption listed in subsection (b); and

(3) the modifications listed in subsection (c).

(b) Exclusions. The following portions of 40 CFR part 279 shall be excluded from adoption:

(1) All comments and all notes; and

(2) 40 CFR 279.82.

(c) Modifications. The following modifications shall be made to 40 CFR part 279:

(1) In 40 CFR 279.10(a), the text "EPA presumes" shall be replaced with "EPA and the department presume."

(2) In 40 CFR 279.12(b), the text ", except when such activity takes place in one of the states listed in § 279.82(c)" shall be deleted.

(3) The text "and which has occurred after the effective date of the recycled used oil management program in effect in the State in which the

release is located" shall be deleted in the following locations:

(A) 40 CFR 279.22(d);

(B) 40 CFR 279.45(h);

(C) 40 CFR 279.54(g); and

(D) 40 CFR 279.64(g).

(4) The parenthetical text in paragraph (b)(1) concerning the "RCRA/Superfund Hotline" and the sentence in paragraph (b)(2) concerning the "RCRA/Superfund Hotline" shall be deleted in the following sections:

(A) 40 CFR 279.42;

(B) 40 CFR 279.51; and

(C) 40 CFR 279.62.

(5) In 40 CFR 279.81(b), the phrase "parts 257 and 258 of this chapter" shall be replaced with "K.S.A. 65-3401 et seq. and article 29." (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

**28-31-279a. Used oil; additional state prohibitions and requirements.** (a) Prohibitions.

(1) No person shall dispose of used oil on or into any of the following:

(A) Sewers;

(B) storm drainage systems;

(C) surface water;

(D) groundwater; or

(E) the ground.

(2) No person shall apply used oil as any of the following:

(A) A coating;

(B) a sealant;

(C) a dust suppressant;

(D) a pesticide carrier; or

(E) any other similar application.

(b) Transporter registration and insurance. Each transporter of used oil shall comply with the requirements of K.A.R. 28-31-6. (Authorized by and implementing K.S.A. 65-3431; effective April 29, 2011.)

## Article 34.—HOSPITALS

**28-34-126. Definitions.** For the purposes of K.A.R. 28-34-126, 28-34-127, and 28-34-129 through 28-34-144, the following terms shall have the meanings specified in this regulation. (a) "Admitting privileges" means permission extended by a hospital to a physician to allow the physician to admit a patient to that hospital either as active or courtesy staff.

(b) "Ancillary services" means laboratory, radiology, or pharmacy services.

(c) "Ancillary staff member" means an individual who performs laboratory, radiology, or pharmacy services at a facility.

(d) "Applicant" means a person who has applied for a license but who has not yet been granted a license to operate a facility.

(e) "Clinical privileges" means permission extended by a hospital to a physician to allow the physician to provide treatment to a patient in that hospital.

(f) "Health professional" means an individual, other than a physician, who is one of the following:

(1) A nurse licensed by the Kansas state board of nursing; or

(2) a physician assistant licensed by the Kansas state board of healing arts.

(g) "Licensee" means a person who has been granted a license to operate a facility.

(h) "Medical staff member" means an individual who is one of the following:

(1) A physician licensed by the Kansas state board of healing arts;

(2) a health professional; or

(3) an ancillary staff member.

(i) "Newborn child" means a viable child delivered during an abortion procedure.

(j) "Person" means any individual, firm, partnership, corporation, company, association, or joint-stock association, and the legal successor thereof.

(k) "Reportable incident" means an act by a medical staff member which:

(1) Is or may be below the applicable standard of care and has a reasonable probability of causing injury to a patient; or

(2) may be grounds for disciplinary action by the appropriate licensing agency.

(l) "Risk manager" means the individual designated by the applicant or licensee to administer the facility's internal risk management program and to receive reports of reportable incidents within the facility.

(m) "Staff member" means an individual who provides services at the facility and who is compensated for those services.

(n) "Unborn child" means a living individual organism of the species homo sapiens, in utero, at any stage of gestation from fertilization to birth.

(o) "Viable" shall have the same meaning ascribed in K.S.A. 65-6701, and amendments thereto.

(p) "Volunteer" means an individual who provides services at the facility and who is not com-

pensated for those services. (Authorized by L. 2011, ch. 82, sec. 9; implementing L. 2011, ch. 82, sec. 1; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

**28-34-127. Application process.** (a) Any person desiring to operate a facility shall apply for a license on forms provided by the department.

(b) Each applicant shall submit a fee of $500 for a license. The applicable fee shall be submitted at the time of license application and shall not be refundable.

(c) Before initial licensing each applicant shall submit to the department the following information:

(1) Written verification from the applicable local authorities showing that the premises are in compliance with all local codes and ordinances, including all building, fire, and zoning requirements;

(2) written verification from the state fire marshal showing that the premises are in compliance with all applicable fire codes and regulations;

(3) documentation of the specific arrangements that have been made for the removal of biomedical waste and human tissue from the premises; and

(4) documentation that the facility is located within 30 miles of an accredited hospital.

(d) The granting of a license to any applicant may be denied by the secretary if the applicant is not in compliance with all applicable laws, rules, and regulations. (Authorized by L. 2011, ch. 82, sec. 9; implementing L. 2011, ch. 82, secs. 2 and 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

**28-34-129. Terms of a license.** (a) Each license shall be effective for one year following the date of issuance.

(b) Each license shall be valid for the licensee and the address specified on the license. When an initial, renewed, or amended license becomes effective, all licenses previously granted to the applicant or licensee at the same address shall become invalid.

(c) Only one physical location shall be described in each license.

(d) Any applicant may withdraw the application for a license.

(e) Any licensee may submit, at any time, a request to close the facility permanently and to surrender the license.

(f) If a facility is closed, any license granted for that facility shall become void. (Authorized by L. 2011, ch. 82, sec. 9; implementing L. 2011, ch. 82, sec. 2; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

**28-34-130. Renewals; amendments.** (a) No earlier than 90 days before but no later than the renewal date, each licensee wishing to renew the license shall submit the following:

(1) The nonrefundable license fee of $500; and

(2) an application to renew the license on the form provided by the department.

(b) Each licensee shall submit a request for an amended license to the department within 30 days after either of the following:

(1) A change of ownership by purchase or by lease; or

(2) a change in the facility's name or address. (Authorized by L. 2011, ch. 82, sec. 9; implementing L. 2011, ch. 82, secs. 2, 3, and 4; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

**28-34-131. Operation of the facility.** (a) Each applicant and each licensee shall be responsible for the operation of the facility.

(b) Each applicant and each licensee shall:

(1) Ensure compliance with all applicable federal, state, and local laws;

(2) serve as or designate a medical director who is a physician licensed by the Kansas state board of healing arts and who has no limitations to the license that would prohibit the physician's ability to serve in the capacity as a medical director of a facility; and

(3) ensure the following documents are conspicuously posted at the facility:

(A) The current facility license issued by the department; and

(B) the current telephone number and address of the department.

(c) Each applicant and each licensee shall ensure that written policies and procedures are developed and implemented for the operation of the facility. The policies and procedures shall include the following requirements:

(1) An organized recordkeeping system to meet the requirements in K.A.R. 28-34-144;

(2) documentation of personnel qualifications, duties, and responsibilities to meet the requirements in K.A.R. 28-34-132;

(3) that the facility is designed, constructed, equipped, and maintained to protect the health and safety of patients, staff, and visitors to meet

the requirements in K.A.R. 28-34-133 through 28-34-136;

(4) ensure proper and adequate medical screening and evaluation of each patient to meet the requirements in K.A.R. 28-34-137;

(5) consent is obtained from each patient before the procedure;

(6) safe conduct of abortion procedures to meet the requirements in K.A.R. 28-34-138;

(7) the appropriate use of anesthesia, analgesia and sedation to meet the requirements in K.A.R. 28-34-138;

(8) ensure the use of appropriate precautions for any patient undergoing a second or third trimester abortion to meet the requirements in K.A.R. 28-34-138;

(9) post-procedure care of patients to meet the requirements in K.A.R. 28-34-139;

(10) identify and ensure a physician with admitting privileges at an accredited hospital located within 30 miles of the facility is available during facility hours of operation;

(11) if indicated, the transfer of any patient and newborn child to a hospital to meet the requirements in K.A.R. 28-34-140;

(12) follow-up and aftercare for each patient receiving an abortion procedure in the facility to meet the requirements in K.A.R. 28-34-141;

(13) a written plan for risk management to meet the requirements in K.A.R. 28-34-142, including policies and procedures for staff member or volunteer reporting of any clinical care concerns; and

(14) ensure that incidents that require reporting to the department are completed as required in K.A.R. 28-34-143. (Authorized by L. 2011, ch. 82, sec. 9; implementing L. 2011, ch. 82, secs. 2 and 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

**28-34-132. Staff requirements.** (a) Each applicant and each licensee shall ensure that each physician performing surgery in a facility is approved by the medical director, licensed to practice medicine and surgery in the state of Kansas, and demonstrates competence in the procedure involved in the physician's duties at the facility. Competence shall be demonstrated through both of the following means and methods:

(1) Documentation of education and experience; and

(2) observation by or interaction with the medical director.

(b) Each applicant and each licensee shall ensure the following:

(1) A physician with admitting privileges at an accredited hospital located within 30 miles of the facility is available.

(2) Any physician performing or inducing abortion procedures in the facility has clinical privileges at a hospital located within 30 miles of the facility.

(c) Each applicant and each licensee shall ensure that each individual who performs an ultrasound is one of the following:

(1) A physician licensed in the state of Kansas who has completed a course for the type of ultrasound examination the physician performs; or

(2) an individual who performs ultrasounds under the supervision of a physician and who meets all of the following requirements:

(A) Has completed a course in performing ultrasounds;

(B) has completed a training for the specific type of ultrasound examination the individual performs; and

(C) is not otherwise precluded by law from performing ultrasound examinations.

(d) Each applicant and each licensee shall ensure that each staff member employed by or contracted with the facility is licensed, if required by state law, is qualified, and provides services to patients consistent with the scope of practice of the individual's training and experience.

(e) Each applicant and each licensee shall ensure that each surgical assistant employed by or contracted with the facility receives training in the specific responsibilities of the services the surgical assistant provides in the facility.

(f) Each applicant and each licensee shall ensure that each volunteer receives training as identified by the medical director in the specific responsibilities the volunteer provides at the facility.

(g) Each applicant and each licensee shall ensure that at least one physician or registered nurse is certified in advanced cardiovascular life support and is present at the facility when any patient who is having an abortion procedure or recovering from an abortion procedure is present at the facility. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

**28-34-133. Facility environmental standards.** (a) Each applicant and each licensee shall ensure that the facility is designed, constructed,

equipped, and maintained to protect the health and safety of patients, staff members, volunteers, and visitors.

(b) Each facility shall include the following rooms and areas:

(1) At least one room designated for patient interviews, counseling, and medical evaluations, located and arranged to preserve patient privacy;

(2) at least one dressing room for patients only and arrangements for storage of patient clothing and valuables;

(3) at least one dressing room for staff members, including a toilet, hand washing station, and arrangements for storage for staff member clothing and valuables;

(4) a toilet room and hand washing station designated for patients;

(5) hand washing stations for pre-procedure hand washing by staff members;

(6) private procedure rooms and doorways of those rooms of sufficient size to accommodate the following:

(A) The equipment, supplies, and medical staff members required for performance of an abortion procedure; and

(B) emergency equipment and personnel in the event of a transfer, as described in K.A.R. 28-34-140;

(7) a recovery area that meets all of the following requirements:

(A) Has a nurse station with visual observation of each patient in the recovery area;

(B) provides privacy for each patient in the recovery area with at least cubicle curtains around each patient gurney or bed; and

(C) has sufficient space to accommodate emergency equipment and personnel in the event of a transfer, as described in K.A.R. 28-34-140;

(8) a waiting area for patients and visitors;

(9) an administrative area, including office space for the secure filing and storage of facility patient records;

(10) a workroom separate from the procedure rooms for cleaning, preparation, and sterilization of instruments, arranged to separate soiled or contaminated instruments from clean or sterilized instruments, including the following:

(A) A hand washing station;

(B) receptacles for waste and soiled items;

(C) designated counter space for soiled or contaminated instruments;

(D) a sink for cleaning soiled or contaminated instruments;

(E) designated counter space for clean instruments; and

(F) an area for sterilizing instruments, if sterilization is completed at the facility;

(11) storage space for clean and sterile instruments and supplies; and

(12) at least one room equipped with a service sink or a floor basin and space for storage of janitorial supplies and equipment. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

**28-34-134. Health and safety requirements.** (a) Each applicant and each licensee shall ensure that the facility meets the following health and safety requirements:

(1) The temperature in each procedure room and in each recovery area shall be between 65 and 75 degrees Fahrenheit unless otherwise ordered by a physician in order to meet the comfort or medical needs of the patient.

(2) Fixed or portable lighting units shall be present in each examination, procedure, and recovery room or area, in addition to general lighting.

(3) Each emergency exit shall accommodate a stretcher or a gurney.

(4) The facility shall be maintained in a clean condition.

(5) The facility shall not be infested by insects and vermin.

(6) A warning notice shall be placed at the entrance to any room or area where oxygen is in use.

(7) Soiled linen and clothing shall be kept in covered containers in a separate area from clean linen and clothing.

(b) A written emergency plan shall be developed and implemented, including procedures for protecting the health and safety of patients and other individuals in any of the following circumstances:

(1) A fire;

(2) a natural disaster;

(3) loss of electrical power; or

(4) threat or incidence of violence.

(c) An evacuation drill shall be conducted at least once every six months, including participation by all individuals in the facility at the time of the drill. Documentation shall be maintained at the facility for one year from the date of the drill and shall include the date and time of the drill. (Authorized by and implementing L. 2011, ch. 82,

sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

**28-34-135. Equipment; supplies; drugs and medications.** (a) Each applicant and each licensee shall ensure that supplies, equipment, drugs, and medications are immediately available for use or in an emergency.

(b) Equipment and supplies shall be maintained in the amount required to assure sufficient quantities of clean and sterilized durable equipment to meet the needs of each patient during any abortion procedure and for monitoring each patient throughout the procedure and recovery period.

(c) Each applicant and each licensee shall ensure that the following equipment and supplies are maintained in the facility for airway management:

(1) An oxygen source with flowmeter;

(2) face masks, in child and adult sizes for assisting ventilation;

(3) a non self-inflating bag with face mask;

(4) suction, either wall or machine;

(5) suction catheters, in sizes 8, 10, 14F, and Yankauer;

(6) oral airways, in child and adult sizes;

(7) nasal cannulas, in child and adult sizes; and

(8) the following additional equipment and supplies for airway management for any abortion procedure performed when the gestational age of the unborn child is 22 weeks or more:

(A) A self-inflating bag with reservoir, 500 cc and 1000 cc;

(B) oral airways, in infant sizes;

(C) a laryngoscope handle with batteries;

(D) straight blades or curved blades, in sizes 0, 1, 2, and 3;

(E) endotracheal tubes, uncuffed, in sizes 3.0, 3.5, 4.0, 4.5, 5.0, 6.0, 7.0, and 8.0;

(F) stylets, small and large; and

(G) adhesive tape to secure airway.

(d) Each applicant and each licensee shall ensure that the following supplies are maintained in the facility for fluid management:

(1) Intraosseous needles, 15 or 18 gauge;

(2) intravenous catheters, 18, 20, 22, and 24 gauge;

(3) butterfly needles, 23 gauge;

(4) tourniquets, alcohol swabs, and tape;

(5) isotonic fluids, either normal saline or lactated Ringer's solution; and

(6) for any abortion procedure performed when the gestational age of the unborn child is 22 weeks or more, pediatric drip chambers and tubing.

(e) Each applicant and each licensee shall ensure that the following miscellaneous equipment and supplies are maintained in the facility:

(1) Blood pressure cuffs, in small, medium and large adult sizes;

(2) adult nasogastric tubes;

(3) manual sphygmomanometer; and

(4) for any abortion procedure performed when the gestational age of the unborn child is 22 weeks or more, blood pressure cuffs in preemie and infant sizes.

(f) Each applicant and each licensee shall ensure that all equipment is safe for each patient and for the staff.

(g) Each applicant and each licensee shall ensure that each item of equipment is installed and used according to the manufacturer's recommendations for use.

(h) Each applicant and each licensee shall ensure that each item of equipment is checked annually to ensure safety and required calibration.

(i) Each applicant and each licensee shall ensure that equipment and supplies are clean and sterile, if applicable, before each use.

(j) Each applicant and each licensee shall ensure that the facility meets the following requirements for equipment:

(1) All equipment shall be clean, functional, and maintained in accordance with the manufacturer's instructions.

(2) The following equipment shall be available at all times:

(A) Ultrasound equipment;

(B) intravenous equipment;

(C) laboratory equipment;

(D) patient resuscitation and suction equipment;

(E) equipment to monitor vital signs in each room in which an abortion is performed;

(F) a surgical or gynecologic examination table;

(G) equipment to measure blood pressure;

(H) a stethoscope; and

(I) a scale for weighing a patient.

(k) Each applicant and each licensee shall ensure that, for any abortion procedure performed when the gestational age of the unborn child is 22 weeks or more, the following equipment and supplies are maintained in the facility:

(1) Equipment to monitor cardiopulmonary status; and

(2) drugs to support cardiopulmonary function.

(l) Each applicant and each licensee shall ensure that equipment and appropriate medications are located in the recovery area as needed for the provision of appropriate emergency resuscitative and life support procedures pending the transfer to a hospital of a patient or a newborn child.

(1) Each applicant and each licensee shall maintain a stock supply of drugs and medications for the use of the physician in treating the emergency needs of patients.

(2) The medications shall be stored in such a manner as to prohibit access by unauthorized personnel.

(3) The stock supplies of medications shall be regularly reviewed to ensure proper inventory control with removal or replacement of expired drugs and medications.

(4) Drugs and equipment shall be available within the facility to treat the following conditions consistent with standards of care for advanced cardiovascular life support:

(A) Cardiac arrest;

(B) a seizure;

(C) an asthma attack;

(D) allergic reaction;

(E) narcotic or sedative toxicity;

(F) hypovolemic shock;

(G) vasovagal shock; and

(H) anesthetic reactions.

(m) Drugs and medications shall be administered to individual patients only by a facility physician or a facility health professional.

(n) If a stock of controlled drugs is to be maintained at the facility, the applicant or licensee shall ensure that the facility is registered by the Kansas board of pharmacy. Each applicant and each licensee shall ensure the proper safeguarding and handling of controlled substances within the facility, and shall ensure that all possible control measures are observed and that any suspected diversion or mishandling of controlled substances is reported immediately.

(o) Records shall be kept of all stock supplies of controlled substances giving an accounting of all items received or administered. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

**28-34-136. Ancillary services.** (a) Each applicant and each licensee shall document that the facility maintains a certificate of compliance from the centers for medicare and medicaid services pursuant to section 353 of the public health services act, 42 U.S.C. 263a, as revised by the clinical laboratory and current clinical laboratory improvement amendments for the purpose of performing examinations or procedures.

(b) Each applicant and each licensee shall ensure that the facility meets the following requirements for radiology services:

(1) Allow only trained and qualified individuals to operate radiology equipment;

(2) document annual checks and calibration of radiology equipment and maintain records of the annual checks and calibrations;

(3) ensure that all radiology and diagnostic procedures are provided only on the order of a physician; and

(4) maintain signed and dated clinical reports of the radiological findings in each patient's record.

(c) Each applicant and each licensee shall ensure that written policies and procedures are developed and implemented relating to drugs, including the following:

(1) Storage of drugs;

(2) security of drugs;

(3) labeling and preparation of drugs;

(4) administration of drugs; and

(5) disposal of drugs.

(d) Each applicant and each licensee shall ensure that all drugs and medications shall be administered pursuant to a written order from a facility physician or a facility health professional.

(e) Each applicant and each licensee shall ensure that each adverse drug reaction is reported to the physician responsible for the patient and is documented in the patient record.

(f) Each applicant and each licensee shall ensure that each drug and each medication requiring refrigeration is stored in a refrigerator that is used only for drug and medication storage.

(g) Each applicant and each licensee shall ensure that there is a mechanism for the ongoing review and evaluation of the quality and scope of laboratory, radiology, and pharmaceutical services. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

**28-34-137. Patient screening and evaluation.** (a) Each applicant and each licensee shall ensure written policies and procedures are developed and implemented for the medical screening and evaluation of patients. A medical screening

and evaluation shall be completed on each patient before an abortion procedure is performed.

(b) The medical screening and evaluation shall consist of the following:

(1) A medical history shall be completed, including the following:

(A) Reported allergies to medications, antiseptic solution, or latex;

(B) obstetric and gynecologic history;

(C) past surgeries;

(D) medication currently being taken by the patient; and

(E) any other medical conditions.

(2) A physical examination shall be performed by a physician, including a bimanual examination to estimate uterine size and palpation of the adnexa.

(3) An ultrasound evaluation shall be completed for any patient who elects to have an abortion of an unborn child. The physician shall estimate the gestational age of the unborn child based on the ultrasound examination and obstetric standards in keeping with established standards of care regarding the estimation of the age of the unborn child and shall verify the estimate in the patient's medical history. The physician shall keep the original prints of each ultrasound examination for each patient in the patient's medical history file. The original prints may consist of a digitized record or an electronic record.

(4) The appropriate laboratory tests shall be completed, including the following:

(A) For an abortion performed in a medical emergency and in which an ultrasound examination is not performed before the abortion procedure, urine or blood tests for pregnancy, which shall be completed before the abortion procedure;

(B) a test for anemia as indicated;

(C) determination of Rh factor or Rh typing, unless the patient provides written documentation of blood type acceptable to the physician; and

(D) other tests recommended by the physician or the medical director on the basis of the physical examination, which may include tests for chlamydia and gonorrhea and other cultures, syphilis serology, and a papanicolaou procedure.

(c) Each licensee shall ensure that another individual is present in the room during a pelvic examination or an abortion procedure. If the physician conducting the examination or the procedure is male, the other individual in the room shall be female.

(d) The physician or health care professional shall review, at the request of the patient, the ultrasound evaluation results with the patient before the abortion procedure is performed, including the probable gestational age of the unborn child. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

**28-34-138. Abortion procedure.** (a) Each applicant and each licensee shall ensure that written policies and procedures are developed and implemented for the following procedures:

(1) Safe conduct of abortion procedures that conform to obstetric standards in keeping with established standards of care regarding the estimated gestational age of the unborn child;

(2) the appropriate use of local anesthesia, analgesia, and sedation if ordered by the physician; and

(3) the use of appropriate precautions, including the establishment of intravenous access for any patient undergoing a second or third trimester abortion, unless the physician determines that establishing intravenous access is not appropriate for the patient and documents that fact in the medical record of the patient.

(b) Each licensee shall ensure that the following procedures are followed for each patient after completion of all requirements for patient screening and evaluation required in K.A.R. 28-34-137 and before performance of an abortion:

(1) Information is provided to the patient on the abortion procedure, including alternatives, risks, and potential complications.

(2) Written consent is signed and dated by the patient.

(c) Each licensee shall ensure that a physician and at least one health professional is available to each patient throughout the abortion procedure.

(d) Each licensee shall ensure that an infection control program is established which includes the following:

(1) Measures for surveillance, prevention, and control of infections;

(2) policies and procedures outlining infection control and aseptic techniques to be followed by staff members and volunteers; and

(3) training on infection control and aseptic techniques for all staff members and volunteers.

(e) Each licensee shall ensure that each abortion is performed according to the facility's policies and procedures and in compliance with all applicable laws, rules, and regulations.

(f) Each licensee shall ensure that health professionals monitor each patient's vital signs throughout the abortion procedure to ensure the health and safety of the patient.

(g) Each licensee shall ensure that the following steps are performed if an abortion procedure results in the delivery of a newborn child:

(1) Resuscitative measures are used to support life;

(2) the newborn child is transferred to a hospital; and

(3) resuscitative measures and the transfer to a hospital are documented. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

**28-34-139. Recovery procedures; discharge.** (a) Each applicant and each licensee shall ensure that written policies and procedures are developed and implemented for the post-procedure care of patients who are administered local anesthesia, analgesia, or sedation, including the following:

(1) Immediate post-procedure care for each patient shall consist of observation in a supervised recovery area.

(2) The vital signs and bleeding of each patient shall be monitored by a physician or a health professional.

(3) Each patient shall remain in the recovery area following the abortion procedure for the following time periods, based on the gestational age of the unborn child:

(A) For a gestational age of 12 weeks or less, a minimum of 30 minutes;

(B) for a gestational age of 13 to 15 weeks, a minimum of 45 minutes; and

(C) for a gestational age of 16 weeks or more, a minimum of 60 minutes. The patient shall remain in the recovery area for a longer period of time when necessary based on the physician's evaluation of the patient's medical condition.

(b) Each licensee shall ensure that a physician or an individual designated by a physician shall discuss Rho(d) immune globulin with each patient for whom it is indicated and assure that it is offered to the patient in the immediate post-procedure period or that it will be available to the patient within 72 hours after completion of the abortion procedure. If the patient refuses the Rho(d) immune globulin, the refusal shall be documented on a form approved by the department, signed by the patient and a witness, and filed in the medical record of the patient.

(c) At the time of discharge from the facility, each patient shall receive the following written information:

(1) Signs of possible complications;

(2) when to access medical care in response to complications;

(3) the telephone number to call in an emergency;

(4) instructions and precautions for resuming vaginal intercourse; and

(5) any other instructions specific to a patient's abortion or condition.

(d) Each licensee shall ensure that a physician signs the discharge order for each patient. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

**28-34-140. Transfers.** (a) Each applicant and each licensee shall ensure that written policies and procedures are developed and implemented for the transfer of patients and newborn children to a hospital.

(b) Each licensee shall ensure that a physician arranges the transfer of a patient to a hospital if any complications beyond the medical capability of the health professionals of the facility occurs or is suspected.

(c) Each licensee shall ensure that a physician arranges the transfer of a newborn child to a hospital if the child requires emergency care.

(d) A physician or a nurse who is certified in advanced cardiovascular life support shall remain on the premises of the facility to facilitate the transfer of an emergency case if hospitalization of a patient or a newborn child is required. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

**28-34-141. Follow-up contact and care.** Each applicant and each licensee shall ensure that written policies and procedures are developed and implemented for follow-up and aftercare for each patient receiving an abortion procedure in the facility, including the following: (a) With the consent of the patient, a health professional from the facility shall make a good faith effort to contact the patient by telephone within 24 hours after the procedure to assess the patient's recovery.

(b) Each patient shall be offered a follow-up visit and, if requested by the patient, shall be

scheduled no more than four weeks after completion of the procedure. The follow-up visit shall include the following:

(1) A physical examination;

(2) a review of all laboratory tests performed as required in K.A.R. 28-34-137; and

(3) a urine pregnancy test.

If a continuing pregnancy is suspected, a physician who performs abortion procedures shall be consulted.

(c) The physician who performs or induces the abortion, or an individual designated by the physician, shall make all reasonable efforts to ensure that the patient returns for a subsequent examination so the physician can assess the patient's medical condition. A description of the efforts made to comply with this regulation, including the date, time, and name of the individual making the efforts, shall be included in the patient's medical record. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

**28-34-142. Risk management.** (a) Each applicant and each licensee shall develop and implement a written risk management plan.

(b) The risk management plan shall be reviewed and approved annually by the licensee.

(c) Findings, conclusions, recommendations, actions taken, and results of actions taken shall be documented and reported through procedures established within the risk management plan.

(d) All patient services, including those services provided by outside contractors or consultants, shall be periodically reviewed and evaluated in accordance with the risk management plan.

(e) Each risk management plan shall include the following:

(1) Section I. A description of the system implemented by the facility for investigation and analysis of the frequency and causes of reportable incidents within the facility;

(2) Section II. A description of the measures used by the facility to minimize the occurrence of reportable incidents and the resulting injuries within the facility;

(3) Section III. A description of the facility's implementation of a reporting system based upon the duty of all medical staff members staffing the facility and all agents and staff members of the facility directly involved in the delivery of health care services to report reportable incidents; and

(4) Section IV. A description of the organizational elements of the plan, including the following:

(A) Name and address of the facility;

(B) name and title of the facility's risk manager; and

(C) description of involvement and organizational structure of medical staff members as related to the risk management program, including names and titles of medical staff members involved in investigation and review of reportable incidents.

(f) The standards-of-care determinations shall include the following:

(1) Each facility shall assure that analysis of patient care incidents complies with the definition of a "reportable incident". Each facility shall use categories to record its analysis of each incident, and those categories shall be in substantially the following form:

(A) Standards of care met;

(B) standards of care not met, but with no reasonable probability of causing injury;

(C) standards of care not met, with injury occurring or reasonably probable; or

(D) possible grounds for disciplinary action by the appropriate licensing agency.

(2) Each reported incident shall be assigned an appropriate standard-of-care determination. Separate standard-of-care determinations shall be made for each involved medical staff member and each clinical issue reasonably presented by the facts. Any incident determined to meet paragraph (f)(1)(C) or (D) of this regulation shall be reported to the appropriate licensing agency. (Authorized by and implementing L. 2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

**28-34-143. Reporting requirements.** In addition to the reporting requirements for risk management required in K.A.R. 28-34-142, each licensee shall ensure that the following incidents are reported to the department, on a form provided by the department:

(a) Each incident resulting in serious injury of a patient or a viable unborn child shall be reported to the department within 10 days after the incident.

(b) The death of a patient, other than the death of an unborn child, shall be reported to the department not later than the next department business day. (Authorized by and implementing L.

2011, ch. 82, sec. 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

**28-34-144. Records.** (a) Each applicant and each licensee shall maintain an organized recordkeeping system that provides for identification, security, confidentiality, control, retrieval, and preservation of all staff member and volunteer records, patient medical records, and facility information.

(b) Each applicant and each licensee shall ensure that only individuals authorized by the applicant or licensee have access to patient medical records.

(c) All records shall be available at the facility for review by the secretary or the authorized agent of the secretary.

(d) For staff member and volunteer records, each applicant and each licensee shall ensure that an individual record is maintained at the facility. The record shall include all of the following information:

(1) The staff member's or volunteer's name, position, title, and the first and last date of employment or volunteer service;

(2) verification of qualifications, training, or licensure, if applicable;

(3) documentation of cardiopulmonary resuscitation certification, if applicable;

(4) if a physician, documentation of verification of competence, as required in K.A.R. 28-34-132, signed and dated by the medical director;

(5) if an individual who performs ultrasounds, documentation of ultrasound training required in K.A.R. 28-34-132;

(6) if a surgical assistant, documentation of training required in K.A.R. 28-34-132; and

(7) if a volunteer, documentation of training required in K.A.R. 28-34-132.

(e) For patient records, each licensee shall ensure that an individual record is maintained at the facility for each patient. The record shall include all of the following information:

(1) Patient identification, including the following:

(A) Name, address, and date of birth; and

(B) name and telephone number of an individual to contact in an emergency;

(2) medical history as required in K.A.R. 28-34-137;

(3) the physical examination required in K.A.R. 28-34-137;

(4) laboratory test results required in K.A.R. 28-34-137;

(5) ultrasound results required in K.A.R. 28-34-137;

(6) the physician's estimated gestational age of the unborn child as required in K.A.R. 28-34-137;

(7) each consent form signed by the patient;

(8) a record of all orders issued by a physician, physician assistant, or nurse practitioner;

(9) a record of all medical, nursing, and health-related services provided to the patient;

(10) a record of all adverse drug reactions as required in K.A.R. 28-34-136; and

(11) documentation of the efforts to contact the patient within 24 hours of the procedure and offer and schedule a follow-up visit no more than four weeks after the procedure, as required in K.A.R. 28-34-141.

(f) For facility records, each applicant and each licensee shall ensure that a record is maintained for the documentation of the following:

(1) All facility, equipment, and supply requirements specified in K.A.R. 28-34-133 through 28-34-136;

(2) ancillary services documentation required in K.A.R. 28-34-136;

(3) risk management activities required in K.A.R. 28-34-142; and

(4) submission of all reports required in K.A.R. 28-34-143. (Authorized by L. 2011, ch. 82, sec. 9; implementing L. 2011, ch. 82, secs. 5 and 9; effective, T-28-7-1-11, July 1, 2011; effective Nov. 14, 2011.)

## Article 35.—RADIATION

**28-35-135*l*. Definitions.** As used in these regulations, each of the following terms shall have the meaning assigned in this regulation: (a) "Lead equivalent" means the thickness of lead affording the same attenuation, under specified conditions, as the material in question.

(b) "Leakage radiation" means radiation emanating from the device source assembly, except for the following:

(1) The useful beam; and

(2) radiation produced when the exposure switch or timer is not activated for diagnosis or therapy.

(c) "Leakage technique factors" means the technique factors associated with the tube housing assembly that are used in measuring leakage ra-

diation. The leakage technique factors shall be defined as follows:

(1) For diagnostic source assemblies intended for capacitor energy storage equipment, the maximum rated number of exposures in an hour for operation at the maximum rated peak tube potential, with the quantity of charge per exposure being 10 millicoulombs or the minimum obtainable from the unit, whichever is larger;

(2) for diagnostic source assemblies intended for field emission equipment rated for pulsed operation, the maximum rated number of X-ray pulses in an hour for operation at the maximum rated peak tube potential; and

(3) for all other diagnostic or therapeutic source assemblies, the maximum rated peak tube potential and the maximum rated continuous tube current for the maximum rated peak tube potential.

(d) "License" means a document issued in accordance with these regulations specifying the conditions of use of radioactive material.

(e) "Licensed or registered material" means radioactive material received, possessed, used, transferred, or disposed of under a general or specific license or registration issued by the department.

(f) "Licensee" means any person who is licensed in accordance with these regulations.

(g) "Licensing state" means any state that has been granted final designation by the conference of radiation control program directors, inc., for the regulatory control of NARM, as defined in K.A.R. 28-35-135n.

(h) "Light field" means that area of the intersection of the light beam from the beam-limiting device and one plane in the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the illumination is one-fourth of the maximum in the intersection.

(i) "Line-voltage regulation" means the difference between the no-load and the load line potentials, expressed as a percent of the load line potential, using the following equation:

Percent line-voltage regulation = $100\ (V_n - V_1)/V_1$
where
$V_n$ = No-load line potential and
$V_1$ = Load line potential.

(j) "Local component" means any part of an analytical X-ray system. This term shall include components that are struck by X-rays, including radiation source housings, port and shutter assemblies, collimators, sample holders, cameras, goniometers, detectors, and shielding. This term shall not include power supplies, transformers, amplifiers, readout devices, and control panels.

(k) "Logging supervisor" means the individual who uses sources of radiation or provides personal supervision of the utilization of sources of radiation at a well site.

(l) "Logging tool" means a device used subsurface to perform well logging.

(m) "Lost or missing licensed or registered source of radiation" means a licensed or registered source of radiation whose location is unknown. This term shall include licensed or registered material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

(n) "Lot tolerance percent defective" means the poorest quality, expressed as the percentage of defective units, in an individual inspection lot that may be accepted.

(o) "Low dose-rate remote afterloader" means a brachytherapy device that remotely delivers a dose rate of less than or equal to two grays per hour at the point or surface where the dose is prescribed. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1603 and 48-1607; effective Dec. 30, 2005; amended March 18, 2011.)

**28-35-135t. Definitions.** As used in these regulations, each of the following terms shall have the meaning assigned in this regulation: (a) "Target" means the part of a radiation head that by design intercepts a beam of accelerated particles, with the subsequent emission of other radiation.

(b) "Target-to-skin distance (TSD)" means the distance measured along the beam axis from the center of the front surface of the X-ray target or electron virtual source to the irradiated object or patient.

(c) "Technique factors" means the conditions of operation specified as follows:

(1) For capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs;

(2) for field emission equipment rated for pulsed operation, peak tube potential in kV and number of X-ray pulses; and

(3) for all equipment not specified in paragraphs (c)(1) and (2), peak tube potential in kV and either the tube current in mA and the expo-

sure time in seconds or the product of the tube current and the exposure time in mAs.

(d) "Teletherapy" means therapeutic irradiation in which the source of radiation is located at a distance from the body.

(e) "Teletherapy physicist" means an individual identified as the qualified teletherapy physicist on a department license.

(f) "Temporary job site" means a location where operations are performed and where sources of radiation may be stored, other than the location or locations of use authorized on the license or registration.

(g) "Tenth-value layer (TVL)" means the thickness of a specified material that attenuates X-radiation or gamma radiation to the extent that the air kerma rate, exposure rate, or absorbed dose rate is reduced to one-tenth of the value measured without the material at the same point.

(h) "Termination of irradiation" means the stopping of irradiation in a fashion not permitting the continuance of irradiation without the resetting of operating conditions at the control panel.

(i) "Test" means the process of verifying compliance with an applicable regulation.

(j) "Therapeutic dosage" means a dosage of unsealed by-product material that is intended to deliver a radiation dose to a patient or human research subject for palliative or curative treatment.

(k) "Therapeutic dose" means a radiation dose delivered from a source containing by-product material to a patient or human research subject for palliative or curative treatment.

(l) "Therapeutic-type tube housing" means the following:

(1) For X-ray equipment not capable of operating at 500 kVp or above, an X-ray tube housing constructed so that the leakage radiation, at a distance of one meter from the source, does not exceed one roentgen in an hour when the tube is operated at its maximum rated continuous current for the maximum rated tube potential; and

(2) for X-ray equipment capable of operating at 500 kVp or above, an X-ray tube housing constructed so that the leakage radiation, at a distance of one meter from the source, does not exceed 0.1 percent of the useful beam dose rate at one meter from the source for any of the tube's operating conditions.

Areas of reduced protection shall be acceptable if the average reading over any area of 100 $cm^2$, at a distance of one meter from the source, does not exceed any of the values specified in this subsection.

(m) "These regulations" means article 35 in its entirety.

(n) "Tomogram" means the depiction of the X-ray attenuation properties of a section through the body.

(o) "Total effective dose equivalent" and "TEDE" mean the sum of the effective dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

(p) "Total organ dose equivalent" and "TODE" mean the sum of the deep dose equivalent and the committed dose equivalent delivered to the organ receiving the highest dose.

(q) "Traceable to a national standard" means that a quantity or a measurement has been compared to a national standard directly or indirectly through one or more intermediate steps and that all comparisons are documented.

(r) "Transport index" means the dimensionless number, rounded up to the first decimal place, placed on the label of a package to designate the degree of control to be exercised by the carrier during transportation. The transport index is the maximum radiation level in millirems per hour at one meter from the external surface of the package.

(s) "Tritium neutron-generator-target source" means a tritium source used within a neutron generator tube to produce neutrons for use in well-logging applications.

(t) "Tube" means an X-ray tube, unless otherwise specified.

(u) "Tube housing assembly" means the tube housing with a tube installed, including high-voltage transformers or filament transformers, or both, and other appropriate elements when contained within the tube housing.

(v) "Treatment site" means the anatomical description of the tissue intended to receive a radiation dose, as specified in a written directive.

(w) "Tube rating chart" means the set of curves that describes the rated limits of operation of the tube in terms of the technique factors.

(x) "Type A package" means packaging that, together with the radioactive contents limited to $A_1$ or $A_2$ as appropriate, is designed to retain the integrity of containment and shielding under normal conditions of transport as demonstrated by the tests specified in 49 CFR 173.465 or 49 CFR 173.466, as appropriate.

(y) "Type B package" and "type B transport container" mean packaging that meets the applicable requirements specified in 10 CFR 71.51. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1603 and 48-1607; effective Dec. 30, 2005; amended March 18, 2011.)

**28-35-135w. Definitions.** As used in these regulations, each of the following terms shall have the meaning assigned in this regulation: (a) "Waste" means any low-level radioactive waste that is acceptable for disposal in a land disposal facility. Low-level radioactive waste shall mean radioactive waste that meets both of the following conditions:

(1) Is not classified as any of the following:

(A) High-level radioactive waste;

(B) spent nuclear fuel;

(C) "byproduct material," as defined in paragraphs (2), (3), and (4) in the definition of "byproduct material" in 10 CFR 20.1003, dated December 1, 2009;

(D) uranium or thorium tailings; and

(E) transuranic waste; and

(2) is classified as low-level radioactive waste consistent with existing law and in accordance with paragraph (a)(1) by the nuclear regulatory commission.

(b) "Waste-handling licensee" means any person licensed to receive and store radioactive wastes before disposal, any person licensed to dispose of radioactive waste, or any person licensed to both receive and dispose of radioactive waste.

(c) "Wedge filter" means an added filter effecting continuous, progressive attenuation of all or part of the useful beam.

(d) "Week" means seven consecutive days, starting on Sunday.

(e) "Weighting factor ($w_T$) for an organ or tissue (T)" means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of $w_T$ shall be as follows:

ORGAN OR TISSUE DOSE WEIGHTING FACTORS

| Organ or Tissue (T) | $w_T$ |
|---|---|
| Gonads | 0.25 |
| Breast | 0.15 |
| Red bone marrow | 0.12 |
| Lung | 0.12 |
| Thyroid | 0.03 |
| Bone surfaces | 0.03 |
| Remainder organs | 0.30[a] |
| Whole body | 1.00[b] |

[a] 0.30 results from 0.06 for each of the five remainder organs that receive the highest doses, excluding the skin and the lens of the eye.

[b] For the purpose of weighting the external whole body dose in determining the total effective dose equivalent, a single weighting factor, $w_T = 1.0$, is specified. The use of other weighting factors for external exposure may be approved by the secretary if the licensee or registrant demonstrates that the effective dose to be received is within the limits specified in these regulations.

(f) "Well bore" means a drilled hole in which wireline service operations and subsurface tracer studies are performed.

(g) "Well logging" means the lowering and raising of measuring devices or tools that could contain sources of radiation into well bores or cavities for the purpose of obtaining information about the well or adjacent formations.

(h) "Wet-source-change irradiator" means an irradiator whose sources are replaced underwater.

(i) "Wet-source-storage irradiator" means an irradiator whose sources are stored underwater.

(j) "Whole body," for purposes of external exposure, means the head and trunk, including the male gonads, and shall include the arms above the elbow and the legs above the knee.

(k) "Wireline" means a cable containing one or more electrical conductors that is used to raise and lower logging tools in the well bore.

(l) "Wireline service operation" means any evaluation or mechanical service that is performed in the well bore using devices on a wireline.

(m) "Worker" means an individual, contractor, or subcontractor engaged in work that is performed under a license or registration, or both, issued by the department and that is controlled by a licensee or registrant, or both. This term shall not include a specific licensee or registrant.

(n) "Working level (WL)" means any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of 1.3E+5 MeV of potential alpha particle energy. The short-lived radon daughters are the following:

(1) For radon-222, the following:

(A) Polonium-218;

(B) lead-214;

(C) bismuth-214; and

(D) polonium-214; and

(2) for radon-220, the following:

(A) Polonium-216;

(B) lead-212;

(C) bismuth-212; and

(D) polonium-212.

(o) "Working-level month (WLM)" means an exposure to one working level for 170 hours.

(p) "Written directive" means a written order for a specific patient that is dated and signed by an authorized user before the administration of a radiopharmaceutical or radiation and that contains any of the following sets of information:

(1) For any administration of quantities greater than 1.11 megabecquerels (30 μCi) of sodium iodide I-125 or I-131, the radionuclide and dosage;

(2) for a therapeutic administration of a radiopharmaceutical other than sodium iodide I-125 or I-131, the radiopharmaceutical, dosage, and route of administration;

(3) for gamma stereotactic radiosurgery, the target coordinates, collimator size, plug pattern, and total dose;

(4) for teletherapy, the total dose, dose per fraction, treatment site, and overall treatment period;

(5) for high dose-rate remote afterloading brachytherapy, the radionuclide, treatment site, and total dose; or

(6) for all other brachytherapy, the following information:

(A) Before implantation, the radionuclide, number of sources, and source strengths; and

(B) after implantation but before completion of the procedure, the radionuclide, treatment site, and either the total source strength and exposure time or the total dose. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1603 and 48-1607; effective Dec. 30, 2005; amended March 18, 2011.)

**28-35-175a. Persons licensed.** (a) A licensed person shall not manufacture, produce, receive, use, possess, acquire, own, transfer, or dispose of radioactive material, except as authorized in a specific or general license issued pursuant to these regulations. Each manufacturer, producer, or processor of any equipment, device, commodity, or other product containing source or "byproduct material," as defined in 10 CFR 20.1003, dated December 1, 2009, for which subsequent receipt, use, possession, acquisition, ownership, transfer, and disposal by any other person is exempted from these regulations shall obtain authority to transfer possession or control to the other person from the nuclear regulatory commission.

(b) In addition to the requirements of this part, each licensee shall be subject to the requirements of part 1, part 4, and part 10 of these regulations. In addition to being subject to part 1, part 4, and part 10, specific licensees shall be subject to all of the following requirements:

(1) Licensees using radioactive material in the healing arts shall be subject to the requirements of part 6.

(2) Licensees using radioactive material in industrial radiography shall be subject to the requirements of part 7.

(3) Licensees using radioactive material in wireline and subsurface tracer studies shall be subject to the requirements of part 11 of these regulations. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended Dec. 30, 2005; amended March 18, 2011.)

**28-35-178b. General license; certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere.** (a)(1) Subject to the provisions of subsections (b) and (c), each commercial and industrial firm, research, educational, and medical institution, individual in the conduct of the individual's business, and federal, state, or local government agency shall be deemed to have been issued a general license to acquire, receive, possess, use, or transfer radioactive material that is contained in any device designed, manufactured, and used for one or more of the following purposes:

(A) Detecting, measuring, gauging, or controlling thickness, density, level interface location, radiation leakage, or qualitative or quantitative chemical composition; or

(B) producing light or an ionized atmosphere.

(2) The general license specified in paragraph (1) of this subsection shall apply only to radioactive material contained in any device that has been manufactured and labeled by a manufacturer in accordance with the specifications of a specific license issued to that manufacturer by the secretary, the nuclear regulatory commission, or an agreement state.

(3) The general license specified in paragraph (1) of this subsection shall not apply to radioactive

material in any device containing at least 370 MBq (10 mCi) of cesium-137, 3.7 MBq (0.1 mCi) of strontium-90, 37 MBq (1 mCi) of cobalt-60, 3.7 MBq (0.1 mCi) of radium-226, or 37 MBq (1 mCi) of americium-241 or any other transuranic element, based on the activity indicated on the label.

(4) Each device shall have been received from one of the specific licensees described in paragraph (a)(2) or through a transfer made under paragraph (b)(9).

(b) Each person who acquires, receives, possesses, uses, or transfers radioactive material in a device pursuant to the general license specified in subsection (a) shall comply with all of the following requirements:

(1) Each person subject to this subsection shall ensure that all labels affixed to the device at the time of receipt and bearing a statement that removal of the label is prohibited are maintained and shall comply with all instructions and precautions provided by these labels.

(2) Each person subject to this subsection shall ensure that the device is tested for leakage of radioactive material and proper operation of the on-off mechanism and indicator, if any, at no longer than six-month intervals or at any other intervals specified in any manufacturer's label affixed to the device, except as follows:

(A) The person shall not be required to test devices containing only krypton for leakage of radioactive material.

(B) The person shall not be required to test, for any purpose, any device containing only tritium, not more than 100 microcuries of other beta-emitting or gamma-emitting material, or 10 microcuries of alpha-emitting material or any device held in storage in the original shipping container before initial installation.

(3) Each person subject to this subsection shall ensure that the tests required by paragraph (b)(2) and other operations involving testing, installation, servicing, and removal from installation of the radioactive material, its shielding, or containment are performed in compliance with one of the following:

(A) In accordance with instructions provided on labels affixed to the device; or

(B) by a person holding a specific license issued under this part or equivalent regulations of NRC or an agreement state to perform the tests and other operations.

(4)(A) Each person subject to this subsection shall maintain records showing compliance with the requirements of paragraphs (b)(2) and (b)(3). The records shall show the results of each test. The records also shall show the dates of the testing, installation, servicing, or removal from installation of the radioactive material, its shielding, or containment and the name of each person performing one or more of these tests and other operations.

(B) Each person shall maintain records of tests for leakage of radioactive material required by paragraph (b)(2) for three years after the next required leak test is performed or until the sealed source is transferred or disposed of. Each person shall maintain records of tests of the on-off mechanism and indicator, as required by paragraph (b)(2), for three years after the next required test of the on-off mechanism and indicator is performed or until the sealed source is transferred or disposed of. Each person shall maintain the records required by paragraph (b)(3) for three years from the date of the recorded event or until the device is transferred or disposed of.

(5) Upon a failure of or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the on-off mechanism or indicator, or upon the detection of 0.005 microcurie or more removable radioactive material, each person subject to this subsection shall take the following actions:

(A) Immediately suspend operation of the device until either of the following conditions is met:

(i) The device has been repaired by the manufacturer or other person holding a specific license issued under this part or equivalent regulations of NRC or an agreement state to repair the device; or

(ii) the device is transferred to a person authorized by a specific license to receive the radioactive material contained in the device;

(B) within 30 days, furnish to the secretary a report containing a brief description of the event and the remedial action taken; and

(C) within 30 days, if contamination of the premises or the environs is likely, furnish to the secretary a plan for ensuring that the premises and environs are acceptable for unrestricted use. The criteria for unrestricted use specified in K.A.R. 28-35-205 may be applicable, as determined by the secretary.

(6) A person subject to this subsection shall not abandon the device.

(7) A person shall not export any device con-

taining radioactive material except in accordance with 10 CFR part 110.

(8) (A) Each person shall transfer or dispose of any device containing radioactive material only by export as provided in paragraph (b)(7), by transfer to another general licensee as authorized in paragraph (b)(9), or to a person authorized to receive the device by a specific license issued under this part or equivalent regulations of NRC or an agreement state.

(B) Each person shall furnish a report to the department within 30 days after the export of the device or the transfer of the device to a specific licensee. The report shall contain the following information:

(i) The identification of the device by manufacturer's name, model number, and serial number;

(ii) the name, address, and license number of the person receiving the device; and

(iii) the date of the transfer.

(C) Each person shall obtain written department approval before transferring the device to any other specific licensee not specifically identified in paragraph (b)(8)(A). The holder of a specific license may transfer a device for possession and use under its own specific license without approval, if the holder performs the following:

(i) Either verifies that the specific license authorizes the possession and use or applies for and obtains an amendment to the license authorizing the possession and use;

(ii) ensures that the device is labeled in compliance with these regulations. The label shall retain the name of the manufacturer, the model number, and the serial number;

(iii) obtains the manufacturer's or initial transferor's information concerning maintenance, including leak testing procedures that are applicable under the specific license; and

(iv) reports the transfer as required by paragraph (b)(8)(B).

(9) Any person subject to this subsection may transfer the device to another general licensee only if either of the following conditions is met:

(A) The device remains in use at a particular location. In this case, the transferor shall give the transferee a copy of this regulation and any safety documents identified in any label affixed to the device and, within 30 days of the transfer, provide a written report to the secretary containing identification of the device by manufacturer's name, model number, and serial number; the name and address of the transferee; and the name, telephone number, and position of an individual who can be contacted by the secretary concerning the device.

(B) The device is held in storage in the original shipping container at its intended location of use before initial use by a general licensee.

(10) Each person subject to this subsection shall comply with the provisions of K.A.R. 28-35-228a and K.A.R. 28-35-229a relating to reports of radiation incidents, theft, or loss of licensed material, but shall be exempt from the other requirements of parts 4 and 10 of these regulations.

(11) Each person shall respond to all written requests from the department to provide information relating to the general license within 30 calendar days of the date of the request or on or before any other deadline specified in the request. If the person cannot provide the requested information within the allotted time, the person, within that same time period, shall request a longer period to supply the information by submitting a letter to the department and shall provide written justification as to why the person cannot comply.

(12) Each general licensee shall appoint an individual responsible for having knowledge of the appropriate regulations and requirements and the authority for taking required actions to comply with appropriate regulations and requirements. The general licensee, through this individual, shall ensure day-to-day compliance with the appropriate regulations and requirements. This appointment shall not relieve the general licensee of any of the licensee's responsibility in this regard.

(13)(A) Each person shall register, in accordance with paragraph (b)(13)(B), each device generally licensed as required by this regulation. Each address for a location of use, as described in paragraph (b)(13)(B)(iv), shall represent a separate general licensee and shall require a separate registration and fee.

(B) In registering each device, the general licensee shall furnish the following information and any other information specifically requested by the department:

(i) The name and mailing address of the general licensee;

(ii) information about each device as indicated on the label, including the manufacturer's name, the model number, the serial number, and the radioisotope and activity;

(iii) the name, title, and telephone number of the responsible person appointed as a represen-

tative of the general licensee under paragraph (b)(12);

(iv) the address or location at which each device is used or stored, or both. For each portable device, the general licensee shall provide the address of the primary place of storage;

(v) certification by the responsible representative of the general licensee that the information concerning each device has been verified through a physical inventory and a check of the label information; and

(vi) certification by the responsible representative of the general licensee that the person is aware of the requirements of the general license.

(14) Each person shall report any change in the mailing address for the location of use, including any change in the name of the general licensee, to the department within 30 days of the effective date of the change. For a portable device, a report of address change shall be required only for a change in the primary place of storage of the device.

(15) No person may store a device that is not in use for longer than two years. If any device with shutters is not being used, the shutters shall be locked in the closed position. The testing required by paragraph (b)(2) shall not be required to be performed during the period of storage only. If the device is put back into service or transferred to another person and was not tested at the required test interval, the device shall be tested for leakage before use or transfer, and all shutters shall be tested before use. Each device kept in storage for future use shall be excluded from the two-year time limit if the general licensee performs quarterly physical inventories of the device while the device is in storage.

(c) Nothing in this regulation shall be deemed to authorize the manufacture or import of any device containing radioactive material.

(d) The general license specified in subsection (a) shall be subject to the provisions of K.A.R. 28-35-184a and K.A.R. 28-35-184b. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended Nov. 1, 1996; amended March 24, 2006; amended July 27, 2007; amended March 18, 2011.)

**28-35-178e. Americium-241 or radium-226 in the form of calibration or reference sources.** (a) A general license to acquire, possess, use and transfer, in accordance with the provisions of subsections (b) and (c), americium-241 or radium-226 in the form of calibration or reference sources is hereby issued to any person who holds a specific license issued by the nuclear regulatory commission that authorizes the agency to acquire, possess, use, and transfer by-product material, source material, or special nuclear material.

(b) The general license issued in subsection (a) shall apply only to calibration or reference sources that have been manufactured or initially transferred in accordance with the specifications contained in a specific license issued by the secretary, the nuclear regulatory commission, or an agreement state.

(c) The general license issued in subsection (a) shall be subject to the provisions of K.A.R. 28-35-184a, and to all of the provisions of parts 4 and 10 of these regulations. In addition, persons who acquire, possess, use, and transfer one or more calibration or reference sources pursuant to this general license shall meet the following requirements:

(1) Not possess, at any one time, at any one location of storage or use, more than 5 microcuries of either americium-241 or radium-226 in such sources;

(2) not receive, possess, use, or transfer such a source unless the source, or the storage container, bears a label that includes the following statement or a substantially similar statement that contains the information called for in the following statement:

"The receipt, possession, use and transfer of this source, Model _____, Serial No. _____, are subject to a general license and the regulations of the United States Nuclear Regulatory Commission or of a State with which the commission has entered into an agreement for the exercise of regulatory authority. Do not remove this label.

CAUTION—RADIOACTIVE MATERIAL—THIS SOURCE CONTAINS AMERICIUM-241 (or RADIUM-226). DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.

_____

(Name of manufacturer or initial transferor)";

(3) not transfer, abandon, or dispose of such source except by transfer to a person authorized by a license issued by the secretary, the nuclear regulatory commission, or an agreement state to receive the source;

(4) store such source, except when the source is being used, in a closed container designed and constructed to contain either americium-241 or radium-226 that might otherwise escape during storage; and

(5) not use the source for any purpose other than the calibration of radiation detectors or the standardization of other sources.

(d) The general license issued in this regulation shall not authorize the manufacture, or the importation or exportation, of calibration or reference sources containing either americium-241 or radium-226. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended March 18, 2011.)

**28-35-178j. General license for use of radioactive material for certain in vivo clinical or laboratory testing.** (a) Except as provided in subsections (b) and (c), each person shall be exempt from the license requirements in part 3 and part 6 of these regulations if the person receives, possesses, uses, transfers, owns, or acquires any capsules containing 37 kBq (1 μCi) of carbon-14 urea, allowing for nominal variation that may occur during the manufacturing process for in vivo diagnostic use for humans.

(b) Before using the capsules specified in subsection (a) for research involving human subjects, each person shall apply and shall be considered for approval for a specific license. Each person shall be required to have a specific license before engaging in the research specified in this subsection.

(c) Before manufacturing, preparing, processing, producing, packaging, repackaging, or transferring the capsules specified in subsection (a) for commercial distribution, each person shall apply and shall be considered for approval for a specific license. Each person shall be required to have a specific license before performing any of the actions specified in this subsection.

(d) Nothing in this regulation shall exempt any person from applicable FDA requirements, other federal requirements, and state requirements governing receipt, administration, and use of drugs. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005; amended March 18, 2011.)

**28-35-180b. Financial assurance for decommissioning.** (a) Each applicant for a specific license authorizing the possession and use of unsealed radioactive material with a half-life greater than 120 days and in quantities exceeding $10^5$ times the applicable quantities specified in K.A.R. 28-35-201 shall submit a decommissioning funding plan as described in K.A.R. 28-35-180b(e). Each applicant shall also submit the decommissioning funding plan if a combination of isotopes is involved and if R divided by $10^5$ is greater than one, where R is defined here as the sum of the ratios of the quantity of each isotope to the applicable value specified in K.A.R. 28-35-201.

(b) Each applicant for a specific license authorizing the possession and use of radioactive material with a half-life greater than 120 days and in quantities specified in table I shall submit either of the following:

(1) A decommissioning funding plan as described in subsection (e); or

(2) a certification that financial assurance for decommissioning has been provided in the amount prescribed by table I, using one of the methods described in subsection (f). The certification may state that the appropriate assurance is to be obtained after the application has been approved and the license has been issued, but before the receipt of licensed material. If the applicant defers execution of the financial instrument required under subsection (f) until after the license has been issued, a signed original of the financial instrument shall be submitted to the department before the applicant receives the licensed material. If the applicant does not defer execution of the financial instrument required under subsection (f), the applicant shall submit to the department, as part of the certification, a signed original of the financial instrument.

(c) Each holder of a specific license that is a type specified in subsection (a) or (b) shall provide financial assurance for decommissioning in accordance with the following requirements:

(1) Each holder of a specific license that is a type specified in subsection (a) shall submit a decommissioning funding plan as specified in subsection (e) or a certification of financial assurance for decommissioning in an amount equal to at least $1,125,000.00. Each licensee shall submit the plan or certification to the department in accordance with the criteria specified in this regulation. If the licensee submits a certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

(2) Each holder of a specific license that is a type specified in subsection (b) shall submit a decommissioning funding plan as specified in subsection (e) or a certification of financial assurance for decommissioning. Each licensee shall submit

the plan or certification to the department, in accordance with the requirements specified in this regulation.

(d) The amounts of financial assurance required for decommissioning, by quantity of material, shall be those specified in table I.

**Table I**

**Financial assurance for decommissioning by quantity of material**

| | |
|---|---|
| If the possession limit is greater than $10^4$ but less than or equal to $10^5$ times the applicable quantities specified in K.A.R. 28-35-201, in unsealed form | $1,125,000.00 |
| For a combination of isotopes, in unsealed form, if R, as defined in subsection (a), divided by $10^4$ is greater than one, but R divided by $10^5$ is equal to or less than one | $1,125,000.00 |
| If the possession limit is greater than $10^3$ but less than or equal to $10^4$ times the applicable quantities specified in K.A.R. 28-35-201, in unsealed form | $225,000.00 |
| For a combination of isotopes, in unsealed form, if R, as defined in subsection (a), divided by $10^3$ is greater than one, but R divided by $10^4$ is less than or equal to one | $225,000.00 |
| If the possession limit is greater than $10^{10}$ times the applicable quantities specified in K.A.R. 28-35-201, in sealed sources or foils | $113,000.00 |
| For a combination of isotopes, in sealed sources or foils, if R, as defined in subsection (a), divided by $10^{10}$ is greater than one | $113,000.00 |

(e) Each decommissioning funding plan shall contain the following:

(1) A cost estimate for decommissioning;

(2) a description of the method of ensuring funds for decommissioning, selected from the methods specified in subsection (f);

(3) a description of the means for periodically adjusting cost estimates and associated funding levels over the life of the facility;

(4) a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning; and

(5) a signed original of the financial instrument obtained to satisfy the requirements specified in subsection (f).

(f) Each licensee shall provide financial assurance for decommissioning by one or more of the following methods.

(1) Prepayment. "Prepayment" shall mean cash or liquid assets that meet the following criteria:

(A) Before the start of operation, are deposited into an account that is segregated from the licensee's assets and outside of the licensee's administrative control; and

(B) consist of an amount that is sufficient to pay decommissioning costs.

The prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(2) A surety instrument, insurance policy, or other guarantee method. The licensee may use a surety instrument, insurance policy, or other similar means to guarantee that decommissioning costs will be paid. A surety instrument may be in the form of a surety bond, letter of credit, or line of credit. A parent company's guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test meet the requirements of K.A.R. 28-35-203. A parent company's guarantee shall not be used in combination with other financial methods to meet the requirements in this regulation. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test meet the requirements of K.A.R. 28-35-203. A guarantee by the applicant or licensee shall not be used in combination with any other financial methods to meet the requirements in this regulation or in any situation in which a parent company of the applicant or licensee holds majority control of the voting stock of the company. Each surety instrument or insurance policy used to provide financial assurance for decommissioning shall contain the following requirements:

(A) The surety instrument or insurance policy shall be open-ended or, if written for a specified term, shall be renewed automatically, unless 90 days or more before the renewal date, the insurer notifies the department, the beneficiary, and the licensee of the insurer's intention not to renew. The surety instrument or insurance policy shall also provide that the full face amount will be paid to the beneficiary automatically before the expiration without proof of forfeiture if the licensee fails to provide a replacement that meets the requirements of this regulation within 30 days after receipt of notification of cancellation.

(B) The surety instrument or insurance policy shall be payable to an approved trust established for decommissioning costs. The trustee may include an appropriate state or federal agency or an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(C) The surety instrument or insurance policy shall remain in effect until the license is terminated by the department.

(3) External sinking fund. A licensee may provide financial assurance for decommissioning through an external sinking fund in which deposits are made at least annually, coupled with a surety instrument or insurance policy. The value of the surety instrument or insurance policy may decrease by the amount accumulated in the sinking fund. "External sinking fund" shall mean a fund that meets both of the following conditions:

(A) Is established and maintained by setting aside funds periodically in an account segregated from the licensee's assets and outside the licensee's administrative control; and

(B) contains a total amount of funds sufficient to pay the decommissioning costs when termination of the operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions shall meet the requirements specified in this subsection.

(4) Statement of intent. Any federal, state, or local government licensee may submit a statement of intent containing a cost estimate for decommissioning or an amount based on table I of this regulation and indicating that funds for decommissioning will be obtained when necessary.

(g) Each person licensed under subsections (a) through (g) shall keep records of all information that is relevant to the safe and effective decommissioning of the facility. The records shall be kept in an identified location until the license is terminated by the department. If records of relevant information are kept for other purposes, the licensee may refer to these records and the location of these records within the records kept pursuant to this subsection.

(h) Each licensee shall maintain decommissioning records, which shall consist of the following information:

(1) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to records of instances in which contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants could have spread to inaccessible areas. These records shall include any known information identifying the nuclides, quantities, forms, and concentrations involved in the spill or occurrence;

(2) drawings of the following, both as originally built and, if applicable, as modified:

(A) The structures and equipment in restricted areas where radioactive materials are used or stored, or both; and

(B) the locations of possible inaccessible contamination. If the licensee refers to required drawings other than those kept pursuant to this regulation, the licensee shall not be required to index each relevant document individually. If drawings are not available, the licensee shall substitute available information concerning these areas and locations;

(3) a list of the following information, which shall be contained in a single document and updated every two years:

(A) All areas designated and formerly designated as restricted areas;

(B) all areas outside of restricted areas that require the documentation specified in this subsection;

(C) all areas outside of restricted areas where current and previous wastes have been buried and documented as specified in K.A.R. 28-35-227j; and

(D) all areas outside of restricted areas that contain material so that, if the license expired, the licensee would be required either to decontaminate the area to unrestricted release levels or to apply for approval for disposal as specified in K.A.R. 28-35-225a.

Those areas containing sealed sources only shall not be included in the list if the sources have not leaked, no contamination remains in the area after any leak, or the area contains only radioactive materials having half-lives of less than 65 days; and

(4) the following records:

(A) Records of the cost estimate performed for the decommissioning funding plan or records of the amount certified for decommissioning; and

(B) if either a funding plan or certification is used, records of the funding method used for assuring funds.

(i) Each applicant for a specific license shall make arrangements for a long-term care fund pursuant to K.S.A. 48-1623, and amendments thereto. Each applicant for any of the following types of specific licenses shall establish the long-term care fund before the issuance of the license or before the termination of the license if the applicant chooses, at the time of licensure, to pro-

vide a surety instrument in lieu of a long-term care fund:

(1) Waste-handling licenses;

(2) source material milling licenses; and

(3) licenses for any facilities formerly licensed by the U.S. atomic energy commission or the nuclear regulatory commission, if required.

(j)(1) Each applicant shall agree to notify the department, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of title 11, bankruptcy, of the United States code by or against any of the following:

(A) The licensee;

(B) any person controlling the licensee or listing the license or licensee as property of the estate; or

(C) any affiliate of the licensee.

(2) The bankruptcy notification shall indicate the following:

(A) The name of the bankruptcy court in which the petition for bankruptcy was filed; and

(B) the date on which the petition was filed. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005; amended March 18, 2011.)

**28-35-181a. Specific licenses for human use of radioactive material in medical institutions.** An application for a specific license for human use of radioactive material in institutions shall not be approved unless all of the following conditions are met:

(a) The applicant has appointed a radiation safety committee as specified in 10 CFR 35.24(f), which is adopted by reference in K.A.R. 28-35-264.

(b) The applicant possesses adequate facilities for the clinical care of patients.

(c) The physician or physicians designated on the application as the user or users have substantial experience in handling and administering radioactive materials and, if applicable, clinical management of radioactive patients.

(d) If the application is for a license to use unspecified quantities or multiple types of radioactive material, the applicant or applicant's staff has substantial experience in the use of a variety of radioactive materials for a variety of human uses. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended March 18, 2011.)

**28-35-181e.** (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended Dec. 30, 2005; revoked March 18, 2011.)

**28-35-181j. Specific licenses to manufacture and distribute calibration sources containing americium-241 or radium-226.** (a) An application for a specific license to manufacture or initially transfer calibration or reference sources containing americium-241 or radium-226 for distribution to persons generally licensed under K.A.R. 28-35-178e shall not be approved unless the following requirements are met:

(1) The applicant shall satisfy the general requirements of part 3 of these regulations.

(2) The applicant shall submit sufficient information regarding each type of calibration or reference source pertinent to evaluation of the potential radiation exposure, including the following:

(A) Chemical and physical form and maximum quantity of americium-241 or radium-226 in the source;

(B) details of construction and design;

(C) details of the method of incorporation and binding of the americium-241 or radium-226 in the source;

(D) procedures for and results of prototype testing of sources that are designed to contain more than 0.005 microcurie of americium-241 or radium-226, to demonstrate that the americium-241 or radium-226 contained in each source will not be released or be removed from the source under normal conditions of use;

(E) details of quality control procedures to be followed in manufacture of the source;

(F) description of labeling to be affixed to the source or the storage container for the source; and

(G) any additional information, including experimental studies and tests, required by the department to facilitate a determination of the safety of the source.

(3) Each source shall contain no more than 5 μCi of americium-241 or radium-226.

(4) The method of incorporation and binding of more than 0.005 μCi of the americium-241 or radium-226 in the source shall prevent the release or removal of americium-241 or radium-226 from the source under normal conditions of use and handling of the source.

(5) The applicant shall conduct prototype tests, in the order listed, on each of five prototypes of the source containing more than 0.185 kilobecquerel (0.005 microcurie) of americium-241 or ra-

dium-226, and the five prototype sources shall have passed the prototype test, as follows:

(A) Initial measurement. The quantity of radioactive material deposited on the source shall be measured by direct counting of the source.

(B) Dry wipe test. The entire radioactive surface of the source shall be wiped with filter paper with the application of moderate finger pressure. Removal of radioactive material from the source shall be determined by measuring the radioactivity on the filter paper or by direct measurement of the radioactivity on the source following the dry wipe.

(C) Wet wipe test. The entire radioactive surface of the source shall be wiped with filter paper, moistened with water, with the application of moderate finger pressure. Removal of radioactive material from the source shall be determined by measuring the radioactivity on the filter paper after the paper has dried or by direct measurement of the radioactivity on the source following the wet wipe.

(D) Water soak test. The source shall be immersed in water at room temperature for 24 consecutive hours. The source shall then be removed from the water. Removal of radioactive material from the source shall be determined by direct measurement of the radioactivity on the source after the source has dried or by measuring the radioactivity in the residue obtained by evaporation of the water in which the source was immersed.

(E) Dry wipe test. On completion of the water soak test, the dry wipe test described in paragraph (a)(5)(B) shall be repeated.

(F) Observations. Removal of more than 0.005 microcurie of radioactivity in any test prescribed by paragraph (a)(5) shall be cause for rejection of the source design. Results of prototype tests submitted to the nuclear regulatory commission shall be given in terms of radioactivity in microcuries and percent of removal from the total amount of radioactive material deposited on the source.

(6) Each source or storage container for the source shall have a label affixed that contains sufficient information about safe use and storage of the source and includes the following or an equivalent statement:

"The receipt, possession, use and transfer of this source, Model _____, Serial No. _____, are subject to a general license and the regulations of the United States Nuclear Regulatory Commission or of a State with which the commission has entered into an agreement for the exercise of regulatory authority. Do not remove this label.

CAUTION—RADIOACTIVE MATERIAL—THIS SOURCE CONTAINS AMERICIUM-241 (or RADIUM-226). DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.

_____

(Name of manufacturer or initial transferor)."

(b) Each person licensed under this regulation shall perform a dry wipe test upon each source containing more than 3.7 kilobecquerels (0.1 microcurie) of americium-241 or radium-226 before transferring the source to a general licensee in accordance with K.A.R. 28-35-178e or equivalent regulations of an agreement state or the nuclear regulatory commission. This test shall be performed by wiping the entire radioactive surface of the source with a filter paper with the application of moderate finger pressure.

The radioactivity on the paper shall be measured by using radiation detection instrumentation capable of detecting 0.185 kilobecquerel (0.005 microcurie) of americium-241 or radium-226. If this test discloses more than 0.185 kilobecquerel (0.005 microcurie) of radioactive material, the source shall be deemed to be leaking or losing americium-241 or radium-226 and shall not be transferred to a general licensee in accordance with K.A.R. 28-35-178e or equivalent regulations of an agreement state or the nuclear regulatory commission. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended March 18, 2011.)

**28-35-181m. Specific licenses to manufacture, prepare, or distribute radiopharmaceuticals containing radioactive material for medical use.** An application for a specific license to manufacture, prepare, or distribute radiopharmaceuticals containing radioactive material and used by persons as specified in part 6 of these regulations shall not be approved unless the applicant meets the requirements of this regulation and all other applicable requirements of these regulations.

(a) Each applicant shall meet the requirements specified in K.A.R. 28-35-180a.

(b) Each applicant shall submit evidence of either of the following:

(1) The radiopharmaceutical containing radioactive material is subject to the federal food, drug and cosmetic act or the public health service act and will be manufactured, labeled, and packaged

in accordance with a new drug application (NDA) approved by the food and drug administration (FDA), a biologic product license issued by the FDA, or a "notice of claimed investigational exemption for a new drug" (IND) accepted by the FDA.

(2) The manufacture and distribution of the radiopharmaceutical containing radioactive material is not subject to the federal food, drug, and cosmetic act or the public health service act.

(c) Each applicant shall submit evidence of at least one of the following:

(1) The applicant is registered or licensed with the U.S. food and drug administration as a drug manufacturer.

(2) The applicant is registered or licensed with a state agency as a drug manufacturer.

(3) The applicant is licensed as a pharmacy by the state board of pharmacy.

(4) The applicant is operating as a nuclear pharmacy within a federal medical institution.

(5) The applicant is operating a positron emission tomography (PET) drug production facility.

(d) Each applicant shall submit the following information on the radionuclide:

(1) The chemical and physical form of the material;

(2) the packaging in which the radionuclide is shipped, including the maximum activity per package; and

(3) evidence that the shielding provided by the packaging of the radioactive material is appropriate for the safe handling and storage of radiopharmaceuticals by group licensees.

(e)(1) Each applicant shall submit a description of the following:

(A) A label that shall be affixed to each transport radiation shield, whether the shield is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution. The label shall include the following:

(i) The radiation symbol and the words "CAUTION — RADIOACTIVE MATERIAL" or "DANGER — RADIOACTIVE MATERIAL";

(ii) the name of the radioactive drug and the abbreviation; and

(iii) the quantity of radioactivity at a specified date and time. For radioactive drugs with a half-life greater than 100 days, the time may be omitted; and

(B) a label that shall be affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label shall include the radiation symbol and the words "CAUTION — RADIOACTIVE MATERIAL" or "DANGER — RADIOACTIVE MATERIAL" and an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

(2) The labels, leaflets, or brochures required by this regulation shall be made in addition to the labeling required by the FDA. The labels, leaflets, or brochures may be separate from the FDA labeling, or with the approval of the FDA, the labeling may be combined with the labeling required by the FDA.

(f) All of the following shall apply to each licensee described in paragraph (c)(3) or (c)(4), or both:

(1) The licensee may prepare radioactive drugs for medical use, if each radioactive drug is prepared by either an authorized nuclear pharmacist, as specified in paragraphs (2) and (4) of this subsection, or an individual under the supervision of an authorized nuclear pharmacist.

(2) The licensee may allow a pharmacist to work as an authorized nuclear pharmacist if at least one of the following conditions is met:

(A) The pharmacist qualifies as an authorized nuclear pharmacist.

(B) The pharmacist meets the requirements specified in 10 CFR 35.55 (b) and 35.59, and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist.

(C) The pharmacist is designated as an authorized nuclear pharmacist in accordance with paragraph (4) of this subsection.

(3) The actions authorized in paragraphs (1) and (2) of this subsection shall be permitted in spite of more restrictive language in license conditions.

(4) The licensee may designate a pharmacist as an authorized nuclear pharmacist if the individual is a nuclear pharmacist preparing radioactive drugs and identified as an "authorized user" on a nuclear pharmacy license issued under this part.

(5) Each licensee shall provide the following to the department no later than 30 days after the date that the licensee allows, pursuant to paragraphs (2)(A) and (2)(C) of this subsection, the individual to work as an authorized nuclear pharmacist:

(A) A copy of each individual's certification by

a specialty board whose certification process has been recognized as specified in 10 CFR 35.55(a), as adopted by reference in K.A.R. 28-35-264, the department or agreement state license, the permit issued by a licensee of broad scope, or nuclear regulatory commission master materials permittee; and

(B) a copy of the state pharmacy license or registration.

(g) Each licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs. Each licensee shall have procedures for using the instrumentation. Each licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta-, or photon-emitting radioactive drugs before transfer for commercial distribution. Each licensee shall meet the following requirements:

(1) Perform tests before initial use, periodically, and following repair on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument, and make adjustments if necessary; and

(2) check each instrument for constancy and proper operation at the beginning of each day of use.

(h) Nothing in these regulations shall exempt the licensee from the requirement to comply with applicable FDA requirements and other federal and state requirements governing radioactive drugs. (Authorized by and implementing K.S.A. 48-1607; effective, T- 86-37, Dec. 11, 1985; effective May 1, 1986; amended Dec. 30, 2005; amended July 27, 2007; amended March 18, 2011.)

**28-35-181o. Specific licenses to manufacture and distribute sources and devices for use as a calibration, transmission, or reference source or for certain medical uses.** (a) Each application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed as specified in K.A.R. 28-35-181d for use as a calibration, transmission, or reference source or for one or more of the uses listed in 10 CFR 35.400, 35.500, 35.600, and 35.1000, as adopted by reference in K.A.R. 28-35-264, shall include the following information regarding each type of source or device:

(1) The radioactive material contained, its chemical and physical form, and amount;

(2) details of design and construction of the source or device;

(3) procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and in accidents;

(4) for devices containing radioactive material, the radiation profile for a prototype device;

(5) details of quality control procedures to ensure that the production sources and devices meet the standards of the design and prototype tests;

(6) procedures and standards for calibrating sources and devices;

(7) legend and methods for labeling sources and devices as to their radioactive content;

(8) radiation safety instructions for handling and storing the source or device. These instructions shall be included on a durable label attached to the source or device. However, instructions that are too lengthy for the label may be summarized on the label and printed in detail on a brochure that is referenced on the label; and

(9) the label that is to be affixed to the source or device or to the permanent storage container for the source or device. The label shall contain information on the radionuclide, quantity, and date of assay, and a statement that the source or device is licensed by the department for distribution to persons licensed under K.A.R. 28-35-181d or under an equivalent license of the nuclear regulatory commission or an agreement state. Labeling for sources that do not require long-term storage may be on a leaflet or brochure that is to accompany the source.

(b) (1) If the applicant wants to have the source or device required to be tested for leakage of radioactive material at intervals longer than six months, the applicant shall include in the application sufficient information to demonstrate that the longer interval is justified by performance characteristics of the source or device, or similar sources or devices, and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source.

(2) In determining the acceptable interval between tests for leakage of radioactive material, information that includes the following shall be considered by the secretary:

(A) The nature of the primary containment;

(B) the method for protection of the primary containment;

(C) the method of sealing the containment;

(D) containment construction materials;

(E) the form of the contained radioactive material;

(F) the maximum temperature withstood during prototype tests;

(G) the maximum pressure withstood during prototype tests;

(H) the maximum quantity of contained radioactive material;

(I) the radiotoxicity of contained radioactive material; and

(J) the applicant's operating experience with identical sources or devices or with similarly designed and constructed sources or devices. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended July 27, 2007; amended March 18, 2011.)

**28-35-192b. Exemptions; exempt concentrations of radioactive materials.** (a) Except as provided in K.A.R. 28-35-184a(e), a person shall be exempt from these regulations to the extent that the person acquires, possesses, uses, transfers, or owns products or materials containing radioactive material in concentrations not exceeding those specified in K.A.R. 28-35-198a.

(b) A person shall be exempt from these regulations to the extent that the person acquires, possesses, uses, or transfers products containing naturally occurring radionuclides of elements with an atomic number less than 82, in isotopic concentrations not in excess of those that occur naturally.

(c) This regulation shall not be deemed to authorize the import of radioactive material or products containing radioactive material.

(d) A person who manufactures, processes, or produces a product or material shall be exempt from the requirements for a license as set forth in these regulations to the extent that the transfer of the radioactive material contained in the product or material is in concentrations not in excess of the amounts specified in K.A.R. 28-35-198a and is introduced into the product or material by a licensee holding a specific license issued by the department expressly authorizing such introduction. This exemption shall not apply to the transfer of radioactive material contained in any food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

(e) No person shall introduce radioactive material into a product or material knowing, or having reason to believe, that the product or material will be transferred to a person exempt from these regulations under subsection (a) or under an equivalent regulation of the nuclear regulatory commission or an agreement state, except in accordance with a specific license issued under K.A.R. 28-35-181e or the general license issued in K.A.R. 28-35-194a. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended March 18, 2011.)

**28-35-192c. Exceptions; other radioactive material.** Except for persons who apply tritium, promethium-147, or radium to, or persons who incorporate tritium, promethium-147, or radium into, the products listed in this regulation, any person shall be exempt from these regulations to the extent that the person acquires, possesses, uses, or transfers any of the following products:

(a) Timepieces or hands or dials containing radium, or timepieces, hands, or dials containing not more than the following specified quantities of other radioactive materials:

(1) 25 millicuries of tritium per timepiece;

(2) 5 millicuries of tritium per hand;

(3) 15 millicuries of tritium per dial. Bezels, when used, shall be considered as part of the dial;

(4) 100 microcuries of promethium-147 per watch or 200 microcuries of promethium-147 per any other timepiece;

(5) 20 microcuries of promethium-147 per watch hand or 40 microcuries of promethium-147 per hand on other timepieces;

(6) 60 microcuries of promethium-147 per watch dial or 120 microcuries of promethium-147 per dial on other timepieces. Bezels, when used, shall be considered as part of the dial. The levels of radiation from hands and dials containing promethium-147 shall not exceed the following, when measured through 50 milligrams per square centimeter of absorber:

(A) For wrist watches, 0.1 millirad per hour at 10 centimeters from any surface;

(B) for pocket watches, 0.1 millirad per hour at one centimeter from any surface; and

(C) for any other timepiece, 0.2 millirad per hour at 10 centimeters from any surface; and

(7) for intact timepieces manufactured before November 30, 2007, 0.037 megabecquerel (1 microcurie) of radium-226 per timepiece;

(b) balances of precision containing not more

than one millicurie of tritium per balance or not more than 0.5 millicurie of tritium per balance part manufactured before December 17, 2007;

(c) marine compasses containing not more than 750 millicuries of tritium gas and other marine navigational instruments containing not more than 250 millicuries of tritium gas manufactured before December 17, 2007;

(d) ionization chamber smoke detectors containing not more than one microcurie (μCi) of americium-241 per detector in the form of a foil and designed to protect life and property from fires;

(e) electron tubes. The levels of radiation from each electron tube containing radioactive material shall not exceed one millirad per hour at one centimeter from any surface when measured through seven milligrams per square centimeter of absorber. For purposes of this subsection, "electron tubes" shall include spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwave tubes, indicator tubes, pickup tubes, radiation detection tubes, and any other completely sealed tube that is designed to conduct or control electrical currents. An electron tube shall not contain more than one of the following specified quantities of radioactive material:

(1) 150 millicuries of tritium per microwave receiver protector tube or 10 millicuries of tritium per any other electron tube;

(2) 1 microcurie cobalt-60;

(3) 5 microcuries nickel-63;

(4) 30 microcuries krypton-85;

(5) 5 microcuries cesium-137; or

(6) 30 microcuries promethium-147; and

(f) ionizing radiation-measuring instruments containing, for purposes of internal calibration or standardization, sources of radioactive material. No source shall exceed the applicable quantity set forth in K.A.R. 28-35-197a. No single instrument shall contain more than 10 sources. For the purposes of this subsection, 0.05 μCi of Am-241 shall be considered an exempt quantity. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended March 18, 2011.)

**28-35-192d.** (Authorized by and implementing K.S.A. 1984 Supp. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; revoked March 18, 2011.)

**28-35-192e. Exemptions; gas and aerosol detectors containing radioactive material.** (a) Except for persons who manufacture, process, or produce gas and aerosol detectors containing radioactive material or who initially transfer these products for sale or distribution, each person who acquires, receives, owns, possesses, uses, or transfers radioactive material in gas and aerosol detectors designed to protect life or property from fires and airborne hazards shall be exempt from these regulations. Each detector shall have been manufactured, processed, produced, imported, or initially transferred in accordance with a specific license issued by the secretary pursuant to K.A.R. 28-35-181q or a license issued by the nuclear regulatory commission or by an agreement state pursuant to an equivalent regulation of the nuclear regulatory commission or the agreement state.

(b) Gas and aerosol detectors previously manufactured and distributed before November 30, 2007 to general licensees in accordance with a specific license issued by an agreement state shall be exempt under subsection (a) if the device is labeled in accordance with the specific license authorizing distribution of the general licensed device and if the detectors meet the requirements of K.A.R. 28-35-181r.

(c) Each person who desires to manufacture, process, or produce gas and aerosol detectors containing radioactive material, or to initially transfer these products for use pursuant to this regulation, shall apply for a license pursuant to K.A.R. 28-35-181q. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended March 18, 2011.)

**28-35-192g. Exemptions; exempt quantities.** (a) Except as provided in subsections (c) through (e), each person who acquires, possesses, uses, owns, receives, or transfers radioactive material in individual quantities that do not exceed the applicable quantity specified in K.A.R. 28-35-197a shall be exempt from these regulations.

(b) Each person who possesses radioactive material received or acquired before January 1, 1972 under the general license then provided in K.A.R. 28-35-178a shall be exempt from these regulations to the extent that the person possesses, uses, or transfers that radioactive material. This exemption shall not apply to radium-226.

(c) This regulation shall not authorize the production, packaging, repackaging, or transfer of radioactive material for purposes of commercial distribution, or the incorporation of radioactive

material into products intended for commercial distribution.

(d) No person shall, for purposes of commercial distribution, transfer radioactive material in the individual quantities specified in K.A.R. 28-35-197a knowing, or having reason to believe, that those quantities of radioactive material will be transferred to a person exempt under this regulation or an equivalent regulation of the nuclear regulatory commission or an agreement state, except in accordance with a specific license issued by the secretary under K.A.R. 28-35-181r, an equivalent regulation of the nuclear regulatory commission, or an equivalent regulation of an agreement state.

(e) No person shall, for purposes of producing an increased radiation level, combine quantities of radioactive material covered by this exemption so that the aggregate quantity exceeds the individual quantities specified in K.A.R. 28-35-197a. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended March 18, 2011.)

**28-35-194a. Reciprocal recognition of licenses.** (a) Subject to other provisions in this regulation, any person may apply for a general license to conduct activities within this state without obtaining a specific license from the secretary, if all of the following conditions are met:

(1) The person possesses a specific license issued by the nuclear regulatory commission or an agreement state, other than this state, that authorizes the proposed activities.

(2) The person does not conduct any activities authorized by any general license issued under this regulation for a period totalling more than 180 days in a calendar year.

(3) The specific license does not limit the activity authorized to a specified installation or location.

(4) The person notifies the department in writing at least five days before engaging in the activity. The notification shall indicate the location, period, and type of proposed possession and use within the state and shall be accompanied by a copy of the specific license. If, for a specific case, the five-day period would impose an undue hardship, the person may, upon application to the department, obtain permission by letter, facsimile, or electronic communication to proceed.

(5) The person complies with all applicable regulations of the secretary and with all the terms and conditions of the specific license, except any term or condition of the license that is inconsistent with these regulations.

(6) The person supplies any information requested by the department.

(7) The person does not transfer or dispose of radioactive material possessed or used under the general license provided in this regulation except by transfer to a person who meets either of the following conditions:

(A) Is specifically licensed by the department or the nuclear regulatory commission to receive the material; or

(B) is exempt from the requirements for a license for that material under K.A.R. 28-35-192a, 28-35-192b, 28-35-192c, 28-35-192d, 28-35-192e, 28-35-192f, or 28-35-192g.

(b) Any person who holds a specific license issued by the nuclear regulatory commission, or an agreement state that authorizes the person to manufacture, transfer, install, or service a device described in K.A.R. 28-35-178b within areas subject to the jurisdiction of the licensing body is issued a general license to manufacture, install, transfer, or service those devices in this state subject to the following requirements:

(1) The person shall satisfy the requirements of K.A.R. 28-35-184a(e)(1) and (2).

(2) The device shall be manufactured, labeled, installed, and serviced in accordance with the provisions of the specific license issued to the person by the nuclear regulatory commission or the agreement state.

(3) The person shall ensure that any labels required to be affixed to the device, under regulations of the authority that licensed the manufacture of the device, and that bear the statement "Removal of this label is prohibited" are affixed to the device.

(4) The person shall furnish to each general licensee to whom the person transfers the device, or on whose premises the person installs the device, a copy of the general license issued in K.A.R. 28-35-178b.

(c) Acceptance of any specific license recognized under this regulation or any product distributed pursuant to such a license may be withdrawn, limited, or qualified by the secretary, upon determining that the action is necessary in order to protect health or minimize danger to life or property. (Authorized by and implementing K.S.A. 48-1607; effective, T-86-37, Dec. 11, 1985; effective May 1, 1986; amended March 18, 2011.)

**28-35-212a. Occupational dose limits for adults.** (a) Each licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures to the following dose limits:

(1) The annual limit shall be the more limiting of either of the following:

(A) The total effective dose equivalent being equal to 0.05 Sv (5 rem); or

(B) the sum of the deep dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 0.50 Sv (50 rem).

(2) The annual limits to the lens of the eye, to the skin, and to the extremities shall be the following:

(A) An eye dose equivalent of 0.15 Sv (15 rem); and

(B) a shallow dose equivalent of 0.50 Sv (50 rem) to the skin or to any extremity.

(b) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual could receive during the current year and during the individual's lifetime.

(c) When the external exposure is determined by measurement with an external personal monitoring device, the deep dose equivalent shall be used in place of the effective dose equivalent, unless the effective dose equivalent is determined by a dosimetry method approved by the secretary. The assigned deep dose equivalent shall be for the portion of the body receiving the highest exposure. The assigned shallow dose equivalent shall be the dose averaged over the contiguous 10 square centimeters of skin receiving the highest exposure.

(1) The deep dose equivalent, eye dose equivalent, and shallow dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure or the results of individual monitoring are unavailable.

(2) If a protective apron is worn by medical fluoroscopists performing special and interventional fluoroscopic procedures and monitoring is conducted as specified in K.A.R. 28-35-217a, the use of weighting factors in determining the effective dose equivalent for external radiation may be approved by the secretary upon receipt of a written request. In no case shall the use of weighting factors be approved unless the request is accompanied by a list of the procedures to be used to ensure that exposures are maintained ALARA and the effective dose equivalent is determined as follows:

(A) If only one individual monitoring device is used and the device is located at the neck outside the protective apron, the reported deep dose equivalent shall be the effective dose equivalent for external radiation.

(B) If only one individual monitoring device is used, the device is located at the neck outside the protective apron, and the reported dose exceeds 25 percent of the limit specified in this regulation, then the reported deep dose equivalent value multiplied by 0.3 shall be the effective dose equivalent for external radiation.

(C) If individual monitoring devices are worn, both under the protective apron at the waist and outside the protective apron at the neck, the effective dose equivalent for external radiation shall be assigned the value of the sum of the deep dose equivalent reported for the individual monitoring device located at the waist under the protective apron multiplied by 1.5 and the deep dose equivalent reported for the individual monitoring device located at the neck outside the protective apron multiplied by 0.04.

(3) All individuals who are associated with the operation of an X-ray system shall be subject to the occupational exposure limits and the requirements for the determination of the doses that are specified in this regulation. In addition, each individual shall meet the following requirements:

(A) When protective clothing or devices are worn on portions of the body and one or more monitoring devices are required, at least one monitoring device shall be utilized as follows:

(i) When an apron is worn, the monitoring device shall be worn at the collar outside of the apron;

(ii) the dose to the device, if one is used, shall be recorded as the whole-body dose based on the maximum dose attributed to any one critical organ, including the gonads, the blood-forming organs, the head and trunk, and the lens of the eye. If more than one device is used and a record is made of the data, each dose shall be identified with the area where the device was worn on the body;

(4) Exposure of a personnel-monitoring device

to deceptively indicate a dose delivered to an individual shall be prohibited.

(5) If the individual is exposed during procedures not specifically approved, weighting factors shall not be applied.

(d) Derived air concentration (DAC) and annual limit on intake (ALI) values, in appendix B, table I, published in "appendices to part 4: standards for protection against radiation," which is adopted in K.A.R. 28-35-135a, shall be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits.

(e) Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to 10 milligrams in a week in consideration of chemical toxicity, in accordance with footnote 3 of appendix B published in "appendices to part 4: standards for protection against radiation," which is adopted in K.A.R. 28-35-135a.

(f) Each licensee or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person. (Authorized by and implementing K.S.A. 48-1607; effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; amended Sept. 20, 1993; amended Oct. 17, 1994; amended Dec. 30, 2005; amended March 18, 2011.)

**28-35-216a. Testing for leakage or contamination of sealed sources.** (a) Each licensee in possession of any sealed source shall ensure that all of the following requirements are met:

(1) Each sealed source, except as specified in subsection (b), shall be tested for leakage or contamination, and the test results shall be received before the sealed source is put into use, unless the licensee has a certificate from the transferor indicating that the sealed source was tested within six months before transfer to the licensee.

(2) Each sealed source that is not designed to emit alpha particles shall be tested for leakage or contamination at intervals not to exceed six months or at alternative intervals approved by the secretary, an agreement state, a licensing state, or the nuclear regulatory commission.

(3) Each sealed source designed to emit alpha particles shall be tested for leakage or contamination at intervals not to exceed three months or at alternative intervals approved by the secretary, an agreement state, a licensing state, or the nuclear regulatory commission.

(4) For each sealed source required to be tested for leakage or contamination, whenever there is reason to suspect that the sealed source might have been damaged or might be leaking, the licensee shall ensure that the sealed source is tested for leakage or contamination before further use.

(5) Tests for leakage for all sealed sources shall be capable of detecting the presence at 185 Bq (0.005 μCi) of radioactive material on a test sample. Test samples shall be taken from the sealed source or from the surfaces of the container in which the sealed source is stored or mounted and on which one might expect contamination to accumulate. For a sealed source contained in a device, test samples shall be obtained when the source is in the "off" position.

(b) The following sealed sources shall be exempt from testing for leakage and contamination:

(1) Sealed sources containing only radioactive material with a half-life of fewer than 30 days;

(2) sealed sources containing only radioactive material as a gas;

(3) sealed sources containing 3.7 Mbq (100 μCi) or less of beta-emitting or photon-emitting material or 370 kBq (10 μCi) or less of alpha-emitting material;

(4) sealed sources containing only hydrogen-3;

(5) seeds of iridium-192 encased in nylon ribbon; and

(6) sealed sources, except sources used in radiation therapy, that are stored, are not being used, and are identified as being in storage. The sources exempted from this test shall be tested for leakage before any use or transfer to another person, unless the source has been leak-tested within six months before the date of the use or transfer. The sources in storage shall be physically inventoried every six months and listed in the radioactive materials inventory. Each source in storage shall be tested for leakage at least every 10 years.

(c) Each test for leakage or contamination from sealed sources shall be performed by a person specifically authorized by the secretary, an agreement state, a licensing state, or the nuclear regulatory commission to perform these services.

(d) All test results shall be recorded in units of becquerel or microcurie and maintained for inspection by the department.

(e) If any test reveals the presence of 0.005 microcurie or more of removable contamination, the licensee shall immediately withdraw the sealed source from use and shall cause the source to be

decontaminated and repaired or to be disposed of in accordance with these regulations. The licensee shall file a report within five days of the test with the radiation control program, Kansas department of health and environment, describing the equipment involved, the test results, and the corrective action taken. (Authorized by and implementing K.S.A. 48-1607; effective, T-85-43, Dec. 19, 1984; effective May 1, 1985; amended Dec. 30, 2005; amended July 27, 2007; amended March 18, 2011.)

**28-35-225b. Disposal of certain radioactive material.** The provisions of 10 CFR 20.2008, as in effect on October 1, 2007, are hereby adopted by reference. (Authorized by and implementing K.S.A. 48-1607; effective March 18, 2011.)

**28-35-231c. Transfer for disposal; manifests.** The provisions of 10 CFR 20.2006 as in effect on October 1, 2007, including appendix G to 10 CFR part 20 as in effect on November 16, 2005, are hereby adopted by reference. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005; amended March 18, 2011.)

**28-35-242. General requirements.** (a) Waiver of requirements. Compliance with the specific requirements of these regulations relative to an existing machine or installation may be waived by the secretary if the registrant provides an alternative to the requirement that provides radiation protection equal to that prescribed in part 4 of these regulations.

(b) Responsibility to meet requirements. A person shall not make, sell, lease, transfer, lend, or install X-ray or fluoroscopic equipment, or the supplies used in connection with this equipment, unless both of the following conditions are met:

(1) Those supplies and equipment, when properly placed in operation and properly used, will meet the requirements of parts 1, 4, and 5 and the applicable regulations under parts 7, 8, and 10 of these regulations.

(2) The person delivers, if applicable, cones or collimators, filters, appropriate timers, and fluoroscopic shutters.

(c) Limitations on human use. An individual shall not be exposed to the useful beam, unless the exposure is for healing arts purposes and each exposure has been authorized by one of the following:

(1) A licensed practitioner of the healing arts;

(2) a physician assistant licensed by the state board of healing arts, when working under the supervision and direction of a person licensed to practice medicine or surgery;

(3) an advanced registered nurse practitioner who holds a certificate of qualification from the state board of nursing, when working under the supervision and direction of a person licensed to practice medicine or surgery; or

(4) an individual licensed to practice dentistry or podiatry within the authority granted to the individual by Kansas licensing laws applying to dentists and podiatrists.

(d) Prohibited uses. Deliberate exposure for the following purposes shall be specifically prohibited:

(1) Exposure of an individual for patient positioning, training, demonstration, or other purposes, unless a healing arts purpose exists and a proper prescription has been provided; and

(2) exposure of an individual for the purpose of healing arts screening without the prior written approval of the department, except mammography screening, if the facility is certified to perform mammography by the food and drug administration. Each person requesting approval for healing arts screening shall submit the information outlined in K.A.R. 28-35-255. Each person requesting approval for a healing arts screening shall notify the department within 30 days if any of the information submitted becomes invalid or outdated. (Authorized by and implementing K.S.A. 48-1607; effective Jan. 1, 1970; amended Jan. 1, 1972; amended May 1, 1976; amended Sept. 20, 1993; amended Dec. 30, 2005; amended March 18, 2011.)

**28-35-264. General requirements.** The provisions of 10 CFR part 35, as in effect on January 15, 2010, are hereby adopted by reference, with the changes specified in this regulation.

(a) For the purposes of part 6, "byproduct material" shall mean all radioactive material regulated by the department.

(b) All reports required by this regulation shall be submitted to the department.

(c) The following sections shall be deleted:

(1) 10 CFR 35.1, "purpose and scope";

(2) 10 CFR 35.2, "definitions," except that the definitions of the following terms shall be retained:

(A) "Authorized medical physicist";

(B) "authorized nuclear pharmacist";

(C) "authorized user";

(D) "medical event";

(E) "prescribed dose"; and

(F) "radiation safety officer";

(3) 10 CFR 35.8, "information collection requirements: OMB approval";

(4) 10 CFR 35.18, "license issuance";

(5) 10 CFR 35.19, "specific exemptions";

(6) 10 CFR 35.26 (a)(1), "radiation protection program changes";

(7) 10 CFR 35.4001, "violations"; and

(8) 10 CFR 35.4002, "criminal penalties."

(d) Wherever the following CFR references occur within 10 CFR part 35, these references shall be replaced with the specified references to regulations and parts in this article:

(1) "10 CFR 19.12" shall be replaced with "K.A.R. 28-35-333, 'instructions to workers.' "

(2) "10 CFR part 20" shall be replaced with "part 4, 'standards for protection against radiation.' "

(3) "10 CFR 20.1101" shall be replaced with "K.A.R. 28-35-211d, 'radiation protection programs.' "

(4) "10 CFR 20.1301(a)(1) and 20.1301(c)" shall be replaced with "K.A.R. 28-35-214a."

(5) "10 CFR 20.1501" shall be replaced with "K.A.R. 28-35-217b."

(6) "10 CFR part 30" shall be replaced with "part 3, 'licensing of sources of radiation.' "

(7) "10 CFR 32.72" shall be replaced with "K.A.R. 28-35-181m, 'specific licenses to manufacture and distribute radiopharmaceuticals containing radioactive material for medical use under group licenses,' and K.A.R. 28-35-181n, 'specific licenses to manufacture and distribute generators or reagent kits for preparation of radiopharmaceuticals containing radioactive material.' "

(8) "10 CFR 32.74" shall be replaced with "K.A.R. 28-35-181o, 'specific licenses to manufacture and distribute sources and devices for use as a calibration or reference source, or for certain medical uses.' "

(9) "10 CFR 33.13" shall be replaced with "K.A.R. 28-35-182b, 'qualifications for a type A specific license of broad scope.' "

(e) Wherever the following terms occur within 10 CFR part 35, these terms shall be replaced with "department":

(1) "Commission";

(2) "NRC operation center"; and

(3) "NRC regional office."

(f) The following changes shall be made to the sections specified:

(1) 10 CFR 35.6(b)(1) and (c)(1) shall be replaced with the following text:

"Obtain review and approval of the research as specified in 45 CFR 46.111, 'criteria for IRB approval of research'; and".

(2) 10 CFR 35.6(b)(2) and (c)(2) shall be replaced with the following text:

"Obtain informed consent from the human research subject as specified in 45 CFR 46.116, 'general requirements for informed consent.' "

(3) 10 CFR 35.10, subsection (a) shall be deleted.

(4) In 10 CFR 35.10(d), the date "October 24, 2002" shall be replaced with "the effective date of these regulations," and in 10 CFR 35.10(b) and (c), the date "October 25, 2005" shall be replaced with "two years from the effective date of these regulations."

(5) 10 CFR 35.12(b)(1) and (c)(1)(i) shall be replaced with the following text: "submitting a form specified by the department that includes the facility diagram, equipment, and training and experience qualifications of the radiation safety officer, authorized users, authorized physicists, and authorized pharmacists."

(6) In 10 CFR 35.57(a)(1) and (b)(1), the date "October 24, 2002" shall be replaced with "the effective date of these regulations."

(7) In 10 CFR 35.57(a)(2) and (b)(2), the date "April 29, 2005" shall be replaced with "the effective date of these regulations."

(8) In 10 CFR 35.432(a), the date "October 24, 2002" shall be replaced with "the effective date of these regulations."

(9) In 10 CFR 35.3045, the footnote shall be deleted, and in subsection (a) the words "or any radiation-producing device" shall be added before the words "results in."

(10) 10 CFR 35.3047(d) shall be replaced with the following text: "The licensee shall submit a written report to the department within 15 days after discovery of a dose to the embryo or fetus, or nursing child that requires a report in paragraphs (a) or (b) in this section."

(11) In 10 CFR 35.3067, the phrase "with the department" shall be inserted after the word "report" in the first sentence, and the second sentence shall be deleted. (Authorized by and implementing K.S.A. 48-1607; effective Dec. 30, 2005; amended March 18, 2011.)

**28-35-334. Reports to individuals.** Radiation exposure data for an individual and the

results of any measurements, analyses, and calculations of radioactive material deposited or retained in the body of an individual shall be reported to the individual as specified in this regulation.

(a) The information reported shall include data and results obtained pursuant to the requirements of these regulations or any order of the secretary or license condition, as shown in records maintained by the licensee or registrant pursuant to K.A.R. 28-35-227h. Each report shall meet the following requirements:

(1) Be in writing;

(2) include appropriate identifying data, including the name of the licensee or registrant, the name of the individual, and the individual's identification number, preferably social security number;

(3) include the individual's exposure information; and

(4) contain the following statement:

"This report is furnished to you under the provisions of Kansas Administrative Regulation 28-35-334. You should preserve this report for further reference."

(b) Each licensee or registrant shall make dose information available to individual workers shown in records maintained by the licensee or registrant pursuant to K.A.R. 28-35-227h. Each licensee or registrant shall provide an annual report to each individual worker monitored pursuant to K.A.R. 28-35-217a of the dose received in that monitoring year if either of the following situations occurs:

(1) The individual's dose exceeds 1 mSv (100 mrem) TEDE or 1 mSv (100 mrem) to any individual organ or tissue.

(2) The individual requests an annual dose report.

(c) Each licensee or registrant shall furnish a written report of a worker's exposure to sources of radiation or radioactive material at the request of the worker if the worker was formerly engaged in activities controlled by the licensee or registrant. The report shall be furnished within 30 days from the date of the request or within 30 days after the dose of the individual has been determined by the licensee or registrant, whichever is later. The report shall cover, within the period of time specified in the request, the dose record for each year the worker was required to be monitored pursuant to K.A.R. 28-35-217a. The report shall also include the period of time in which the worker's activities involved exposure to sources of radiation and shall include the dates and locations of work under the license or registration in which the worker participated during this period.

(d) When a licensee or registrant is required pursuant to K.A.R. 28-35-229a(a)(1) and (b)(1) to report to the department any exposure of an individual to sources of radiation, the licensee or the registrant shall also provide to the individual a written report of the individual's exposure data included in the report. This report shall be transmitted to the individual at a time not later than the transmittal of the report to the department.

(e) At the request of a worker who is terminating employment with the licensee or registrant that involves exposure to radiation or radioactive material or at the request of a worker who, while employed by another person, is terminating an assignment to work involving radiation dose in the licensee's facility, each licensee or registrant shall provide to the worker, or the worker's designee, a written report regarding the radiation dose received by that worker from operations of the licensee or registrant during the current year. The report shall be provided at the worker's termination. The licensee or registrant may provide a written estimate of that dose if the finally determined personnel monitoring results are not available at that time. Estimated doses shall be clearly indicated as such. (Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1607 and 48-1609; effective May 1, 1976; amended, T-85-43, Dec. 19, 1984; amended May 1, 1985; amended Oct. 17, 1994; amended March 18, 2011.)

**28-35-346. Leak testing of sealed sources.** (a) Requirements. Each licensee using any sealed source of radioactive material shall have the source tested for leakage as specified in subsection (c). A record of leak test results shall be kept in units of microcuries and maintained for inspection by the department. The licensee shall keep the records of the results for three years after the leak test is performed.

(b) Method of testing. Each test for leakage shall be performed only by a person specifically authorized to perform such a test by the department, the nuclear regulatory commission, an agreement state, or a licensing state. The test sample shall be taken from the surface of the source, the source holder, or the surface of the device in which the source is stored or mounted and on which one could expect contamination to accumulate. The test sample shall be analyzed for ra-

dioactive contamination. The analysis shall be capable of detecting the presence of 0.005 microcurie (185 Bq) of radioactive material on the test sample and shall be performed by a person specifically authorized to perform such a test by the department, the nuclear regulatory commission, an agreement state, or a licensing state.

(c) Interval of testing. Each sealed source of radioactive material, except an energy compensation source (ECS), shall be tested at intervals not to exceed six months. In the absence of a certificate from a transferor indicating that a test has been made within the six months before the transfer, the sealed source shall not be put into use until tested. If, for any reason, it is suspected that a sealed source could be leaking, the sealed source shall be removed from service immediately and tested for leakage as soon as practical. Each ECS that is not exempt from testing in accordance with subsection (e) shall be tested at intervals not to exceed three years. In the absence of a certificate from a transferor that a test has been made within the three years before the transfer, the ECS shall not be used until tested.

(d) Leaking or contaminated sources. If the test reveals the presence of 0.005 microcurie (185 Bq) or more of leakage or contamination, the licensee shall immediately withdraw the source from use and shall cause it to be decontaminated, repaired, or disposed of in accordance with these regulations. Each licensee shall check the equipment associated with the leaking source for radioactive contamination and, if contaminated, shall have the equipment decontaminated or disposed of by a nuclear regulatory commission licensee or an agreement state licensee that is authorized to perform these functions. A report describing the equipment involved, the test result, and the corrective action taken shall be filed with the department within five days after receiving the test results.

(e) Exemptions. The following sources shall be exempt from the periodic leak test requirements of this regulation:

(1) Hydrogen-3 (tritium) sources;

(2) sources of radioactive material with a half-life of 30 days or less;

(3) sealed sources of radioactive material in gaseous form;

(4) sources of radioactive material emitting beta, beta-gamma, or gamma radiation, with an activity of not more than 100 microcuries (3.7 Mbq); and

(5) sources of alpha-emitting radioactive material with an activity of not more than 10 microcuries (0.370 MBq). (Authorized by and implementing K.S.A 48-1607; effective Sept. 20, 1993; amended Dec. 30, 2005; amended March 18, 2011.)

**28-35-411. Table of quantities of radioactive material; need for contingency plan.**

Quantities of Radioactive Materials Requiring Consideration of the Need for a Contingency Plan for Responding to a Release

| Radioactive Material[1] | **Release** Fraction | **Quantity** (GBq) | **Quantity** (Ci) |
|---|---|---|---|
| Actinium-228 | 0.001 | 148,000 | 4,000 |
| Americium-241 | 0.001 | 74 | 2 |
| Americium-242 | 0.001 | 74 | 2 |
| Americium-243 | 0.001 | 74 | 2 |
| Antimony-124 | 0.01 | 148,000 | 4,000 |
| Antimony-126 | 0.01 | 222,000 | 6,000 |
| Barium-133 | 0.01 | 370,000 | 10,000 |
| Barium-140 | 0.01 | 1,110,000 | 30,000 |
| Bismuth-207 | 0.01 | 185,000 | 5,000 |
| Bismuth-210 | 0.01 | 22,200 | 600 |
| Cadmium-109 | 0.01 | 37,000 | 1,000 |
| Cadmium-113 | 0.01 | 2,960 | 80 |
| Calcium-45 | 0.01 | 740,000 | 20,000 |
| Californium-252 | 0.001 | 333 | 9 (20 mg) |
| Carbon-14 (Non-CO) | 0.01 | 1,850,000 | 50,000 |
| Cerium-141 | 0.01 | 370,000 | 10,000 |
| Cerium-144 | 0.01 | 11,100 | 300 |
| Cesium-134 | 0.01 | 74,000 | 2,000 |
| Cesium-137 | 0.01 | 111,000 | 3,000 |
| Chlorine-36 | 0.5 | 3,700 | 100 |
| Chromium-51 | 0.01 | 11,100,000 | 300,000 |
| Cobalt-60 | 0.001 | 185,000 | 5,000 |
| Copper-64 | 0.01 | 7,400,000 | 200,000 |
| Curium-242 | 0.001 | 2,220 | 60 |
| Curium-243 | 0.001 | 110 | 3 |
| Curium-244 | 0.001 | 148 | 4 |
| Curium-245 | 0.001 | 74 | 2 |
| Europium-152 | 0.01 | 18,500 | 500 |
| Europium-154 | 0.01 | 14,800 | 400 |
| Europium-155 | 0.01 | 111,000 | 3,000 |
| Gadolinium-153 | 0.01 | 185,000 | 5,000 |
| Gold-198 | 0.01 | 1,110,000 | 30,000 |
| Hafnium-172 | 0.01 | 14,800 | 400 |
| Hafnium-181 | 0.01 | 259,000 | 7,000 |
| Holmium-166m | 0.01 | 3,700 | 100 |
| Hydrogen-3 | 0.5 | 740,000 | 20,000 |
| Indium-114m | 0.01 | 37,000 | 1,000 |
| Iodine-124 | 0.5 | 370 | 10 |
| Iodine-125 | 0.5 | 370 | 10 |
| Iodine-131 | 0.5 | 370 | 10 |

| | Release | Quantity | Quantity |
|---|---|---|---|
| Indium-114m | 0.01 | 37,000 | 1,000 |
| Iridium-192 | 0.001 | 1,480,000 | 40,000 |
| Iron-55 | 0.01 | 1,480,000 | 40,000 |
| Iron-59 | 0.01 | 259,000 | 7,000 |
| Krypton-85 | 1.0 | 222,000,000 | 6,000,000 |
| Lead-210 | 0.01 | 296 | 8 |
| Manganese-56 | 0.01 | 2,220,000 | 60,000 |
| Mercury-203 | 0.01 | 370,000 | 10,000 |
| Molybdenum-99 | 0.01 | 1,110,000 | 30,000 |
| Neptunium-237 | 0.001 | 74 | 2 |
| Nickel-63 | 0.01 | 740,000 | 20,000 |
| Niobium-94 | 0.01 | 11,100 | 300 |
| Phosphorus-32 | 0.5 | 3,700 | 100 |
| Phosphorus-33 | 0.5 | 37,000 | 1,000 |
| Polonium-210 | 0.01 | 370 | 10 |
| Potassium-42 | 0.01 | 333,000 | 9,000 |
| Promethium-145 | 0.01 | 148,000 | 4,000 |
| Promethium-147 | 0.01 | 148,000 | 4,000 |
| Radium-226 | 0.001 | 3,700 | 100 |
| Ruthenium-106 | 0.01 | 7,400 | 200 |
| Samarium-151 | 0.01 | 148,000 | 4,000 |
| Scandium-46 | 0.01 | 111,000 | 3,000 |
| Selenium-75 | 0.01 | 370,000 | 10,000 |
| Silver-110m | 0.01 | 37,000 | 1,000 |
| Sodium-22 | 0.01 | 333,000 | 9,000 |
| Sodium-24 | 0.01 | 370,000 | 10,000 |
| Strontium-89 | 0.01 | 111,000 | 3,000 |
| Strontium-90 | 0.01 | 3,330 | 90 |
| Sulfur-35 | 0.5 | 3,330 | 900 |
| Technetium-99 | 0.01 | 370,000 | 10,000 |
| Technetium-99m | 0.01 | 14,800,000 | 400,000 |
| Tellurium-127m | 0.01 | 185,000 | 5,000 |
| Tellurium-129m | 0.01 | 185,000 | 5,000 |
| Terbium-160 | 0.01 | 148,000 | 4,000 |
| Thulium-170 | 0.01 | 148,000 | 4,000 |
| Tin-113 | 0.01 | 370,000 | 10,000 |
| Tin-123 | 0.01 | 111,000 | 3,000 |
| Tin-126 | 0.01 | 37,000 | 1,000 |
| Titanium-44 | 0.01 | 3,700 | 100 |
| Vanadium-48 | 0.01 | 259,000 | 7,000 |
| Xenon-133 | 1.0 | 33,300,000 | 900,000 |
| Yttrium-91 | 0.01 | 74,000 | 2,000 |
| Zinc-65 | 0.01 | 185,000 | 5,000 |
| Zirconium-93 | 0.01 | 14,800 | 400 |
| Zirconium-95 | 0.01 | 185,000 | 5,000 |
| Any other beta-gamma emitter | 0.01 | 370,000 | 10,000 |
| Mixed fission products | 0.01 | 37,000 | 1,000 |
| Contaminated equipment: | | | |
| beta-gamma emitters | 0.001 | 370,000 | 10,000 |
| Irradiated material, in any form other than solid noncombustible | 0.01 | 370,000 | 10,000 |
| Irradiated material that is solid and noncombustible | 0.001 | 370,000 | 10,000 |
| Mixed radioactive waste: | | | |
| beta-gamma emitters | 0.01 | 37,000 | 1,000 |
| Packaged mixed waste[2]: | | | |
| beta-gamma emitters | 0.001 | 370,000 | 10,000 |
| Any other alpha emitter | 0.001 | 74 | 2 |
| Contaminated equipment: | | | |
| alpha emitters | 0.0001 | 740 | 20 |
| Packaged waste[2]: | | | |
| alpha emitters | 0.0001 | 740 | 20 |

[1] For combinations of radioactive materials, the licensee shall be required to consider whether a contingency plan is needed if the sum of the ratios of the quantity of each radioactive material authorized to the quantity listed in this table for that material exceeds one.

[2] Waste packaged in type B containers shall not require a contingency plan.

(Authorized by K.S.A. 48-1607; implementing K.S.A. 48-1602; effective Dec. 30, 2005; amended March 18, 2011.)

## Article 36.—FOOD SERVICE ESTABLISHMENTS, FOOD VENDING MACHINE COMPANIES AND LODGING ESTABLISHMENTS

**28-36-30.** (Authorized by and implementing K.S.A. 2002 Supp. 36-503; effective, E-79-16, July 1, 1978; effective May 1, 1979; amended, E-82-21, Nov. 16, 1981; amended May 1, 1982; amended Dec. 30, 1991; amended Sept. 27, 1993; amended Nov. 20, 1998; amended, T-28-7-2-01, July 2, 2001; amended Nov. 9, 2001; amended Oct. 24, 2003; revoked June 4, 2010.)

**28-36-31.** (Authorized by K.S.A. 1978 Supp. 36-502; effective, E-79-16, July 1, 1978; effective May 1, 1979; revoked June 4, 2010.)

**28-36-70.** (Authorized by K.S.A. 36-506; implementing K.S.A. 36-501 and 36-506; effective, T-28-10-8-07, Oct. 8, 2007; effective Feb. 5, 2008; revoked June 4, 2010.)

**28-36-71.** (Authorized by and implementing K.S.A. 36-502 and 36-506; effective, T-28-10-8-07, Oct. 8, 2007; effective Feb. 5, 2008; revoked June 4, 2010.)

**28-36-72 through 28-36-89.** (Authorized by and implementing K.S.A. 36-506; effec-

tive, T-28-10-8-07, Oct. 8, 2007; effective Feb. 5, 2008; revoked June 4, 2010.)

**28-36-101 through 28-36-107.** (Authorized by and implementing K.S.A. 36-507; effective Aug. 13, 1999; amended Nov. 30, 2007; revoked June 4, 2010.)

**28-36-108.** (Authorized by K.S.A. 36-507; implementing K.S.A. 2006 Supp. 36-503 and K.S.A. 36-507; effective Aug. 13, 1999; amended Nov. 30, 2007, revoked June 4, 2010.)

**28-36-109.** (Authorized by and implementing K.S.A. 36-507; effective Nov. 30, 2007; revoked June 4, 2010.)

## Article 38.—LICENSURE OF ADULT CARE HOME ADMINISTRATORS

**28-38-18. Licensing examinations.** (a) Each candidate for 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. Each candidate shall take the national test within 12 months of completing an administrator-in-training practicum unless for good cause the board grants an extension.

(b) Each candidate for licensure shall pay the required examination fee for the national examination directly to the testing agency. An examination fee shall be required each time a candidate takes the national examination.

(c) The minimum passing scaled score for the national examination shall be 113. The minimum passing raw score for the state law examination shall be 75 percent.

(d) Each candidate for licensure who has been disqualified for failing the national examination shall be given written notification by the board of the disqualification and the reason or reasons for failing, including a breakdown of the subject areas passed and failed.

(e) A candidate who has failed three national examinations shall not submit a new application for examination until the candidate has received board approval for a course of additional education or training, or both, signed by the candidate, the preceptor, and the candidate'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 an additional 40 hours of administrator-in-training instruction in each of the "domains of practice," as defined in K.A.R. 28-38-29, for which the candidate received a raw score below 75 percent on the national examination.

(f) Each candidate who completes the required 40 hours of additional administrator-in-training education or training, or both, in each of the domains of practice for which the candidate received a raw score below 75 percent on the national examination shall be eligible to submit a new application for the national examination. If the candidate fails the fourth attempt, the candidate shall remain eligible to submit an application for a fifth attempt to pass the national examination.

(g) A candidate who has failed five national examinations shall not submit a new application for examination until the candidate has completed a second 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. 28-38-19(a)(2).

(h) Each candidate who has completed a second 480-hour administrator-in-training practicum shall be given three additional attempts to pass the national examination. A candidate who has failed three national examinations after completing a second 480-hour administrator-in-training practicum shall not be allowed to submit an additional application for examination.

(i) Each candidate shall be given a period of 36 months from the date the candidate completed an initial administrator-in-training practicum or a second practicum under subsection (g) to take and pass the national test.

(j) Any candidate who fails the state examination may retake the state law examination until the candidate passes this examination.

(k) The national association of long term care administrator boards (NAB) examination shall be the approved national examination for licensure. (Authorized by K.S.A. 2010 Supp. 65-3503; implementing K.S.A. 2010 Supp. 65-3503 and 65-3504; effective May 1, 1981; amended July 1, 1981; amended, E-82-12, June 17, 1981; amended May 1, 1982; amended Sept. 24, 1990; amended May 10, 1993; amended July 14, 2000; amended Jan. 17, 2003; amended Oct. 3, 2003; amended Dec. 5, 2008; amended Oct. 14, 2011.)

## Article 39.—LICENSURE OF ADULT CARE HOMES

**28-39-145a.** (Authorized by K.S.A. 39-930, 39-932, and 39-933; implementing K.S.A. 39-

927, 39-930, 39-932, and 39-933; effective Oct. 8, 1999; revoked May 22, 2009.)

**28-39-146.** (Authorized by and implementing K.S.A. 39-954; effective Nov. 1, 1993; amended Feb. 21, 1997; revoked May 22, 2009.)

**28-39-147 and 28-39-148.** (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997; revoked May 22, 2009.)

**28-39-162.** (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997; revoked Jan. 7, 2011.)

**28-39-162a.** (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997; amended Oct. 8, 1999; revoked Jan. 7, 2011.)

**28-39-162b.** (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997; revoked Jan. 7, 2011.)

**28-39-162c.** (Authorized by and implementing K.S.A. 39-932; effective Nov. 1, 1993; amended Feb. 21, 1997; amended Oct. 8, 1999; revoked Jan. 7, 2011.)

**28-39-164. Definitions.** (a) "Adult care home" means any facility that meets the definition specified in K.A.R. 28-39-144.

(b) "Clinical instruction" means training in which the trainee demonstrates knowledge and skills while performing tasks on an individual under the direct supervision of the course instructor. Clinical instruction may be performed in any of the following settings:

(1) An adult care home;

(2) a long-term care unit of a hospital; or

(3) a simulated laboratory.

(c) "Department" means Kansas department of health and environment.

(d) "Direct care" means assistance provided in activities of daily living. These activities shall include grooming, eating, toileting, transferring, and ambulation.

(e) "Direct supervision" means that the supervisor is on the facility premises and is readily accessible for one-on-one consultation, instruction, and assistance, as needed.

(f) "Eligible for employment," when describing a certified nurse aide, means that the certified nurse aide meets the following criteria:

(1) Has been employed to perform nursing or nursing-related services for at least eight hours in the preceding 24 months;

(2) has no record of abuse, neglect, and exploitation; and

(3) is not prohibited from employment based upon criminal convictions pursuant to K.S.A. 39-970, and amendments thereto.

(g) "Instructor" means an individual who has been approved by the secretary to teach nurse aide, home health aide, or medication aide training courses.

(h) "Licensed nursing experience" means experience as a registered nurse or licensed practical nurse.

(i) "Nurse aide trainee I" means an individual in the process of completing part I of a 90-hour nurse aide course as specified in K.A.R. 28-39-165.

(j) "Nurse aide trainee II" means an individual who has successfully completed part I of a 90-hour nurse aide course specified in K.A.R. 28-39-165 or whose training has been endorsed as specified in K.A.R. 28-39-167.

(k) "Secretary" means secretary of the Kansas department of health and environment.

(l) "Simulated laboratory" means an enclosed area that is in a school, institution, adult care home, or other facility and that is similar to an adult care home residential room. In a simulated laboratory, trainees practice and demonstrate basic nurse aide skills while an instructor observes and evaluates the trainees. (Authorized by K.S.A. 2008 Supp. 39-925(d)(2); implementing K.S.A. 2008 Supp. 39-936; effective Feb. 28, 1994; amended Dec. 29, 2003; amended June 12, 2009.)

**28-39-165. Nurse aide training program.** (a) Requirements. Unlicensed employees who provide direct individual care to residents shall be required to perform the following:

(1) Successfully complete at least a 90-hour nurse aide course that has been approved by the secretary; and

(2) pass a state test as specified in K.A.R. 28-39-168.

(b) Certification. Each person shall be issued a nurse aide certificate by the secretary and shall be listed on a public registry upon completion of the requirements specified in subsection (a).

(c) Employment as a trainee.

(1) Each nurse aide trainee I in an approved 90-hour course shall be required to successfully complete part I of the course to demonstrate in-

itial competency before being employed or used as a nurse aide trainee II. A nurse aide trainee II may provide direct care to residents only under the direct supervision of a registered nurse or licensed practical nurse.

(2) Each nurse aide trainee II in an approved 90-hour course shall be issued a nurse aide certificate by the secretary, upon completion of the requirements specified in subsection (a), within four months from the beginning date of the initial course in order to continue employment providing direct care. Nurse aide trainee II status for employment shall be for one four-month period only.

(d) 90-hour nurse aide course.

(1) Each nurse aide course shall be prepared and administered in accordance with the guidelines established by the department in the "Kansas certified nurse aide curriculum guidelines (90 hours)," including the appendices, dated May 2008, and the "Kansas 90-hour certified nurse aide sponsor and instructor manual," pages 1 through 20 and the appendices, dated May 2008, which are hereby adopted by reference.

(2) Each nurse aide course shall consist of a combination of didactic and clinical instruction. At least 50 percent of part I and part II of the course curriculum shall be provided as clinical instruction.

(3) Each nurse aide course shall be sponsored by one of the following:

(A) An adult care home;

(B) a long-term care unit of a hospital; or

(C) a postsecondary school under the jurisdiction of the state board of regents.

(4) Clinical instruction shall be conducted in one or a combination of the following locations:

(A) An adult care home;

(B) a long-term care unit of a hospital; or

(C) a simulated laboratory.

(5) 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 medicare certification regulations listed in 42 C.F.R. 483.151(b)(2), as in effect on October 1, 2007.

(e) Correspondence courses. No correspondence course shall be approved as a nurse aide course.

(f) Other offerings. Distance-learning offerings and computer-based educational offerings shall meet the standards specified in subsection (d). (Authorized by K.S.A. 2008 Supp. 39-925(d)(2); implementing K.S.A. 2008 Supp. 39-936; effective Feb. 28, 1994; amended Dec. 29, 2003; amended June 12, 2009.)

**28-39-166. Nurse aide course instructor.** (a) Approval and qualifications.

(1) Each person who intends to be a course instructor shall submit a completed instructor approval application form to the department at least three weeks before offering an initial course and shall receive approval as an instructor before the first day of an initial course.

(2) Each course instructor shall be a registered nurse with a minimum of two years of licensed nursing experience, with at least 1,750 hours of experience in either or a combination of an adult care home or long-term care unit of a hospital. Each course instructor shall have completed a course in teaching adults, shall have completed a professional continuing education offering on supervision or adult education, or shall have experience in teaching adults or supervising nurse aides.

(b) Course instructor and course sponsor responsibilities.

(1) Each course instructor and course sponsor shall be responsible for ensuring that the following requirements are met:

(A) A completed course approval application form shall be submitted to the department at least three weeks before offering a course. Approval shall be obtained from the secretary at the beginning of each course whether the course is being offered initially or after a previous approval. Each change in course location, schedule, or instructor shall require approval by the secretary.

(B) All course objectives shall be accomplished.

(C) Only persons in health professions having the appropriate skills and knowledge shall be selected to conduct any part of the training. Each person shall have at least one year of experience in the subject area in which that person is providing training.

(D) Each person providing a part of the training shall do so only under the direct supervision of the course instructor.

(E) The provision of direct care to residents by a nurse aide trainee II during clinical instruction shall be limited to clinical experiences that are for the purpose of learning nursing skills under the direct supervision of the course instructor.

(F) When providing clinical instruction, the course instructor shall perform no other duties

but the direct supervision of the nurse aide trainees.

(G) Each nurse aide trainee in the 90-hour nurse aide course shall demonstrate competency in all skills identified on the part I task checklist before the checklist is signed and dated by the course instructor as evidence of successful completion of part I of the course.

(H) The course shall be prepared and administered in accordance with the guidelines in the "Kansas certified nurse aide curriculum guidelines (90 hours)" and the "Kansas 90-hour certified nurse aide sponsor and instructor manual," as adopted in K.A.R. 28-39-165.

(2) Any course instructor or course sponsor who does not meet the requirements of this regulation may be subject to withdrawal of approval to serve as a course instructor or a course sponsor. (Authorized by K.S.A. 2008 Supp. 39-925(d)(2); implementing K.S.A. 2008 Supp. 39-936; effective Feb. 28, 1994; amended Dec. 29, 2003; amended June 12, 2009.)

**28-39-167. Out-of-state and allied health training endorsement for nurse aide.** (a) Each person whom the secretary has determined to have successfully completed training or passed a test, or both, that is equivalent to the training or test required by this state may be employed without taking this state's test.

(b) Each person whom the secretary has determined not to be exempt from examination pursuant to subsection (a) but who meets any one of the following requirements shall be deemed to have met the requirements specified in K.A.R. 28-39-165 if that person passes a state test as specified in K.A.R. 28-39-168:

(1) Each person who has received nurse aide training in another state, is listed on another state's registry as a nurse aide, and is eligible for employment as a nurse aide shall be deemed eligible to take the state test as specified in K.A.R. 28-39-168. Each person whose training in another state is endorsed and who has passed the state test shall be issued a nurse aide certificate.

(2) Each person who meets any of the following criteria shall be deemed eligible to take the state test as specified in K.A.R. 28-39-168:

(A) Has completed training deemed equivalent to the requirements specified in K.A.R. 28-39-165;

(B) is currently licensed in Kansas or another state to practice as a registered nurse, licensed practical nurse, or licensed mental health technician, with a license that has not been suspended or revoked; or

(C) has a license to practice as a registered nurse, licensed practical nurse, or licensed mental health technician that has expired within the 24-month period before applying for equivalency, but has not been suspended or revoked.

(3) Each person who has received training from an accredited nursing or mental health technician training program within the 24-month period before applying for equivalency and whose training included a basic skills component comprised of personal hygiene, nutrition and feeding, safe transfer and ambulation techniques, normal range of motion and positioning, and a supervised clinical experience in geriatrics shall be deemed eligible to take the state test as specified in K.A.R. 28-39-168.

(c) Each person qualified under subsection (a) shall receive written notification from the department of exemption from the requirement to take this state's test and the fact that the person is eligible for employment.

(d) Each person qualified under subsection (b) shall receive written approval from the department or its designated agent to take the state test. Upon receiving written approval from the department or its designated agent to take the state test, 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 a registered nurse or licensed practical nurse. Each person employed as a nurse aide trainee II shall be issued a nurse aide certificate by the secretary, upon completion of the requirements specified in K.A.R. 28-39-165, within one four-month period starting from the date of approval, in order to continue employment providing direct care. (Authorized by K.S.A. 2008 Supp. 39-925(d)(2); implementing K.S.A. 2008 Supp. 39-936; effective Feb. 28, 1994; amended Dec. 29, 2003; amended June 12, 2009.)

**28-39-168. State nurse aide test.** (a) Composition of state nurse aide test. The state test shall be comprised of 100 multiple-choice questions. A score of 75 percent or higher shall constitute a passing score.

(b) State nurse aide test eligibility.

(1) Only persons who have successfully completed an approved 90-hour nurse aide course or completed education or training that has been en-

dorsed or deemed equivalent as specified in K.A.R. 28-39-167 shall be allowed to take the state test.

(2) Each person shall have a maximum of three attempts within 12 months from the beginning date of the course to pass the state test after completing an approved 90-hour course as specified in K.A.R. 28-39-165.

(3) If the person does not pass the state test within 12 months after the starting date of taking an approved 90-hour course, the person shall retake the entire course.

(4) If a person whose education or training has been endorsed or deemed equivalent as specified in K.A.R. 28-39-167 and the person does not pass the state test on the first attempt, the person shall successfully complete an approved 90-hour nurse aide course as specified in K.A.R. 28-39-165 to retake the state test. Each person whose training was endorsed or deemed equivalent, who failed the state test, and who has successfully completed an approved nurse aide course shall be eligible to take the test three times within a year after the beginning date of the course.

(c) Application fee.

(1) Each nurse aide trainee shall pay a nonrefundable application fee of $20.00 before taking the state test. A nonrefundable application fee shall be required each time the test is scheduled to be taken. Each person who is scheduled to take the state test, but fails to take the state test, shall submit another fee before being scheduled for another opportunity to take the test.

(2) Each course instructor shall collect the application fee for each nurse aide candidate eligible to take the state test and shall submit the fees, class roster, application forms, and accommodation request forms to the department or its designated agent.

(d) Each person who is eligible to take the state test and who has submitted the application fee and application form shall be issued written approval, which shall be proof of eligibility to sit for the test.

(e) Test accommodation.

(1) Any reasonable test accommodation or auxiliary aid to address a disability may be requested by any person who is eligible to take the state test. Each request for reasonable accommodation or auxiliary aid shall be submitted each time a candidate is scheduled to take the test.

(2) Each person requesting a test accommodation shall submit an accommodation request form along with an 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. Each instructor shall verify the need for the accommodation by signing the accommodation request form.

(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.

(f) This regulation shall not apply to any person who meets the requirement of K.A.R. 28-39-167(a). (Authorized by K.S.A. 2008 Supp. 39-925(d)(2) and 39-936; implementing K.S.A. 2008 Supp. 39-936; effective Feb. 28, 1994; amended Dec. 29, 2003; amended June 12, 2009.)

**28-39-169a. Medication aide.** (a) Each medication aide candidate shall be either a nurse aide who has been issued a certificate by the secretary or a qualified mental retardation professional as defined in 42 C.F.R. 483.430(a), revised October 1, 2010 and hereby adopted by reference, and shall meet the following requirements:

(1) Has completed a course in medication administration approved by the secretary; and

(2) has passed a state test as approved by the secretary.

(b) Each person who has met one of the following requirements shall be eligible to enroll in a medication aide course:

(1) Is a nurse aide who has a Kansas nurse aide certificate and who has been screened and tested for reading comprehension at an eighth-grade level; or

(2) is a qualified mental retardation professional employed by an intermediate care facility for the mentally retarded.

(c) A qualified mental retardation professional who is not a nurse aide, who has completed a course in medication administration as approved by the secretary, and who has passed the state test shall be allowed to administer medications only to residents in an intermediate care facility for the mentally retarded.

(d) (1) Each medication aide course shall meet the following requirements:

(A) Consist of a minimum of 75 total hours, which shall include a minimum of 25 hours of clinical instruction;

(B) be prepared and administered in accordance with the guidelines prescribed by the secretary and follow the content outlined in the "Kansas certified medication aide curriculum" and appendices, dated February 2011, and the "Kansas certified medication aide sponsor and instructor manual," pages 2 through 21, dated February 2011, which are hereby adopted by reference; and

(C) be sponsored by one of the following:

(i) A postsecondary school under the jurisdiction of the state board of regents;

(ii) a state-operated institution for the mentally retarded; or

(iii) a professional health care association approved by the secretary.

(2) No correspondence course shall be approved as a medication aide course.

(3) Distance-learning and computer-based educational offerings shall be required to meet the requirements specified in this subsection.

(e) Each medication aide course instructor shall meet the following requirements:

(1) Each person who intends to be a course instructor shall submit an instructor approval application form to the secretary at least three weeks before offering an initial course and shall be required to receive approval as an instructor before the first day of an initial course.

(2) Each instructor shall be a registered nurse with a current Kansas license and two years of clinical experience as a registered nurse. Any Kansas-licensed pharmacist actively working in the pharmacy field may conduct part of the training under the supervision of an approved instructor.

(f) Each course sponsor and course instructor shall be responsible for ensuring that the following requirements are met:

(1) Only persons who meet the qualifications specified in subsection (b) shall be eligible to take the course.

(2) Each trainee shall be screened and tested for comprehension of the written English language at an eighth-grade reading level before enrolling in the course.

(3) The course shall be prepared and administered in accordance with the guidelines and follow the content in the "Kansas certified medication aide curriculum" and the "Kansas certified medication aide sponsor and instructor manual," as adopted in subsection (d).

(4) The clinical instruction and skills performance involving the administering of medications shall be under the direct supervision of the course instructor.

(5) During the clinical instruction and skills performance, the course instructor shall perform no other duties than the provision of direct supervision to the trainees.

(g) Any course instructor or course sponsor who does not fulfill the requirements of this regulation may be subject to withdrawal of approval to serve as a course instructor or a course sponsor.

(h) Any person whose education or training has been deemed equivalent to the medication aide course by an approved sponsor as specified in paragraph (d)(1)(C) may apply to take the state test to become certified as a medication aide. Before requesting a determination of equivalency for a person's education or training, that person shall be a Kansas-certified nurse aide and shall meet one of the following conditions:

(1) The person is currently credentialed to administer medications in another state. The secretary or the designated agent shall evaluate that state's credentialed training for equivalency in content and skills level to the requirements for certification as a medication aide in Kansas.

(2) The person is currently enrolled in an accredited practical nursing or professional nursing program and has completed a course of study in pharmacology with a grade of C or better.

(3) The person is currently licensed in Kansas or another state, or has been licensed within 24 months from the date of application, as a licensed mental health technician, and there are no pending or current disciplinary actions against the individual's license.

(4) The person has been licensed in Kansas or another state, within 24 months from the date of application, as a licensed practical nurse whose license is inactive or a registered nurse whose license is inactive, and there are no pending or current disciplinary actions against the individual's license. (Authorized by K.S.A. 75-5625; implementing K.S.A. 65-1,120 and K.S.A. 2010 Supp. 65-1124; effective Dec. 29, 2003; amended Oct. 14, 2011.)

**28-39-169b. State medication aide test.** (a) The state test shall be administered by the secretary or the designated agent and in accordance with guidelines prescribed by the secretary as outlined in the "certified medication aide test manual" on pages 24 through 31 of the "Kansas certified medication aide sponsor and instructor

manual," dated February 2011. These pages are hereby adopted by reference.

(1) Each person who has completed the medication aide course as specified in K.A.R. 28-39-169a shall have a maximum of two attempts to pass the state test within 12 months after the first day of the course. If the person does not pass the test within this 12-month period, the course shall be retaken. Each time the person successfully completes the course, the person shall have two attempts to pass the state test within 12 months after the first day of the course. The number of times a person may retake the course shall be unlimited.

(2) Each person who is a Kansas-certified nurse aide and whose training has been deemed equivalent to the Kansas medication aide course shall have a maximum of one attempt to pass the test within 12 months after the date the equivalency is approved. If the person does not pass the test within this 12-month period, the person shall be required to take the medication aide course.

(3) There shall be three different forms of the state test. The different forms of the test shall be used on an alternating basis. Each of the three forms shall be comprised of 85 multiple-choice questions. The passing score for each of the three forms of the test shall be 65 or higher.

(4) Only persons who have met the requirements specified in K.A.R. 28-39-169a(a)(1) and (h) shall be eligible to take the state test.

(5) 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 two additional hours may be offered to persons with limited English proficiency.

(b) Each person shall be issued a medication aide certificate by the secretary and shall be listed on a public nurse aide registry upon successful completion of the requirements specified in K.A.R. 28-39-169a(a) and (h).

(c) The course instructor shall submit to the secretary a course roster of names, an application form, and a nonrefundable application fee of $20.00 for each medication aide who has completed the course and passed the state test.

(d) A replacement medication aide certificate for a medication aide whose certification is current shall be issued by the secretary upon the receipt and processing of a certificate replacement form and a nonrefundable fee of $20.00. (Authorized by K.S.A. 75-5625; implementing K.S.A. 65-1,120 and K.S.A. 2010 Supp. 65-1124; effective Dec. 29, 2003; amended Oct. 14, 2011.)

**28-39-169c. Medication aide continuing education.** (a) Each person who has a certificate of completion for a medication aide training course as specified in K.A.R. 28-39-169a and who wishes to maintain the certificate shall complete, every two years, a program of 10 hours of continuing education approved by the secretary.

(b) The continuing education requirement shall include one or more of the following topics:

(1) Classes of drugs and new drugs;

(2) new uses of 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 program of continuing education 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 the mentally retarded; or

(5) a professional health care association approved by the secretary.

(d) Each course instructor shall be a registered nurse with a current Kansas license and two years of clinical experience as a registered nurse or a licensed practical nurse. Any Kansas-licensed pharmacist actively working in the pharmacy field may be selected to conduct part of the training under the supervision of the instructor.

(e) Each person who intends to be a course instructor shall submit an instructor approval application form to the secretary at least three weeks before offering an initial course and shall be required to receive approval as an instructor before the first day of an initial course.

(f) Each sponsor and course instructor of continuing education shall be responsible for ensuring that the following requirements are met:

(1) The course shall be prepared and administered as prescribed by regulation and the "Kansas certified medication aide sponsor and instructor manual," as adopted in K.A.R. 28-39-169a.

(2) A course approval application form shall be

submitted to the secretary at least three weeks before offering a course, and course approval shall be required to be received before beginning the course.

(3) A course roster of names, a renewal application form, and a nonrefundable renewal application fee of $20.00 for each medication aide who has completed the course shall be submitted to the secretary.

(4) If clinical instruction in administering medications is included in the program, each student administering medications shall be under the direct supervision of the registered nurse instructor.

(g) Any sponsor or instructor who does not fulfill the requirements specified in subsections (d), (e), and (f) may be subject to withdrawal of approval to serve as a course instructor or a course sponsor.

(h) College credits or vocational training may be approved by the secretary as substantially equivalent to medication aide continuing education. 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).

(i) Each certified medication aide shall be responsible for notifying the secretary of any change in the aide's address or name.

(j) No correspondence course shall be approved for a medication aide continuing education course.

(k) Distance-learning educational offerings and computer-based educational offerings shall meet the requirements specified in subsections (b), (c), (d), (e), (f), and (g).

(l) Each medication aide certificate shall be renewed upon the department's receipt from the course instructor of the following:

(1) Verification of the applicant's completion of 10 hours of approved continuing education;

(2) a renewal application form; and

(3) a nonrefundable renewal application fee of $20.00.

(m) Each medication aide certificate or renewed certificate shall be valid for two years from the date of issue.

(n) Each applicant for renewal of certification shall have completed the required number of hours of documented and approved continuing education during each certification period immediately preceding renewal of the certificate. Approved continuing education hours completed in excess of the requirement shall not be carried over to a subsequent renewal period.

(o) Each medication aide certificate that has been expired for three or fewer years shall be reinstated upon the department's receipt of the following:

(1) Verification of the applicant's completion of 10 hours of approved continuing education. This continuing education shall have been completed within the three-year period following expiration of the certification;

(2) a renewal application form; and

(3) a nonrefundable renewal application fee of $20.00.

(p) Each lapsed certificate renewed within the three-year period specified in subsection (o) shall be valid for two years from the date of issuance.

(q) Each person whose medication aide certification has been expired for more than three years shall be required to retake the 75-hour medication aide course. (Authorized by K.S.A. 65-1,121 and 75-5625; implementing K.S.A. 65-1,121 and K.S.A. 2010 Supp. 65-1124; effective Dec. 29, 2003; amended Oct. 14, 2011.)

**28-39-240.** Authorized by and implementing K.S.A. 39-932; effective Feb. 21, 1997; amended Oct. 8, 1999; revoked May 29, 2009.)

**28-39-241 through 28-39-244.** (Authorized by and implementing K.S.A. 39-932; effective Feb. 21, 1997; revoked May 29, 2009.)

**28-39-245.** (Authorized by and implementing K.S.A. 39-932; effective Feb. 21, 1997; amended Oct. 8, 1999; revoked May 29, 2009.)

**28-39-246.** (Authorized by and implementing K.S.A. 39-932; effective Feb. 21, 1997; revoked May 29, 2009.)

**28-39-247.** (Authorized by and implementing K.S.A. 39-932; effective Feb. 21, 1997; amended Oct. 8, 1999; revoked May 29, 2009.)

**28-39-248 through 28-39-253.** (Authorized by and implementing K.S.A. 39-932; effective Feb. 21, 1997; revoked May 29, 2009.)

**28-39-275 through 28-39-288.** (Authorized by and implementing K.S.A. 39-932; effective Oct. 8, 1999; revoked May 29, 2009.)

**28-39-425 through 28-39-436.** (Authorized by and implementing K.S.A. 39-932; effective Oct. 8, 1999; revoked May 29, 2009.)

## Article 43.— CONSTRUCTION, OPERATION, MONITORING AND ABANDONMENT OF SALT SOLUTION MINING WELLS

**28-43-1.** (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

**28-43-2.** (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

**28-43-3.** (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

**28-43-4.** (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

**28-43-5.** (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

**28-43-6.** (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

**28-43-7.** (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

**28-43-8.** (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; amended May 1, 1984; revoked Aug. 6, 2010.)

**28-43-9.** (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

**28-43-10.** (Authorized by K.S.A. 65-171d; implementing K.S.A. 65-171d; effective May 1, 1979; amended May 1, 1981; revoked Aug. 6, 2010.)

**28-43-11.** (Authorized by and implementing K.S.A. 1984 Supp. 65-171d; effective, T-85-7, Feb. 15, 1984; effective May 1, 1984; amended May 1, 1985; revoked Aug. 6, 2010.)

## Article 45b.—UNDERGROUND CRUDE OIL STORAGE WELLS AND ASSOCIATED BRINE PONDS

**28-45b-1. Definitions.** (a) "Active well" means an unplugged well that is in service or in monitoring status.

(b) "American petroleum institute gravity" and "API gravity" mean the specific gravity scale developed by the American petroleum institute for measuring the relative density of various petroleum liquids, expressed in degrees API.

(c) "Applicant" means the operator and the owner requesting a permit as specified in this article. If the operator and the owner are not the same person, the owner and the operator shall jointly submit an application for a permit.

(d) "Brine" means saline water with a sodium chloride concentration equal to or greater than 90 percent.

(e) "Brine pond" means the excavated or diked structure used for the surface containment of brine used in the creation, maintenance, and operation of an underground crude oil storage well.

(f) "Crude oil" means unrefined, liquid petroleum.

(g) "Crude oil reserve" means the storage of crude oil for future use.

(h) "Crude oil storage well," "underground crude oil storage well," and "storage well" mean a well used for the injection or withdrawal of crude oil into or out of an underground crude oil storage cavern.

(i) "Department" means Kansas department of health and environment.

(j) "Draft permit" means a document that is pending approval by the secretary to be issued as a permit.

(k) "Fracture gradient" means the pressure gradient, measured in pounds per square inch per foot, that causes the geological formations to physically fracture.

(l) "Freshwater" means water containing not more than 1,000 milligrams per liter of total dissolved solids (TDS).

(m) "Licensed geologist" means a geologist licensed to practice geology in Kansas by the Kansas board of technical professions.

(n) "Licensed professional engineer" means a professional engineer licensed to practice engineering in Kansas by the Kansas board of technical professions.

(o) "Licensed professional land surveyor"

means a professional land surveyor licensed to practice land surveying in Kansas by the Kansas board of technical professions.

(p) "Liner" means the casing normally installed within the production casing.

(q) "Maximum allowable operating pressure" means the maximum pressure authorized by the department and measured at the product side of the wellhead.

(r) "Maximum allowable synthetic membrane liner leakage rate" means a monitored or a calculated leakage rate of 10 percent of the collection and leak return system capacity.

(s) "Maximum operating pressure" means the maximum pressure monitored during a 24-hour period and measured at the product side of the wellhead.

(t) "Monitoring status" means temporary status for a well that has been placed out of service by removing the product and filling the cavern with brine.

(u) "Municipal population center" means an incorporated city.

(v) "Operator" means the person recognized by the secretary as being responsible for the physical operation of an underground crude oil storage facility or a brine pond.

(w) "Owner" means the person owning all or part of any underground crude oil storage facility or brine pond.

(x) "Permit" means an authorization, license, or equivalent control document issued to the owner and the operator by the secretary. A permit may be issued for any of the following:

(1) A new underground crude oil storage facility and the associated crude oil storage wells;

(2) an existing underground crude oil storage facility and the associated crude oil storage wells; or

(3) a brine pond.

(y) "Permittee" means the owner and the operator issued a permit, as defined in this regulation, by the secretary.

(z) "Person" means any individual, company, corporation, institution, association, partnership, municipality, township, and local, state, or federal agency.

(aa) "Plugged well" means a storage well that has been plugged or placed into plugging-monitoring status pursuant to K.A.R. 28-45b-18.

(bb) "Plugging-monitoring status" means the status of a storage well that will not be returned to active status but will be filled with brine to monitor cavern stabilization in lieu of plugging.

(cc) "Porosity storage" means the storage of hydrocarbon gas in underground porous and permeable strata that have been converted to hydrocarbon gas storage.

(dd) "Pressure gradient" means the ratio of pressure per unit depth, expressed as pounds per square inch per foot of depth.

(ee) "Product" means crude oil.

(ff) "Saturated brine" means saline water with a sodium chloride concentration that is equal to or greater than 90 percent.

(gg) "Secretary" means secretary of the department of health and environment.

(hh) "Solutioning" means the process of injecting fluid into a well to dissolve salt or any other readily soluble rock or mineral.

(ii) "Sour crude oil" means crude oil with a sulfur content greater than 0.5 percent.

(jj) "Supervisory control and data acquisition" means an automated surveillance system in which the monitoring and control of storage activities are accomplished at a central or remote location.

(kk) "Sweet crude oil" means crude oil with a sulfur content not greater than 0.5 percent by weight.

(ll) "Type" means the description of the product that includes American petroleum institute gravity, non-hydrocarbon impurities, and hydrogen sulfide content.

(mm) "Underground crude oil storage cavern," "cavern," and "storage cavern" mean the storage space for crude oil created in a salt formation by solution mining.

(nn) "Underground crude oil storage facility" and "facility" mean the acreage associated with the storage field, with facility boundaries approved by the secretary. This term shall include the brine ponds, storage wells, wellbore tubular goods, the wellheads, and any related equipment, including any appurtenances associated with the well field.

(oo) "Unplugged,"when used to describe a well, means a storage well that either is not plugged or is in plugging-monitoring status.

(pp) "Unsaturated brine" means saline water with a sodium chloride concentration less than 90 percent.

(qq) "Usable water formation" means an aquifer or any portion of the aquifer that meets any of the following criteria:

(1) Supplies any public water system;

(2) contains a supply of groundwater that is sufficient to supply a public water system and that currently supplies drinking water for human consumption; or

(3) contains fewer than 10,000 milligrams per liter total dissolved solids and is not an exempted aquifer.

(rr) "Variance" means the secretary's written approval authorizing an alternative action to one or more of the requirements of these regulations. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-2. Permit required for facilities and storage wells; variances.** (a) No person shall create, operate, or maintain an underground crude oil storage facility or any crude oil storage well without first obtaining a permit from the secretary.

(b) The storage of crude oil in caverns constructed in any rock formations other than bedded salt shall be prohibited.

(c) A variance to any requirement of this article may be granted by the secretary if both of the following conditions are met:

(1) The variance is protective of public health, safety, and the environment.

(2) The applicant or permittee agrees to perform any additional testing, monitoring, or well improvements, or any combination, if required by the secretary.

(d) Each applicant or permittee seeking a variance shall submit a written request, including justification for the variance and any supporting data, to the secretary for review and consideration for approval. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-3. Well conversions and reentry.** (a) The conversion of an existing well that was not originally designed for crude oil storage to an underground crude oil storage well shall be considered for approval if both of the following conditions are met:

(1) The applicant submits a completed application as required by K.A.R. 28-45b-4.

(2) The secretary determines that the conversion is protective of public health, safety, and the environment.

(b) Any permittee may convert an unplugged underground crude oil storage well to monitoring status if all of the following requirements are met:

(1) Each permittee shall verify the integrity of the storage well and cavern by conducting a mechanical integrity test before converting the well to monitoring status.

(2) Each permittee shall run a gamma-density log, a thermal neutron decay time log, or a pulsed neutron log to verify the roof thickness before converting the well to monitoring status.

(3) Each permittee shall meet the requirements specified in the department's document titled "procedure for converting a crude oil storage well to monitoring status," procedure #UICLPG-27, dated October 2008, which is hereby adopted by reference.

(4) Each permittee of an underground crude oil storage cavern that is in monitoring status shall conduct a casing inspection evaluation before placing the cavern into service. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-4. Permit required for facility and associated storage wells.** (a) Each applicant who intends to construct a new underground crude oil storage well shall submit a completed permit application to the secretary, on a form approved by the department, at least 180 days before the proposed commencement date for the construction of the new crude oil storage well. Well construction shall not begin until the secretary has issued the permit.

(b) Each applicant who intends to convert an existing well to a crude oil storage well shall submit a completed permit application to the secretary, on a form approved by the department, at least 180 days before the proposed date for operation of the crude oil storage well. Well modifications and operations shall not commence until the secretary has issued the permit.

(c) Each applicant who intends to construct a new storage well for the purpose of creating a crude oil reserve shall submit a completed permit application to the secretary at least 180 days before the proposed commencement date for storage well construction. Well construction shall not begin until the secretary has issued the permit.

(d) Each applicant who wishes to convert an existing storage well for the purpose of creating a crude oil reserve shall submit a completed permit application to the secretary at least 180 days before the proposed date for operation of the crude oil storage well. Well modifications and operations

shall not commence until the secretary has issued the permit.

(e) Each applicant who intends to create a crude oil reserve shall include the following with the permit application:

(1) A description of monitoring and testing methods to demonstrate that the quality of the crude oil is maintained during storage;

(2) a description of methods and a schedule for routinely testing the integrity of the wellhead, casing, and transfer equipment; and

(3) a description of the brine transfer system, including brine source, disposal method, and means of transfer.

(f) Upon review of each application, one of the following shall be issued by the secretary:

(1) A permit, if the application is approved; or

(2) a notice that the permit has been denied if the applicant has not complied with the requirements of this article. The notice shall include justification for the permit denial.

(g) Each application for a permit shall include a report prepared by a licensed geologist and shall include the following:

(1) An evaluation of the geology and hydrogeology, including cross-sections, isopach and structure maps of the salt formation, and water-level or potentiometric maps;

(2) a regional stratigraphic evaluation;

(3) local and regional structural analyses, including maps, cross-sections, and available geophysical data;

(4) a flood assessment identifying floodplain and flood-prone areas, including the following:

(A) Flood response procedures; and

(B) design criteria for the well and facility equipment; and

(5) an assessment of the potential for ground subsidence.

(h) Each applicant shall submit the following information with the application:

(1) A plan view map showing locations of all water, solution-mining, storage, monitoring, disposal, injection, oil, and gas wells within a one-mile perimeter of the facility's boundary; and

(2) a plan view map of man-made surface structures and activities within a one-mile perimeter of the facility's boundary.

(i) Each permittee shall submit a compliance audit every 10 years, on a form furnished by the department, for review and consideration for approval for the continued operation of each storage well.

(j) Each permittee shall submit a sample log of well cuttings from any new well drilled at the facility, including new crude oil storage wells, monitoring wells, and stratigraphic test holes.

(1) Cuttings shall be collected at 10-foot intervals from surface to total well depth or at an interval specified by the department.

(2) Well cuttings shall be collected, described, and logged as specified in the department's document titled "procedure for sample logging," which is adopted by reference in K.A.R. 28-45-6a.

(3) The collection of cuttings shall be supervised by a licensed geologist or a licensed geologist's designee.

(4) The description and logging of the sample cuttings shall be performed by a licensed geologist.

(5) Each permittee shall submit a sample log and a dry sample set to the department within 45 days after the completion of the well.

(k) Each permittee shall provide a minimum of one core from each facility. The following provisions shall apply:

(1) Each permittee shall submit a plan for a new core describing the coring interval, coring procedures, and core testing with the permit application to the secretary for review and consideration for approval. The plan shall be submitted at least 60 days before the coring event.

(2) Each permittee shall submit the core analysis for a new core after installing the first storage well and before developing the storage field.

(3) Any permittee may submit existing core data if the secretary determines that the core is representative of the geology of the area.

(4) Each permittee shall submit the core analysis for an approved existing core with the permit application.

(5) Each permittee shall make the core available for inspection upon request by the secretary.

(l) Each permittee shall submit a water analysis for any water-bearing formation encountered in drilling a new monitoring well. The water shall be analyzed for the following parameters:

(1) Chloride;

(2) total dissolved solids; and

(3) any parameter that the secretary determines could pose a potential threat to public health, safety, and the environment.

(m) Each permittee shall ensure that the stored crude oil, formation water, lithology, and substances used in the solutioning of the storage caverns are compatible.

(n) Each permittee shall submit open-hole logs for any new crude oil storage well. The logging interval shall be from the surface to at least 100 feet below the top of the salt section. At a minimum, the following logs shall be run:

(1) A gamma ray log;

(2) a neutron log, if the source is registered in Kansas, or a sonic log;

(3) a density log; and

(4) a caliper log.

(o) Any permittee may use an alternative log if the secretary determines that the alternative log is substantially equivalent to one of the logs specified in subsection (n). The permittee shall submit the following information:

(1) A description of the log and the theory of operation for that log;

(2) a description of the field conditions under which the log can be used;

(3) the procedure for interpreting the log; and

(4) an interpretation of the log upon completion of the logging event.

(p) If a facility has a new storage cavern, the permittee shall ensure that a minimum salt roof thickness of 100 feet is maintained above the storage cavern.

(q) Each permittee shall submit supporting data showing that a minimum crude oil inventory in each storage cavern shall be maintained to protect the salt roof during short time periods when changing service, conducting workover activities, or performing surface facility maintenance.

(r) If a facility has an existing cavern approved for crude oil storage with a salt roof thickness greater than 50 feet but less than 100 feet, the permittee shall meet the following requirements:

(1) The permittee shall use only saturated brine to displace product.

(2) The permittee shall submit a schedule for monitoring brine salinity.

(3) The salt roof thickness shall be monitored with gamma ray and density logs, or any other log specified in subsection (o), every three years.

(4) The permittee shall provide any additional information, including a geomechanical study from core analysis, that may be requested by the secretary to verify the integrity of the salt roof.

(s) Underground crude oil storage caverns with a salt roof thickness of 50 feet or less shall be prohibited.

(t) Underground communication between underground crude oil storage caverns in the upper 50 feet of the salt formation shall be prohibited.

(u) Underground communication between underground crude oil storage caverns below the upper 50 feet of the salt formation shall be prohibited, unless the secretary determines that the communication is protective of public health, safety, and the environment. The permittee shall submit the following:

(1) A sonar survey for each cavern that is in communication with another cavern; and

(2) a plan describing the monitoring and testing that the permittee will conduct to ensure that the integrity of the underground crude oil storage wells and caverns will be maintained.

(v) The horizontal distance separating new underground crude oil storage caverns shall be at least 100 feet between the cavern boundaries.

(w) Any existing cavern approved for crude oil storage with horizontal separation less than 100 feet may operate if the following requirements are met:

(1) Each permittee shall submit a justification for each existing underground crude oil storage cavern with horizontal separation less than 100 feet. The following requirements shall apply:

(A) The justification shall include spacing-to-diameter ratios, cavern pressure differentials, and analyses of cavern shape, size, and depth.

(B) The horizontal spacing shall be reevaluated every five years.

(2) Horizontal spacing of less than 50 feet between caverns shall be prohibited.

(x) The maximum horizontal diameter of each cavern shall not exceed 300 feet.

(y) Each permittee shall ensure the integrity of the storage well, including the wellhead and casing, and storage cavern before commissioning any new storage cavern into service. Storage operations may commence when the following requirements are met:

(1) The permittee shall submit a notice of completion of construction on a form furnished by the department.

(2) Each new storage well shall be inspected by the secretary before storage operations commence. If the well fails the inspection, the permittee shall not commence storage operations. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-5. Public notice.** (a) Public notice shall be given by the secretary for any of the following permit actions:

(1) Any permit application for a crude oil storage well;

(2) the denial of a permit; or

(3) a scheduled hearing.

(b) Public notice and, if applicable, a copy of the draft permit shall be mailed or electronically mailed by the department to the permit applicant.

(c) Each public notice shall be mailed by the department to the following:

(1) Any person who submits a written request for placement on the mailing list;

(2) the official county newspaper of each county in which the lands affected by the application are located, for publication in at least two issues; and

(3) the Kansas register.

(d) Each public notice shall include the following information:

(1) The name and address of the department processing the permit action for which the notice is being given;

(2) the name and address of the person or company seeking the permit;

(3) a brief description of the business conducted at the facility or the activity described in the permit application;

(4) the name, address, and telephone number of the departmental contact whom interested persons may contact for further information, including copies of the application, draft permit, or any other appropriate information;

(5) a brief description of the comment procedures for public notice; and

(6) a statement of the procedure to request a hearing and any other procedures that allow public participation in the final permit decision.

(e) Any interested person may submit written comments on any permit action to the secretary during the 30-day public comment period. The following requirements shall apply:

(1) All comments shall be submitted by the close of the public comment period.

(2) All supporting materials submitted shall be included in full. The supporting materials shall not be incorporated by reference, unless the supporting materials are any of the following:

(A) Part of the administrative record in the same proceeding;

(B) state or federal statutes and regulations;

(C) state or environmental protection agency documents of general applicability; or

(D) other generally available reference materials.

(3) Commentators shall make supporting materials not already included in the administrative record available to the secretary.

(f) The response to all relevant comments concerning any permit actions and the reasons for changing any provisions in the draft permit shall be issued when the permit decision is issued.

(g) The response to comments shall be made available to the public upon request. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-6. Modification and transfer of a permit.** (a) The automatic transfer of a permit shall be prohibited. The requirements for each permit transfer shall be as follows:

(1) Each person requesting a permit transfer shall notify the secretary at least 60 days before the effective date of the proposed transfer.

(2) Each owner and each operator shall comply with the conditions of the existing permit until the secretary reissues the permit.

(b) Any permit may be modified by the secretary under any of the following conditions:

(1) The secretary receives information that was not available when the permit was issued.

(2) The secretary receives a request for the modification of a permit.

(3) The secretary conducts a review of the permit file and determines that a modification is necessary.

(c) Only the permit actions subject to modification shall be reopened.

(d) Minor modifications that do not require public notification shall include the following, except as otherwise specified:

(1) Correction of typographical errors;

(2) requirements for more frequent monitoring or reporting by the permittee;

(3) a date change in a schedule of compliance;

(4) a change in ownership or operational control of the facility, unless the secretary determines that public notification is necessary to protect the public interest;

(5) a change in construction requirements, if the secretary determines that the change is protective of public health, safety, and the environment; and

(6) any amendments to a facility plugging plan.

(e) A draft permit and notification to the public shall be required if any of the following conditions is met:

(1) A permittee proposes substantial alterations

or additions to the facility or proposes an activity that justifies a change in the permit requirements, including cumulative effects on public health, safety, or the environment.

(2) Information has become available that would have initially justified different permit requirements.

(3) Regulations on which the permit was based have changed due to the promulgation of new or amended regulations or due to a judicial decision after the permit was issued.

(f) Any permittee may request a permit modification within 180 days after any of the following:

(1) The adoption of new regulations;

(2) any deadline to achieve compliance with regulations; or

(3) any judicial remand and stay of a promulgated regulation if the permit requirement was based on the remanded regulation. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-7. Signatories for permit applications and reports.** (a) Each applicant for a permit shall designate at least one signatory to sign the permit applications and all reports required by the secretary.

(b) The positions that may be approved by the secretary to be signatories shall be the following:

(1) Plant or operations manager;

(2) cavern specialist;

(3) superintendent; and

(4) any position with responsibility at least equivalent to that required by the positions listed in this subsection.

(c) Any signatory may submit written notification to the secretary specifying a position having responsibility for the overall operation of the facility or activity to act as a designated signatory.

(d) Each signatory and each signatory's designee shall submit a signature statement, on a form furnished by the department, to the secretary with each permit application. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-8. Siting requirements for new storage wells and facilities.** (a) Each applicant shall assess the geographical, topographical, and physical data for any proposed underground crude oil storage well location to determine whether siting requirements have been met. The following siting requirements shall be met:

(1) Each new storage facility shall be located at least three miles from the established boundaries of municipal population centers.

(2) Each proposed new facility or boundary expansion for an existing facility shall be located as follows:

(A) Not less than five miles from an active or abandoned conventional shaft mining operation; and

(B) not less than two miles from the facility's boundary of any solution mining operation.

(3) Each applicant shall assess the extent and nature of current or past conventional subsurface mining activities within five miles of the underground crude oil storage facility's boundary to determine any potential impact to public health, safety, or the environment resulting from the proposed activities at the facility.

(4) Each applicant shall identify and assess all wells, including abandoned wells, from available sources of information, within a one-mile perimeter of the facility's boundary to determine if the following conditions are met:

(A) The wells have been constructed in a manner to protect public health, property, and the environment.

(B) The abandoned wells, including water, oil, gas, monitoring, and underground storage wells, have been properly plugged.

(b) Each applicant shall conduct a regional geological evaluation to determine if the integrity of each proposed storage cavern will be adversely affected by any of the following:

(1) Salt thinning due to any stratigraphic change;

(2) a dissolution zone in the bedded salt; or

(3) abrupt changes in the lithology within the salt interval.

(c) Each applicant shall determine if the facility's location is in a floodplain or flood-prone area.

(d) No new facility's boundary or the expansion of an existing facility's boundary shall be located less than one mile from any existing underground porosity storage facility.

(e) Each applicant shall identify potential risks to the storage operation from activities conducted at adjacent facilities.

(f) Each applicant shall identify all utilities having a right-of-way, including pipeline, railway, roadway, and electrical lines, and shall assess the potential impact of the utilities on the location or operation of the facility. If a facility is exposed and subject to hazards, including vehicular traffic, rail-

roads, electrical power lines, and aircraft traffic, the facility shall be protected from accidental damage, by distance or barricades.

(g) No outer boundary of an underground crude oil storage cavern shall be less than 100 feet from any of the following:

(1) The property boundary of any owners who have not consented to subsurface storage under their property;

(2) any existing surface structure not owned by the facility's owner; or

(3) any public transportation artery. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-9. Financial assurance for closure of underground crude oil storage facility.** (a) Each applicant shall submit, with the permit application and annually thereafter on or before the permit renewal date, proof of financial assurance to the secretary for the following:

(1) Closure of the facility; and

(2) the plugging of any crude oil storage well.

(b) Each applicant shall meet the following requirements:

(1) Submit a detailed written estimate, in current dollars, of the cost to close all underground storage wells and storage caverns at the proposed facility following the closure procedures specified in K.A.R. 28-45b-18. The estimate shall be reviewed and approved by a licensed professional engineer or licensed geologist; and

(2) prepare an estimate of the closure cost for all storage wells and storage caverns at the proposed facility based on the cost charged by a third party to plug the underground storage wells.

(c)(1) Each permittee shall increase the closure cost estimate and the amount of financial assurance provided if any change in the facility operation or closure plan increases the maximum cost of closure at any time.

(2) Each permittee shall provide continuous financial assurance coverage for closure until the secretary approves the facility closure.

(d) Each permittee shall comply with the provisions of the department's document titled "procedure for demonstrating financial assurance for an underground crude oil storage well," procedure #UICLPG-28, dated October 2008, which is hereby adopted by reference. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-10. Operations and maintenance plan.** (a) Each applicant shall submit a plan for the long-term operation and maintenance of the facility with the permit application.

(b) Each operation and maintenance plan shall include the following information:

(1) A description of the methods to be used to prevent the overpressuring of wells and storage caverns;

(2) a plan view map of the location of any disposal wells and corrosion control wells; and

(3) the location, depth, and well construction for all shallow and deep groundwater monitoring and observation wells.

(c) Each permittee shall maintain at the facility and make available for inspection by the secretary the following information:

(1) A location map of all wells within the facility's boundaries and a listing of the global positioning system coordinates for each well;

(2) a schematic of the brine and product lines for each cavern; and

(3) a schematic of the gathering line system that connects all wells within the underground crude oil storage facility to a central distribution point.

(d) Each applicant shall submit a plan for solutioning or washing any cavern to the secretary for review and consideration for approval. The plan shall include the following:

(1) A list of acceptable blanket pad materials;

(2) methods for monitoring the solutioning or washing process; and

(3) a monitoring schedule.

(e) Only saturated brine shall be used to displace any product.

(f) The maximum allowable operating pressure and test pressure shall not exceed 0.8 pounds per square inch per foot of depth measured at the higher elevation of either the casing seat or the highest interior elevation of the storage cavern roof.

(g) Each permittee shall submit justification for a minimum operating pressure that is protective of cavern integrity and shall maintain the minimum operating pressure at each storage well.

(h) Each permittee shall meet the notification requirements in the facility's emergency response plan, give oral notification to the department within two hours, and submit written notification

within one week to the department if any of the following events occurs:

(1) The overpressuring or the overfilling of an underground crude oil storage cavern;

(2) the loss of integrity for an underground crude oil storage well or cavern;

(3) the release of brine, product, or any other chemical parameter that poses a threat to public health, safety, or the environment;

(4) any uncontrolled or unanticipated loss of product or brine that is detectable by any monitoring or testing;

(5) any other condition that could endanger public health, safety, or the environment;

(6) the establishment of communication between storage caverns;

(7) the triggering of any alarms verifying that the permit safety requirements have been exceeded; or

(8) any equipment malfunction or failure that could result in potential harm to public health, safety, or the environment.

(i) Each permittee shall notify the secretary of any change in the type of product stored in any storage cavern and shall certify that the compatibility of product types and the changes in pressure will not adversely affect the wellhead, casing, tubing, and cavern. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-11. Emergency response plan and safety and security measures.** (a)(1) Each applicant for a permit for an underground crude oil storage facility shall make the emergency response plan available for inspection by the secretary when the permit application is submitted to the department.

(2) Each permittee shall maintain the emergency response plan at the facility and at the company headquarters and shall make the plan available for inspection by the secretary.

(b) Each permittee shall update the emergency response plan annually and also shall update the plan whenever new information regarding the requirements for the emergency response plan becomes available.

(c) Each emergency response plan shall include a description of the facility's response to the following events:

(1) Spills and releases;

(2) fires and explosions;

(3) cavern subsidence and collapse; and

(4) any other activity that endangers public health and safety or that constitutes a threat to the environment.

(d) Each emergency response plan shall include the following information:

(1) A description of the warning systems in operation at the facility;

(2) a description of the facility's emergency response communication system that includes the following:

(A) A plat showing the location of all occupied buildings within a two-mile perimeter of the facility's boundaries; and

(B) a list of addresses and telephone numbers for all persons to contact within a two-mile perimeter of the facility's boundaries if a release or emergency condition occurs;

(3) the procedures for coordination of emergency response with local emergency planning committees, including emergency notification and evacuation of citizens and employees;

(4) a description of employee training for emergency response;

(5) a plat of the facility, showing the following locations:

(A) All crude oil storage wells;

(B) all underground injection control wells;

(C) all monitoring wells;

(D) all brine and product lines;

(E) railroad and transportation routes;

(F) brine ponds; and

(G) any other appurtenances at the facility; and

(6) a plan map of man-made surface structures and any construction activities within a one-mile perimeter of the facility's boundaries.

(e) A copy of the emergency response plan shall be available at the facility, the company headquarters, and the office of each coordinating agency or committee involved in the emergency response plan.

(f) Each permittee shall establish an educational program for community safety and awareness of the emergency response plan.

(g) Each permittee of an underground crude oil storage facility shall provide security measures to protect the public and to prevent unauthorized access. These security measures shall include the following:

(1) Methods for securing the facility from unauthorized entry and for providing a convenient opportunity for escape to a place of safety;

(2) at least one visible, permanent sign at each point of entry and along the facility's boundary,

identifying the storage well or facility name, owner, and contact telephone number;

(3) security lighting;

(4) alarm systems;

(5) appropriate warning signs in areas that could contain accumulations of hazardous or noxious vapors or where physical hazards exist; and

(6) a direct communication link with the local control room or any remote control center for service and maintenance crews.

(h) Warning systems and alarms shall consist of the following:

(1) Combustible gas detectors, hydrogen sulfide detectors, heat sensors, pressure sensors, and emergency shutdown instrumentation integrated with warning systems audible and visible in the local control room and at any remote control center;

(2) circuitry designed so that the failure of a detector or heat sensor, excluding meltdown and fused devices, will activate the warning; and

(3) a manually operated alarm that is audible to facility personnel.

(i) Each wellhead shall be protected with safety devices to prevent pressures in excess of the maximum allowable operating pressure from being exerted on the storage well or cavern and to prevent the backflow of any stored crude oil if a flowline ruptures.

(j) Each wellhead shall be equipped with manual isolation valves. Each port on a wellhead shall be equipped with either a valve or a blind flange. The valve or blind flange shall be rated at the same pressure as that for the wellhead.

(k) Each permittee shall ensure that the facility has a supervisory control and data acquisition system approved by the secretary to monitor storage operations for individual storage wells. Each of the following instruments shall be connected to an alarm:

(1) Flow indicators for crude oil;

(2) combustible gas and hydrogen sulfide detection indicators; and

(3) pressure indicators on both the product and brine lines at the wellhead.

(l) Each permittee shall install emergency shutdown valves on all crude oil, brine, and water lines. Criteria for emergency shutdown valves shall include the following:

(1) (A) Be rated at least equivalent to 125 percent of the maximum pressure that could be exerted at the surface; or

(B) meet a pressure-rating standard equivalent to that specified in paragraph (l)(1)(A) and determined by the secretary to be protective of public health, safety, and the environment;

(2) fail to the closed position;

(3) be capable of remote and local operation; and

(4) be activated by the following:

(A) Overpressuring;

(B) underpressuring; and

(C) gas and heat detection.

(m) Each permittee shall conduct annual inspections of all wellhead instrumentation.

(n) Each permittee shall function-test each critical control system and emergency shutdown valve semiannually.

(o) Each permittee shall perform trip-testing of each loop, including the instrumentation, valves, shutdown equipment, and all wiring connections, to ensure the integrity of the circuit.

(p) Each permittee shall ensure that the equipment automatically closes all inlets and outlets to the storage cavern and safely shuts down or diverts any operation associated with the storage cavern, in case of overfilling or an emergency.

(q) Each permittee shall ensure that the automatic valve closure times meet the valve design limits for closure times.

(r) Each permittee shall cease operations or shall comply with the instructions from the secretary if the secretary determines that an imminent threat to public health, safety, or the environment exists due to any unsafe operating condition. The permittee may resume operations if the secretary determines that the facility's operations no longer pose a risk to public health, safety, or the environment. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-12. Design and construction of storage wells.** (a) Each permittee shall ensure that each storage well is constructed with surface casing. The following requirements shall apply:

(1) The surface casing shall be set through all fresh and usable water formations and into competent bedrock.

(2) The surface casing shall be cemented by circulating cement through the bottom of the casing to the surface.

(3) The annular space between the casing and the formation shall be filled with cement.

(b) Each permittee shall install in each storage well double casing protection with an intermedi-

ate casing and a production casing set into the upper part of the salt formation. The following requirements shall apply:

(1) The intermediate casing shall extend at least 105 feet into the salt formation.

(2) The production casing shall extend at least to the depth of the intermediate casing.

(3) The annular space between the intermediate and production casings and between the intermediate casing and formation shall be filled with cement by circulating cement through the bottom of the casing to the surface.

(c) For each existing storage well that does not have double casing protection, the permittee shall provide a casing protection evaluation as specified in K.A.R. 28-45b-14.

(d) The casing and tubing shall meet the performance standards for collapse resistance, internal yield pressure, and pipe body yield strength for the well's setting depths using criteria specified in the American petroleum institute's bulletin 5C2, which is adopted by reference in K.A.R. 28-45-14.

(e) Each permittee shall designate and maintain a maximum fill level above the bottom of the brine string. The permittee shall submit the following information:

(1) A schematic of the well construction;

(2) the cavern capacity as determined from the most recent sonar survey;

(3) supporting data that shows calculations used to determine the maximum fill level; and

(4) the method that will be used to maintain the maximum fill level.

(f) Only new steel casing shall be installed in a new storage well. Used parts, materials, and equipment that have been tested and certified for continued service may be used for repairs.

(g) Liners shall extend from the surface to a depth near the bottom of the production casing that allows room for workover operations.

(h) The following cementing requirements shall be met:

(1) The cement shall be compatible with the rock formation water and the drilling fluids. Salt-saturated cement shall be used when cementing through the salt section.

(2) The cement across the confining zone and to the surface shall have a compressive strength of not less than 1,000 pounds per square inch.

(3) Remedial cementing shall be completed if there is evidence of either of the following:

(A) Communication between the confining zone and other horizons; or

(B) annular voids that would allow either fluid contact with the casing or channeling across the confining zone or above the confining zone.

(4) The following requirements for cement evaluation shall apply:

(A) Samples shall be obtained at the start and end of the cementing operation for evaluation of cement properties. All cement samples collected shall be representative of the cement being utilized.

(B) All samples shall be tested for compressive strength.

(C) A cement bond log shall be run on the surface casing, intermediate casing, and cemented production casing after the neat cement has cured for at least 72 hours.

(i) Casing patches shall be prohibited, unless the secretary determines that the use of casing patches is protective of public health, safety, and the environment. The following requirements shall apply:

(1) Each permittee shall submit a plan for the installation of the casing patch to the secretary.

(2) Each permittee shall meet the requirements specified in the department's document titled "procedure for internal casing repair," which is adopted by reference in K.A.R. 28-45-14.

(j) Each permittee shall pressure-test each production casing for leaks when the well construction is completed.

(k) Each permittee shall submit a casing inspection base log for the entire cased interval for the innermost casing string or for the cemented liner that extends the entire length of the casing after the well construction is completed.

(l) Each permittee shall contain, in a tank, all workover wastes, drilling fluids, drilling mud, and drill cuttings from any drilling operation or workover. Drilling fluids, drilling mud, and drill cuttings shall be disposed of in a manner determined by the secretary to be protective of public health, safety, and the environment.

(m) A licensed professional engineer shall review and approve the construction plans for the crude oil storage well and cavern system.

(n) A licensed professional engineer or a licensed geologist, or the licensed professional engineer's or licensed geologist's designee, shall supervise the installation of each storage well.

(o) Each permittee shall maintain a corrosion

control system. The following requirements shall apply:

(1) The corrosion control system shall be capable of protecting the well casings.

(2) The corrosion control system shall be assessed according to the protocol and time schedule recommended by the corrosion control system manufacturer, and the results shall be reported to the secretary. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-13. Monitoring.** (a) Each permittee shall ensure that pressure sensors continuously monitor wellhead pressures for both the product and brine sides at the wellhead for each storage well. The following requirements shall apply:

(1) The pressure sensor shall be capable of recording the maximum and minimum operating pressures during a 24-hour period.

(2) The pressure sensor shall be capable of recording operating pressures at an interval approved by the secretary.

(3) Each permittee shall provide pressure data, including historic continuous monitoring, to the secretary upon request.

(b) Each permittee shall submit a plan for any monitoring activity, including logging and sonar surveys, to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment, at least 60 days before the commencement of these monitoring activities.

(c) Each permittee shall submit a summary and the results of the monitoring activity to the secretary within 45 days after completion of the monitoring activity.

(d) Each permittee shall monitor the thickness of the salt roof for each cavern with a gamma ray log and a density log, or with another log as specified in K.A.R. 28-45b-4, as follows:

(1) Every five years;

(2) every three years, if the cavern meets criteria specified in K.A.R. 28-45b-4;

(3) at any time that the secretary determines that cavern integrity is suspect; and

(4) before plugging the well.

(e) Each permittee shall monitor the cavern storage capacity and the cavern geometry with a sonar survey. The sonar survey shall be conducted as follows:

(1) Before placing the underground crude oil storage cavern in service;

(2) every 10 years;

(3) for determining the stability of the cavern and the overburden if the salt roof thickness and cavern geometry indicate that the stability of the cavern or overburden is at risk;

(4) after any growth of the cavern that results in a solution volume increase of 20 percent or more of cavern capacity; and

(5) before plugging the well if a sonar survey has not been run in the past five years.

(f) Any permittee may use an alternative method for the sonar survey if the secretary determines that the alternative method is substantially equivalent to the method specified in subsection (e). The permittee shall submit the following information for the secretary's consideration:

(1) A description of the proposed method and the theory for its operation;

(2) a description of the storage well and cavern conditions under which the log can be used;

(3) the procedure for interpreting the survey results; and

(4) an assessment of the capacity and stability of the cavern upon completion of the survey.

(g)(1) Each applicant shall submit a ground subsidence monitoring plan to the secretary with the permit application. The ground subsidence monitoring plan shall include the following information:

(A) A description of the method for conducting an elevation survey; and

(B) the criteria for establishing monuments, benchmarks, and wellhead survey points.

(2)(A) Each permittee shall meet the following requirements:

(i) Ensure level measurements to the accuracy of 0.01 foot;

(ii) report any surface elevation changes in excess of 0.10 foot within 24 hours to the secretary;

(iii) for any change in established benchmarks, submit justification that the change is protective of public health, safety, and the environment; and

(iv) for each change in established benchmarks, note the elevation change from the previous benchmark noted in the elevation survey report.

(B) Each permittee shall submit the elevation before and after any wellhead work that results in a change in the survey point at the wellhead.

(C) The elevation survey shall be conducted by a licensed professional land surveyor.

(D) Each permittee shall submit biennial survey results to the department within 30 days after completion of the survey.

(h) Before commencing facility operations, each permittee shall submit to the secretary, for review and consideration for approval, an inventory balance plan for measuring the volume of crude oil injected into or withdrawn from each underground crude oil storage well, including methods for measuring and verifying volume. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-14. Testing and inspections.** (a) Each permittee shall submit a plan to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment, before conducting any testing of a storage well or a cavern. Testing shall not commence without prior approval from the secretary.

(b) Each permittee shall submit a summary of the testing to the secretary within 45 days after completing the test. The summary shall include the following:

(1) A chronology of the test;

(2) copies of all logs;

(3) storage well construction information;

(4) pressure readings;

(5) volume measurements; and

(6) an explanation of the test results.

(c) Each permittee shall test each unplugged storage well and cavern for mechanical integrity. The following requirements shall apply:

(1) Integrity tests shall be conducted on the storage well and cavern as follows:

(A) Before the cavern is initially placed in service;

(B) every five years after the initial service date;

(C) before the storage well is placed back in service after being in monitoring status; and

(D) before the well is plugged, unless the mechanical integrity test has been performed in the last five years.

(2) Integrity tests shall be conducted on the underground crude oil storage well after each workover that involves physical changes to any cemented casing string.

(3) Each underground crude oil storage cavern shall be tested for mechanical integrity using a product-brine interface test.

(4) The nitrogen-brine test may be used if the surface equipment is rated for the nitrogen pressure on the upstream side of the well head valves.

(5) Each underground crude oil storage well shall be tested for mechanical integrity using one of the following:

(A) An interface test capable of identifying the location of a leak in the casing; or

(B) a hydraulic casing test.

(6) Each permittee shall submit a test procedure plan, on a form furnished by the department, to the secretary for review and consideration for approval at least 30 days before test commencement. The plan shall include the following information:

(A) The justification for test parameters;

(B) the test sensitivities; and

(C) the pass and fail criteria for the test.

(7) Each permittee shall notify the secretary at least five days before conducting any integrity test.

(8) The integrity test shall be conducted at the maximum allowable operating pressure.

(9) All test procedures shall use certified gauges and pressure transducers that have been calibrated annually.

(d) Any permittee may use an alternative integrity test if the secretary determines that the alternative integrity test is substantially equivalent to the integrity tests specified in subsection (c). The permittee shall submit the following information for the secretary's consideration:

(1) A description of the test method and the theory of operation, including the test sensitivities, a justification for the test parameters, and the pass and fail criteria for the test;

(2) a description of the well and cavern conditions under which the test can be conducted;

(3) the procedure for interpreting the test results; and

(4) an interpretation of the test upon completion of the test.

(e) No storage well and cavern shall be used for storage if the mechanical integrity is not verified.

(f) Each permittee shall submit a casing evaluation for each underground crude oil storage well. Acceptable casing evaluation methods shall include magnetic flux and ultrasonic imaging.

(g) Any permittee may use an alternative casing evaluation method if the secretary determines that the alternative casing evaluation method is substantially equivalent to the casing evaluation methods specified in subsection (f). The permittee shall meet the following requirements:

(1) Each permittee shall submit a description

of the logging method, including the theory of operation and the well conditions suitable for log use.

(2) Each permittee shall submit the specifications for the logging tool, including tool dimensions, maximum temperature and pressure rating, recommended logging speed, approximate image resolution, and hole size range.

(3) Each permittee shall describe the capabilities of the log for determining the following:

(A) The presence of any metal loss due to either of the following:

(i) Internal or external corrosion; or

(ii) internal wear;

(B) the degree of penetration of the corrosion or the casing defect; and

(C) the circumferential extent of the corrosion or the casing defect.

(4) Each permittee shall submit a log and an interpretation of the log to the secretary.

(h) Each permittee shall submit a casing evaluation according to the following time schedule:

(1) Every 10 years for either of the following conditions:

(A) The storage well has double casing protection; or

(B) an existing storage well has a liner and a production casing;

(2) after any workover involving the cemented casing; and

(3) every five years, if the storage well does not have double casing protection or if a determination is made by the secretary that the integrity of the long string casing could be adversely affected by any naturally occurring condition or man-made activity.

(i) Each permittee shall submit a cement bond log with the casing evaluation if a cement bond log has not been previously submitted.

(j) A licensed professional engineer or licensed geologist, or licensed professional engineer's or licensed geologist's designee, shall supervise all test procedures and associated field activity.

(k) Each permittee shall have a licensed professional engineer or licensed geologist review all test results.

(l) Each permittee shall visually inspect each wellhead monthly for any leakage.

(m) Each permittee shall conduct an inspection of facility records, using a form furnished by the department, every two years to ensure that the required records are being maintained in accordance with these regulations. The permittee shall maintain these records at the facility and shall make the records available to the secretary upon request. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-15. Groundwater monitoring.** (a) Each applicant shall submit a groundwater monitoring plan with the permit application to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment.

(b) Each permittee shall ensure that the groundwater monitoring wells meet the following requirements:

(1) Each permittee shall set the screen in each shallow monitoring well at a depth that is inclusive of the seasonal fluctuation of the water table.

(2) Each permittee shall ensure that all deep groundwater monitoring wells extend a minimum of 25 feet into the bedrock, or to a depth based on the geology and hydrogeology at the facility and approved by the secretary to ensure the protection of public health, safety, and the environment.

(c) All well locations and the spacing between all well locations shall be based on the geology and the hydrogeology at the facility and shall be required to be approved by the secretary to ensure the protection of public health, safety, and the environment.

(d) Before commencing facility operations, each applicant shall submit a quality assurance plan, including techniques for sampling and analysis, to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment.

(e) Each permittee shall collect groundwater samples and analyze the samples for chlorides and any other parameter determined by the secretary to pose a threat to public health, safety, and the environment. The reporting format shall be determined by the secretary.

(f) Each permittee shall submit the results for chloride analyses from groundwater samples to the department on a quarterly basis.

(g) Each permittee shall monitor monthly for the presence of combustible gas in the headspace in monitoring wells and shall quarterly submit the results to the department.

(h) Each permittee shall submit a static groundwater level measurement for each monitoring well

with the quarterly chloride analyses results specified in subsection (f).

(i) Any permittee of a facility where chloride concentrations in the groundwater exceed 250 milligrams per liter may be required by the secretary to submit a work plan, for review and consideration for approval, that describes the methods to delineate potential source areas and to control migration of the chloride contamination.

(j) Each permittee of a well in which combustible gas is detected shall submit a work plan to the secretary for review and consideration for approval. Each permittee shall describe the proposed methods to eliminate any source areas and return the combustible gas levels to levels that do not pose a potential threat to public health, safety, or the environment. The plan shall be approved if the secretary determines that the plan is protective of public health, safety, and the environment. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-16. Record requirements and retention.** (a) Each permittee shall submit an annual report, on a form approved by the department, on or before April 1 of each year. The annual report shall include the following:

(1) A description of any incident of uncontrolled or unanticipated product loss;

(2) the well number and date of any logs or sonar surveys conducted;

(3) the estimated storage capacity for each cavern associated with an unplugged well;

(4) a list of any caverns being washed;

(5) a list of the volume of product injected and withdrawn for each storage well;

(6) a list, by well number, of the type of product stored; and

(7) a list, by well number, of the maximum and minimum product storage pressures encountered during the report year.

(b) Each permittee shall maintain facility records at the facility or at a location approved by the secretary for the following time periods:

(1) A period of 10 years, for the following records:

(A) The maximum and minimum operating pressures for each storage well; and

(B) the annual inspections required by the secretary;

(2) the life of each storage well, for the following records:

(A) The casing records for each storage well;

(B) the cementing records for each storage well;

(C) the workover records;

(D) monitoring information, including calibration and maintenance records; and

(E) continuous monitoring data; and

(3) the life of the facility, for the following records:

(A) All logging events;

(B) all mechanical integrity tests and other testing;

(C) all groundwater monitoring data; and

(D) all correspondence relating to the permit, including electronic mail.

(c) Surface elevation surveys shall be maintained and retained for the life of facility plus 20 years after the facility's closure.

(d) If the facility permit is transferred, the former permittee shall provide all required facility records, reports, and documents to the new pemittee. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-17. Well workovers.** (a) Each permittee shall submit a workover plan to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment. The following provisions shall apply:

(1) Each permittee shall submit the workover plan at least 10 days before performing any downhole or wellhead work that involves dismantling or removal of the wellhead.

(2) A permittee shall not be required to submit a workover plan for routine maintenance or replacement of gauges, sensors, or valves.

(3) Verbal authorization to initiate downhole or wellhead work may be issued by the secretary if the permittee has fulfilled the requirements of this subsection.

(b) Each permittee shall ensure that a blowout preventer with a pressure rating greater than the pressures anticipated to be encountered is used during eachworkover.

(c) Each permittee shall ensure that all logging procedures are conducted through a lubricator unit with a pressure rating greater than the pressures anticipated to be encountered.

(d) Each permittee shall provide to the person logging a storage well or performing a well workover all relevant information concerning the status

and condition of the storage well and cavern before initiating any work. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-18. Plugging and plugging-monitoring requirements.** (a) Each permittee shall submit a plugging plan, including monitoring and testing requirements, to the secretary for review and consideration for approval at least 60 days before each plugging event.

(b) Each permittee shall follow the plugging procedure for a plugging event specified in the department's document titled "procedure for the plugging and abandonment of a crude oil storage well," procedure #UICLPG-29, dated October 2008, which is hereby adopted by reference.

(c) Each permittee wishing to place a storage well and cavern into plugging-monitoring status shall submit a plugging-monitoring plan to the secretary for review and consideration for approval at least 60 days before the plugging-monitoring event. The plan shall include the following:

(1) A schematic of the storage well configuration;

(2) the most recent results from the gamma-density log, the casing inspection log, the cement bond log, and the sonar survey; and

(3) the procedure for placing the cavern into plugging-monitoring status.

(d) Each permittee of a crude oil storage well to be placed into plugging-monitoring status may be required to perform additional testing or logging before placing the cavern into plugging-monitoring status if either of the following conditions exists:

(1) The required logging and testing are not current.

(2) A lack of storage well or cavern integrity poses a threat to public health, safety, or the environment.

(e) Each permittee of a storage well and cavern placed into plugging-monitoring status shall monitor the cavern pressure with a gauge on a weekly basis or continue to monitor pressures with a pressure transducer connected to a supervisory control and data acquisition system.

(f) Each permittee shall report any unexpected increase or decrease in pressure at a well in plugging-monitoring status to the secretary within 24 hours. Testing, logging, or any other necessary measures may be required by the secretary to determine if a threat to public health, safety, or the environment exists.

(g) Each permittee shall restore and preserve the integrity of the site as follows:

(1) Dispose of all liquid waste in an environmentally safe manner;

(2) clear the area of debris;

(3) drain and fill all excavations;

(4) remove all unused concrete bases, machinery, and materials; and

(5) level and restore the site. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-19. Underground crude oil storage fees.** (a) Each permit applicant shall submit a fee of $700 for each proposed storage well with the permit application.

(b) Each permittee shall submit an annual permit fee of $18,890 per facility and $305 per unplugged storage well on or before April 1 of each year.

(c) Fees shall be made payable to the "Kansas department of health and environment — subsurface hydrocarbon storage fund."

(d) The fees collected under the provisions of this regulation shall not be refunded.

(e) If ownership of an underground crude oil storage well or underground crude oil storage facility changes during the term of a valid permit, no additional fee shall be required unless a change occurs that results in a new storage well or an expanded facility operation. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-20. Permit required for a brine pond.** Since the underground storage of crude oil and the access to and transfer of crude oil are dependent on the safe and secure operation and maintenance of associated brine ponds, no person shall construct, operate, or maintain any brine pond associated with an underground crude oil storage facility without first obtaining a brine pond permit from the secretary. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-21. Brine pond permit application; permit renewal.** (a)(1) Each applicant for a permit for a new brine pond shall submit an application to the secretary at least 90 days before

the construction of the new brine pond commences. Brine pond construction shall not begin until the secretary has issued the permit.

(2) Upon review of the application, either of the following shall be issued by the secretary:

(A) A final permit if the application is approved; or

(B) a notice that the permit has been denied if the applicant has not complied with the applicable requirements of this article. The notice shall include justification for the permit denial.

(b) Each permit for a brine pond shall be authorized for a term not to exceed 10 years.

(c) Each permittee wanting to renew the permit shall submit a completed renewal application at least 90 days before the expiration date of the permit in effect.

(d) Each permit application for a new brine pond shall include a hydrogeological investigation conducted under the direction of a licensed geologist or a licensed professional engineer. Each hydrogeological investigation for a new brine pond shall include the following information:

(1) A site characterization for brine pond construction, which shall meet the following requirements:

(A) The bottom of the brine pond shall be determined by the lowest surface elevation of compacted or excavated soils used in creating the pond structure;

(B) all required excavations or boreholes shall be drilled to a depth of at least 10 feet below the bottom of the brine pond;

(C) the separation distance between the bottom of the brine pond and the water table, which shall meet one of the following requirements:

(i) A separation distance of at least 10 feet shall be maintained between the brine pond bottom and the water table; or

(ii) a separation distance of less than 10 feet shall require the installation of a clay tertiary subliner; and

(D) the surface area shall be measured at the interior top dike elevation;

(2) the location and elevation of each borehole or excavation, based on surface area, which shall be determined by the following criteria:

(A) At least two boreholes or excavations for each five acres of proposed brine pond surface area; or

(B) at least two boreholes or excavations if the brine pond surface area is less than five acres; and

(3) the following information for each borehole or excavation:

(A) A log of soil types encountered in each borehole or excavation; and

(B) a groundwater level measurement at each borehole or excavation.

(e) Each permittee shall notify the department at least five days before conducting any field activities for the hydrogeological investigation. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-22. Public notice for a brine pond.** (a) Public notice shall be given by the secretary for the following permit actions:

(1) A permit application for any new brine pond associated with an underground crude oil storage well;

(2) a denied permit; and

(3) a scheduled hearing.

(b) The public notice and, if applicable, a copy of the draft permit shall be mailed or electronically mailed by the department to the permit applicant.

(c) Each public notice shall be mailed by the department to the following:

(1) Any person who submits a written request for placement on the mailing list;

(2) the official county newspaper of each county in which the lands affected by the application are located, for publication in at least two issues; and

(3) the Kansas register.

(d) Each public notice shall include the following information:

(1) The name and address of the department processing the permit action for which the notice is being given;

(2) the name and address of the person seeking the permit;

(3) a brief description of the activity described in the permit application;

(4) the name, address, and telephone number of the person that interested persons may contact for further information, including copies of the application, draft permit, or other appropriate information;

(5) a brief description of the comment procedures for public notice; and

(6) a statement of the procedure to request a hearing and other procedures that allow public participation in the final permit decision.

(e) Any interested person may submit written

comments to the secretary on any permit action during the 30-day public comment period. The following requirements shall apply:

(1) Comments shall be submitted by the close of the public comment period.

(2) All supporting materials submitted shall be included in full. The supporting materials shall not be incorporated by reference, unless the supporting materials are any of the following:

(A) Part of the administrative record in the same proceeding;

(B) state or federal statutes and regulations;

(C) state or environmental protection agency documents of general applicability; or

(D) other generally available reference materials.

(3) Commentators shall make available to the secretary all supporting materials not already included in the administrative record.

(f) The response to all relevant comments concerning any permit actions and the reasons for changing any provisions in the draft permit shall be issued when the final permit decision is issued.

(g) The response to comments shall be made available to the public upon request. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-23. Modification and transfer of a brine pond permit; variance.** (a) Any reissuance or modification of a brine pond permit and any variance may be authorized by the secretary for a term of less than 10 years.

(b) The automatic transfer of a brine pond permit shall be prohibited. The terms of a permit transfer shall include the following:

(1) Each person requesting a permit transfer shall submit a completed application to the secretary at least 60 days before the proposed effective date of the transfer.

(2) Each permittee shall comply with the requirements of the existing permit until the secretary reissues the permit.

(c) Any permit for a brine pond may be modified by the secretary for any of the following reasons:

(1) The secretary receives information not available when the permit was issued.

(2) The secretary receives a request for a modification.

(3) The secretary conducts a review of the permit file and determines that a modification is necessary.

(d) Only the permit actions subject to modification shall be reopened.

(e) Minor modifications that shall not require public notification shall include the following:

(1) Correction of typographical errors;

(2) requirements for more frequent monitoring or reporting by the permittee;

(3) date change in a schedule of compliance;

(4) change in ownership or operational control of the facility, unless the secretary determines that public notification is necessary to protect the public interest;

(5) change in construction requirements, if approved by the secretary; and

(6) amendments to a brine pond closure plan.

(f) A draft permit and notification to the public shall be required if any of the following conditions is met:

(1) A permittee proposes substantial alterations to the brine ponds or proposes any activity that justifies a change in permit requirements, including cumulative effects on public health, safety, or the environment.

(2) Information has become available that would have initially justified different permit conditions.

(3) The regulations on which the permit was based have changed because of the promulgation of new or amended regulations or because of a judicial decision.

(g) Any permittee may request a permit modification within 180 days after any of the following:

(1) The adoption of any new regulations;

(2) any deadline to achieve compliance with regulations before the expiration date of the permit; or

(3) any judicial remand and stay of a promulgated regulation, if the permit condition was based on the remanded regulation. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-24. Signatories for brine pond permit applications and reports.** (a) Each applicant for a permit for a new brine pond shall designate at least one signatory to sign the permit applications and reports required by the secretary.

(b) The positions that may be approved by the secretary as signatories shall include any of the following:

(1) Operations manager;

(2) brine pond specialist; or

(3) any position with responsibility at least equivalent to that required by the positions listed in this subsection.

(c) Any signatory may submit written notification to the secretary specifying a position having responsibility for the overall operation of the facility or activity to act as a designated signatory.

(d) Each signatory and each signatory's designee shall submit a signature statement, on a form furnished by the department, to the secretary with the brine pond permit application. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-25. Financial assurance for brine pond closure.** (a) Each applicant for a permit for a new brine pond shall submit, with the application and annually thereafter on or before the permit renewal date, proof of financial assurance to the secretary.

(b)(1) Each brine pond permittee shall establish financial assurance for the decommissioning and abandonment of any brine pond permitted by the secretary under this article.

(2) Each applicant and each permittee shall meet the following requirements:

(A) Submit a detailed written estimate, in current dollars, of the cost to close any brine pond at the facility. The estimate shall be reviewed and approved by a licensed professional engineer or licensed geologist;

(B) develop an estimate of the closure cost for each brine pond at the facility as follows:

(i) The estimate shall be based on the cost charged by a third party to decommission the brine pond in accordance with this article; and

(ii) the brine pond shall be assumed to be at maximum storage capacity; and

(C) increase the closure cost estimate and the amount of financial assurance provided if any change in the brine pond closure plan or in the operation increases the maximum cost of brine pond closure at any time.

(c) Each permittee shall provide continuous financial assurance coverage for closure until the secretary approves the brine pond closure.

(d) Each permittee shall comply with the provisions of the department's document titled "procedure for demonstrating financial assurance for a brine pond associated with a storage facility," procedure # UICLPG-30, dated October 2008, which is hereby adopted by reference. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-26. Design, construction, and maintenance of brine ponds.** (a) Each applicant for a brine pond permit shall submit a design and construction plan for each new brine pond associated with an underground crude oil storage facility to the secretary. The design and construction plan shall be approved if the secretary determines that the plan is protective of public health, safety, and the environment. Each brine pond shall be designed by a licensed professional engineer.

(b) Each applicant shall ensure that the impermeable synthetic membrane liner system for each brine pond consists of primary and secondary impermeable synthetic membrane liners with an intermediate leak detection system. The following requirements shall apply:

(1) The primary and secondary liners shall each be at least 30 mils in thickness.

(2) The engineer designing the brine pond shall obtain a certification from the liner manufacturer providing the following information:

(A) Confirmation that the specified liner is compatible for use with the brine;

(B) confirmation that the specified liner is ultraviolet-resistant; and

(C) data for the manufacturer's estimated leakage, permeability, or transmissivity rate for specific liners, including the rate of movement of fluids through the synthetic membrane liner due to the properties and thickness of the liner material, expressed in units of volume per area per time;

(D) any normally expected manufacturing defects in the liner material; and

(E) any normally expected defects associated with the seaming and installation process.

(c) Each brine pond permittee shall submit a contingency plan to the secretary that outlines the procedures for brine containment issues associated with brine pond maintenance and dewatering due to liner failure, repair, replacement, or expansion of the brine pond. The contingency plan shall be approved if the secretary determines that the plan is protective of public health, safety, and the environment.

(d) Each permittee of an existing brine pond and each applicant for a permit for a new brine pond shall submit a flood response plan if the

brine pond is located in a floodplain or a flood-prone area.

(e) Each permittee shall cease operations or shall comply with instructions from the secretary if the secretary determines that an imminent threat to public health, safety, or the environment exists due to any unsafe operating condition. The permittee may resume operations if the secretary determines that the brine pond operations no longer pose a risk to public health, safety, or the environment.

(f) Each permittee shall ensure that the primary and secondary liners for each brine pond are separated to provide a conduit for the movement of any fluid between the liners to the leak detection monitoring location for detection and removal.

(g) Each permittee shall ensure that all materials between the primary and secondary liners are capable of transmitting at least 1/64 inch per acre per day of flow with a head of no more than two feet placed on the secondary liner. Acceptable materials shall include the following:

(1) Clean sand;

(2) pea gravel;

(3) geotextile fabric;

(4) geonet-type material; and

(5) any alternatives recommended by the liner manufacturer, if the secretary determines that the alternatives are substantially equivalent to materials listed in this subsection.

(h) Each permittee shall ensure that the leak detection system design for each brine pond limits the maximum travel time required for fluid penetrating the liner to reach the leak detection monitoring location to 24 hours or less.

(i) Each permittee shall ensure that the bottom of each brine pond has a slope adequate for the proper operation of the leak detection system, with not less than 0.5 percent for the slope for the collection pipes and 1.0 percent for all other slopes.

(j) Each permittee shall ensure that the dewatering system design for each brine pond is capable of the following:

(1) Monitoring the volume of fluid removed from the intermediate space between the primary and secondary liners; and

(2) pumping the volume of fluid generated equal to 10 times the maximum allowable liner leakage rate.

(k) Each permittee shall ensure that the compaction of all brine pond embankments and of the upper six inches of the interior lagoon bottom below the secondary liner meets all of the following requirements:

(1) The maximum standard proctor density shall be at least 95 percent at optimum moisture to optimum moisture plus three percent.

(2) The maximum thickness of the layers of material to be compacted shall not exceed six inches.

(3) The moisture content range of the compacted soils shall be optimum moisture to optimum moisture plus three percent.

(4) The maximum size of dirt clods in the compacted soil shall be less than one inch in diameter.

(l) Each permittee shall ensure that the following requirements for the installation of the liners at each brine pond are met:

(1) The primary and secondary liners shall be anchored at the top of the brine pond dike in accordance with the liner manufacturer's instructions.

(2) Installation shall be performed in accordance with the liner manufacturer's instructions.

(3) Installation shall be performed by a contractor experienced in the installation of impermeable synthetic membrane liners.

(4) On-site supervision of the liner installation shall be provided by an individual that has experience in liner installation practices.

(m) Each permittee shall ensure that the volume of fluid monitored from the intermediate leak detection system at the brine pond is based on a rate of 10 percent of leak return system capacity and does not exceed 1,000 gallons per day per acre of pond area.

(n) Each permittee shall submit, to the secretary, a seam testing method to verify the adequacy of the seaming process for the liners at each brine pond. The following requirements shall apply:

(1) The testing method shall include the following:

(A) The methods for destructive and nondestructive seam testing;

(B) the protocol describing the number of tests per lineal foot of field seam;

(C) the size of the destructive test specimen required; and

(D) any other pertinent quality control provisions recommended by the liner manufacturer.

(2) All field seams shall be subjected to nondestructive testing.

(o) Each permittee shall install an oil-brine separator to separate entrained product from the brine used to transfer product. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a;

implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-27. Groundwater monitoring for brine ponds.** (a) Each applicant for a permit for a new brine pond shall submit a groundwater monitoring plan with the application for a brine pond permit to the secretary for review and consideration for approval. The monitoring plan shall be approved if the secretary determines that the plan is protective of public health, safety, and the environment.

(b) Each applicant for a permit for a new brine pond shall meet the following requirements:

(1) Install monitoring wells around the perimeter of the brine pond. The well spacing shall be based on the geology and hydrogeology at the facility and shall be approved by the secretary if the secretary determines that the well spacing is protective of public health, safety, and the environment; and

(2) set the screen in all shallow groundwater monitoring wells at a depth that is inclusive of the seasonal fluctuation of the water table.

(c) Each applicant for a permit for a new brine pond shall submit, with the groundwater monitoring plan, a quality assurance plan to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment.

(d) Each permittee shall collect groundwater samples and analyze the samples for chloride and any other parameter determined by the secretary as posing a potential threat to public health, safety, and the environment. The reporting format shall be determined by the secretary.

(1) Each permittee shall submit the following to the department on a quarterly basis:

(A) The results for the chloride analyses from groundwater samples; and

(B) a static groundwater level measurement for each monitoring well.

(2) Each permittee shall monitor monthly for the presence of combustible gas in the headspace in monitoring wells and submit the results to the department on a quarterly basis.

(e) Any permittee of a brine pond where chloride concentrations in the groundwater exceed 250 milligrams per liter may be required by the secretary to submit a work plan, for review and consideration for approval, that describes proposed methods to delineate the extent of the contamination and to control migration of the chloride contamination. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

**28-45b-28. Brine pond closure requirements.** (a) Each brine pond permittee shall submit a closure plan, including monitoring and testing requirements, to the secretary for review and consideration for approval at least 60 days before the closure of a brine pond. The closure plan shall be approved if the secretary determines that the closure plan is protective of public health, safety, and the environment.

(b) The permittee shall not commence closure activities without the secretary's prior approval.

(c) Each permittee shall include the following information in the brine pond closure plan:

(1) The procedure for deactivating the various brine lines employed at the facility;

(2) the procedures for the remediation, removal, or disposal of brine, accumulated sludge in the brine pond, contaminated soils, and contaminated groundwater;

(3) a description regarding the proposed maintenance, deactivation, conversion, or demolition of the brine pond structure; and

(4) procedures addressing the plugging of any water wells or groundwater monitoring wells associated with the brine pond. (Authorized by K.S.A. 55-1,117 and K.S.A. 2008 Supp. 55-1,117a; implementing K.S.A. 55-1,117; effective July 6, 2009.)

## Article 46.—UNDERGROUND INJECTION CONTROL REGULATIONS

**28-46-1. General requirements.** (a) Any reference in these regulations to standards, procedures, or requirements of 40 CFR Parts 124, 136, 144, 145, 146, or 261 shall constitute adoption by reference of the entire part, subpart, and paragraph so referenced, including any notes, charts, and appendices, unless otherwise specifically stated in these regulations, except for any references to NPDES, RCRA, PSD, ocean dumping permits, dredge and fill permits under section 404 of the clean water act, the non-attainment program under the clean air act, national emissions standards for hazardous pollutants(HESHAPS), EPA issued permits, and any internal CFR citations specific to those programs. Each reference to 40 CFR 146.04, 40 CFR 146.06, 40 CFR 146.07, and 40 CFR 146.08 shall

mean 40 CFR 146.4, 40 CFR 146.6, 40 CFR 146.7, and 40 CFR 146.8, respectively.

(b) When used in any provision adopted from 40 CFR Parts 124, 136, 144, 145, 146, or 261, references to "the United States" shall mean the state of Kansas, "environmental protection agency" shall mean the Kansas department of health and environment, and "administrator," "regional administrator," "state director," and "director" shall mean the secretary of the department of health and environment.

(c) When existing Kansas statutory and regulatory requirements are more stringent than the regulations adopted in subsection (a), the Kansas requirements shall prevail. (Authorized by and implementing K.S.A. 2009 Supp. 65-171d; effective May 1, 1982; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-2a. Definitions.** (a) The following federal regulations, as in effect on July 1, 2008, are hereby adopted by reference, except as specified:

(1) 40 CFR 124.2, except for the following terms and their definitions:

(A) "Application";

(B) "director";

(C) "draft permit";

(D) "eligible Indian tribe";

(E) "environmental appeals board";

(F) "facility or activity";

(G) "Indian tribe";

(H) "major facility";

(I) "owner or operator";

(J) "permit";

(K) "regional administrator";

(L) "SDWA"; and

(M) "state";

(2) 40 CFR 144.3, except for the following terms and their definitions:

(A) "Application";

(B) "approved state program";

(C) "appropriate act and regulations";

(D) "director";

(E) "draft permit";

(F) "eligible Indian tribe";

(G) "Indian tribe";

(H) "state";

(I) "total dissolved solids"; and

(J) "well";

(3) 40 CFR 144.61;

(4) 40 CFR 146.3, except for the following terms and their definitions:

(A) "Application";

(B) "director";

(C) "exempted aquifer";

(D) "facility or activity";

(E) "Indian tribe";

(F) "owner or operator";

(G) "permit";

(H) "SDWA";

(I) "site"; and

(J) "well"; and

(5) 40 CFR 146.61(b), except for the term "cone of influence" and its definition.

(b) In addition to the definitions adopted in subsection (a), the following definitions shall apply in this article:

(1) "Application" means the standard departmental form or forms required for applying for a permit, including any additions, revisions, and modifications to the forms.

(2) "Authorized by rule," when used to describe an injection well, means that the well meets all of the following conditions:

(A) The well is a class V injection well.

(B) The well is in compliance with this article.

(C) The well is not prohibited, as specified in K.A.R. 28-46-26a.

(D) The well is not required by the secretary to have a permit.

(3) "Cone of impression" means the mound in the potentiometric surface of the receiving formation in the vicinity of the injection well.

(4) "Cone of influence" means the area around a well within which increased injection pressures caused by injection into the well would be sufficient to drive fluids into an underground source of drinking water (USDW).

(5) "Department" means the Kansas department of health and environment.

(6) "Director" means director of the division of environment of the Kansas department of health and environment.

(7) "Draft permit" means a document prepared by the department after receiving a complete application or making a tentative decision that an existing permit shall be modified and reissued, indicating the secretary's tentative decision to either issue a permit or deny a permit. A draft permit is not required for a minor modification of an existing permit.

(8) "Existing salt solution mining well" means a

well authorized and permitted by the secretary before the effective date of these regulations.

(9) "Fracture pressure" means the wellhead pressure that could cause vertical or horizontal fracturing of rock along a well bore.

(10) "Gallery" means a series of two or more salt solution mining wells that are artificially connected within the salt horizon and are produced as a system with one or more wells designated for withdrawal of solutioned salt.

(11) "Injection well facility" and "facility" mean the acreage associated with the injection field and with facility boundaries approved by the secretary. These terms shall include the injection wells, wellhead, and any related equipment, including any appurtenances associated with the well field.

(12) "Maximum allowable injection pressure" means the maximum wellhead pressure not to be exceeded as a permit condition.

(13) "Motor vehicle waste disposal well" and "MVWDW" mean a disposal well that received, receives, or has the potential to receive fluids from vehicular repair or maintenance activities.

(14) "Notice of intent to deny" means a draft permit indicating the secretary's tentative decision to deny a permit.

(15) "Production casing," when used for a class III well, means the casing inside the surface casing of a well that extends into the salt formation.

(16) "Salt roof" means a distance, determined in feet, from the highest point of a salt solution mining cavern to the top of the salt formation. This distance shall be approved by the secretary.

(17) "Secretary" means the secretary of the Kansas department of health and environment or the secretary's authorized representative.

(18) "Transportation artery" means any highway, county road, township road, private road, or railroad, excluding any existing right-of-way, not owned or leased by the permittee.

(19) "Well" means any of the following:

(A) A bored, drilled, or driven shaft whose depth is greater than the largest surface dimension;

(B) a dug hole whose depth is greater than the largest surface dimension;

(C) a sinkhole modified to receive fluids; or

(D) a subsurface fluid distribution system. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective March 2, 2007; amended Aug. 6, 2010.)

**28-46-3. Classification of injection wells.** 40 CFR 144.6, 40 CFR 144.80, 40 CFR 144.81, and 40 CFR 146.5, as in effect on July 1, 2008, are adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-4. Injection of hazardous or radioactive wastes into or above an underground source of drinking water.** The injection of hazardous or radioactive wastes into or above an underground source of drinking water shall be prohibited. (Authorized by and implementing K.S.A. 2009 Supp. 65-171d; effective May 1, 1982; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended Aug. 6, 2010.)

**28-46-5. Application for injection well permits.** (a) 40 CFR 124.3, except (d), and 40 CFR 144.31, except (c)(1), as in effect on July 1, 2008, are adopted by reference. In addition, the provisions of K.S.A. 65-3437, and amendments thereto, that relate to hazardous waste injection wells shall apply to class I hazardous waste injection wells.

(b) A draft permit shall not be prepared if an applicant fails or refuses to correct deficiencies in the permit application. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-6. Conditions applicable to all permits.** 40 CFR 144.51(a) through (p), as in effect on July 1, 2008, are adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-7. Draft permits.** (a) Once an application is complete, a draft permit shall be issued by the secretary.

(b) Each draft permit issued after the secretary's decision to issue a permit shall contain the following information:

(1) All conditions under 40 CFR 144.51(a) through (p);

(2) all compliance schedules under 40 CFR 144.53;

(3) all monitoring requirements under 40 CFR 144.54; and

(4) all permit conditions under 40 CFR 144.52.

(c) If the secretary determines, after issuing a notice of intent to deny, that the decision to deny the permit application was incorrect, the notice of intent to deny shall be withdrawn and a draft permit issued under subsection (b). (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-8. Fact sheets.** 40 CFR 124.8, except (b)(9), as in effect on July 1, 2008, is adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-9. Establishing permit conditions.** 40 CFR 144.52, except for references to 40 CFR 144.4, 40 CFR 144.36, and part 145, as in effect on July 1, 2008, is adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-10. Term of permits.** (a) Class I, III, and V permits shall be effective for a fixed term not to exceed 10 years.

(b) If a permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee shall submit an application to renew the permit. Each application to renew the permit shall be filed with the department at least 180 days before the permit expiration date. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended May 1, 1987; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-11. Schedules of compliance.** 40 CFR 144.53, except references to 40 CFR part 145, as in effect on July 1, 2008, is adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-12. Requirements for recording and reporting of monitoring results.** 40 CFR 144.54, as in effect on July 1, 2008, is adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-13. Effect of a permit.** 40 CFR 144.35, as in effect on July 1, 2008, is adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-14. Transfer of permits.** 40 CFR 144.38, as in effect on July 1, 2008, is adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-15. Modification and reissuance of permits.** (a) Any permit may be modified and reissued either at the request of any interested person, including the permittee, or upon the secretary's initiative after conducting a review of the permit file.

(b) Each request from any interested person or the permittee shall be submitted in writing and shall contain facts or reasons supporting the request.

(c) If at least one of the causes listed in subsection (d) for modification or reissuance exists, a draft permit including the modifications to the existing permit shall be issued.

(d) Each of the following shall be cause for modification and reissuance:

(1) There are material and substantial altera-

tions or additions to the permitted facility or activity that occurred after permit issuance and justify the application of permit conditions that are different from or absent in the existing permit.

(2) The secretary has received information indicating that the terms of the permit need modification because the information was not provided to the secretary when the permit was issued.

(3) The regulations on which the permit was based have been changed by promulgation of new or amended regulations or by judicial decision after the permit was issued.

(4) The secretary determines that good cause exists for modification of a compliance schedule, including an act of God, strike, flood, materials shortage, or any other event over which the permittee has little or no control and for which there is no reasonably available remedy.

(5) Cause exists for termination under K.A.R. 28-46-16, and the secretary determines that modification and reissuance is appropriate.

(6) The secretary determines that the waste being injected is a hazardous waste either because the definition of hazardous waste has been revised or because a previous determination has been changed.

(7) The secretary determines that the location of the facility is unsuitable because new information indicates that a threat to human health or the environment exists that was unknown at the time of permit issuance.

(e)(1) If the secretary decides to modify and reissue a permit, a draft permit under K.A.R. 28-46-7 shall be prepared by the secretary incorporating the proposed changes. Additional information may be requested by the secretary, and the submission of an updated application may be required by the secretary.

(2) If a permit is modified, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect.

(3) A permit may be modified to make minor modifications to a permit without the issuance of a draft permit. Minor modifications shall include the following:

(A) Correcting typographical errors;

(B) requiring more frequent monitoring or reporting by the permittee;

(C) changing an interim compliance date in a schedule of compliance, if the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(D) allowing for a change in ownership or operational control of a facility if the secretary determines that no other change in the permit is necessary, if a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the secretary;

(E) changing quantities or types of fluids injected that are within the capacity of the facility as permitted, if the change meets the following conditions:

(i) The change would not interfere with the operation of the facility;

(ii) the change would not interfere with the facility's ability to meet conditions described in the permit; and

(iii) the change would not change the facility's classification;

(F) changing construction requirements previously approved by the secretary; and

(G) amending a plugging and abandonment plan that has been updated. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-16. Termination of permits.** 40 CFR 144.40, as in effect on July 1, 2008, is adopted by reference. (Authorized by K.S.A. 2009 Supp. 55-1,117 and 65-171d; implementing K.S.A. 2009 Supp. 55-1,117 and K.S.A. 65-165; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-17. Minor modifications of permits.** 40 CFR 144.41, as in effect on July 1, 2008, is adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-18. Area permits.** 40 CFR 144.33, as in effect on July 1, 2008, is adopted by refer-

ence. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-19. Emergency permits.** 40 CFR 144.34, as in effect on July 1, 2008, is adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-20. Corrective action.** 40 CFR 144.55, except reference to 40 CFR 146.33(b), 40 CFR 146.7, and 40 CFR 146.64, as in effect on July 1, 2008, are adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-21. Public notice, public comments, and public hearings.** 40 CFR 124.10 through 40 CFR 124.12 and 40 CFR 124.17, except references to 40 CFR 145.11, as in effect on July 1, 2008, are adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-22. Signatories.** 40 CFR 144.32, as in effect on July 1, 2008, is adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-27. Prohibition of fluid movement into underground sources of drinking water.** 40 CFR 144.12, except references to 40 CFR 144.21 through 144.24, as in effect on July 1, 2008, is adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-28. Establishing maximum injection pressure.** (a) A maximum allowable injection pressure for each injection well shall be established by the secretary as a permit condition.

(b)(1) All class I wells operating on other than gravity flow shall be prohibited.

(2) In the case of gravity flow, the positive wellhead pressure for a class I well shall not exceed 35 pounds per square inch gauge.

(c) For all wells, the maximum operating pressure shall not be allowed to exceed fracture pressure, except under either of the following conditions:

(1) The development of fractures for well stimulation operations; or

(2) the connection of a class III salt solution mining well to any other class III well for operation as a salt solution mining gallery. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-29. Design and construction requirements.** 40 CFR 146.12 and 40 CFR 146.65, governing class I wells, and 40 CFR 146.32, governing class III wells, as in effect on July 1, 2008, are adopted by reference. In addition, the following requirements shall apply to class III salt solution mining wells:

(a) Each salt solution mining well cavern wall shall meet the following requirements:

(1) Be located at least 50 feet from any other active or abandoned brine-supply wells or other holes or excavations penetrating the salt section, unless the wells, holes, or excavations have been properly plugged; and

(2) be located at least 50 feet from any existing surface structures not owned by the permittee, including any transportation artery.

(b) The cavern wall for each solution mining well shall be located at least 50 feet from the property boundaries of any owners who have not consented to the mining of salt under their property.

(c) Each salt solution mining wellhead shall be located at least 150 feet from the property boundaries of any owners who have not consented to the mining of salt under their property.

(d) For each new salt solution mining well, new steel surface casing shall be set through all freshwater formations and encased in cement from bottom to top by circulating cement through the bottom of the casing to the surface.

(e) For each new salt solution mining well, production casing shall be set into the upper part of the salt formation and encased in cement as specified in this regulation. The casing shall extend at least 55 feet into the salt formation. Centralizers shall be used on the outside of the production casing and shall not be spaced more than 100 feet apart. Before setting and cementing the production casing, the mudcake on the bore wall shall be removed by the use of scratchers or a washing method approved by the director. The cement for that part of the casing opposite the salt formation shall be prepared with salt-saturated cement.

(f) A variance for each well not meeting the requirements of this regulation may be granted by the secretary if all the following conditions are met:

(1) The variance is protective of public health, safety, and the environment.

(2) The permittee agrees to perform any additional monitoring or well improvements, or any combination of these, if required by the secretary.

(3) The permittee agrees to conduct a geomechanical study in support of the variance request. The geomechanical study shall be conducted by a contractor experienced in conducting and interpreting geomechanical studies.

(g) Each permittee seeking a variance shall submit a written request to the secretary for review and consideration for approval. Each request shall include justification for the variance, the geomechanical study and interpretation, and any additional supporting information.

(h) A cement bond log shall be conducted on the production casing after the cement mixture has cured for at least 72 hours and shall be submitted to the department within 45 days after completion of the test. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-29a. Operation of class III salt solution mining wells.** (a) A class III salt solution mining well shall not be operated under any of the following conditions:

(1) The salt roof is less than 50 feet in thickness above the washed cavern.

(2) The solution cavern has been developed as a single well, and the dimensions of the cavern across a horizontal plane exceed 400 feet at any depth or 300 feet in the upper one-third of the potential cavern height.

(3) The top of the solution cavern is less than 250 feet from the ground surface.

(4) The solution cavern has been developed as part of a gallery, and the dimensions of the cavern across a horizontal plane exceed 400 feet at any depth or 300 feet in the upper one-third of the potential cavern height, except the route of interconnection between wells.

(5) The depth to the top of the salt section is less than 400 feet below land surface, and the dimensions of the cavern across a horizontal plane exceed 300 feet in diameter, except the route of interconnection between wells.

(6) The distance between adjacent galleries is less than 100 feet from the wall of a cavern in an adjacent gallery.

(7) There are leaks or losses of fluid in the casing or surface pipe of a well.

(b) A variance for any well not meeting the conditions in paragraphs (a)(2) and (a)(4) through (a)(6) may be granted by the secretary if all of the following conditions are met:

(1) The variance is protective of public health, safety, and the environment.

(2) The applicant or permittee agrees to perform any additional monitoring or well improvements, or any combination, if required by the secretary.

(3) The applicant or permittee agrees to conduct a geomechanical study in support of the variance request. The geomechanical study shall be conducted by a contractor experienced in conducting and interpreting geomechanical studies.

(c) Each applicant or permittee seeking a variance shall submit a written request to the secretary that includes justification for the variance, a geomechanical study and interpretation, and any additional supporting information for review and consideration for approval. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective Aug. 6, 2010.)

**28-46-30. Monitoring and reporting requirements for class I wells.** 40 CFR 146.13,

40 CFR 146.67, 40 CFR 146.68, and 40 CFR 146.69, as in effect on July 1, 2008, are hereby adopted by reference. In addition to 40 CFR 144.14, as adopted in K.A.R. 28-46-24 and 28-46-31, and 40 CFR 146.70, as adopted in K.A.R. 28-46-31, all of the following requirements shall apply to each class I hazardous waste injection well:

(a) Records of the continuously monitored parameters shall be maintained in addition to the monthly average of and the minimum and maximum values of the following parameters:

(1) Injection pressure;

(2) flow rate;

(3) injection volume; and

(4) annular pressure.

(b) The monitoring results shall be reported to the department on a monthly basis on forms provided by the department.

(c) The necessary number of monitoring wells in appropriate geologic zones for the early detection of contaminant migration shall be determined by the secretary to protect public health, safety, and the environment. (Authorized by and implementing K.S.A. 2009 Supp. 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-30a. Monitoring and reporting requirements for class III salt solution mining wells.** 40 CFR 146.33, as in effect on July 1, 2008, is hereby adopted by reference. In addition, all of the following requirements shall apply to each permittee of a class III salt solution mining well:

(a) Within two years of the effective date of this regulation, each permittee shall submit a facility plan for monitoring the injection and withdrawal volumes and injection pressures that meets the secretary's approval and ensures the protection of public health, safety, and the environment.

(b) Each permittee shall monthly submit the following monitoring records to the department on a form provided by the department:

(1) The weekly injection and withdrawal volume for each salt solution mining well or gallery;

(2) the weekly injection and withdrawal ratio for each salt solution mining well or gallery; and

(3) a summary of the weekly minimum and maximum injection pressures for each salt solution mining well or gallery.

(c) Each permittee shall annually submit a report to the department, on a form provided by the department, which shall include the following information:

(1) For each well, a percentage of the remaining amount of salt that can potentially be mined in accordance with these regulations; and

(2) a summary of facility activities regarding abnormal fluid loss, well drilling, well plugging, geophysical well logging, sonar caliper surveys, mechanical integrity testing, calibration and maintenance of flow meters and gauges, elevation survey results, and the description of the model theory used to calculate the percentage of the total amount of remaining salt that can potentially be mined in accordance with these regulations.

(d) If an unanticipated loss of fluid has occurred or the monitoring system indicates that leakage has occurred and has been verified, the permittee shall notify the department orally within 24 hours of discovery and shall provide written confirmation within seven days regarding the abnormal loss or leakage.

(e) A sonar caliper survey shall be conducted on each well when calculations based on a model, approved by the secretary, indicate that 20 percent of the total amount of remaining salt that can be potentially mined in accordance with these regulations has been mined. The well shall be checked by the permittee to determine the dimensions and configuration of the cavern developed by the solutioning. Thereafter, a sonar caliper survey shall be conducted when the calculations indicate that each additional 20 percent of the remaining salt that can be potentially mined in accordance with these regulations has been mined.

(f) Any permittee may use an alternative method for determining the dimensions and configuration of the solution mining cavern if the secretary determines that the alternative method is substantially equivalent to the sonar caliper survey. The permittee shall submit the following information for the secretary's consideration:

(1) A description of the survey method and theory of operation, including the survey sensitivities and justification for the survey parameters;

(2) a description of the well and cavern conditions under which the survey can be conducted;

(3) the procedure for interpreting the survey results; and

(4) an interpretation of the survey upon completion of the survey.

(g) More frequent monitoring of the cavern di-

mensions and configuration by sonar caliper survey may be required by the secretary if the secretary receives information that the cavern could be unstable. Each existing well shall meet the requirements of the survey frequency established in the well permit. The results of the survey, including logs and an interpretation by a contractor experienced in sonar interpretation, shall be submitted to the department within 45 days of completing the survey.

(h) Any permittee may submit a variance request regarding the sonar caliper survey frequency to the department, if both of the following conditions are met:

(1) The variance is protective of public health, safety, and the environment.

(2) The permittee agrees to perform any additional monitoring or well improvements, or any combination of these, if required by the secretary.

(i) Each permittee seeking a variance shall submit a written request, including justification for the variance and any supporting data to the secretary for review and consideration for approval.

(j) Each permittee shall check the thickness of the salt roof at the end of two years of use and biennially thereafter, unless otherwise permitted by the secretary, by gamma ray log or any other method approved by the secretary. A report of the method used and a copy of the survey shall be submitted to the department within 45 days from completion of the test.

(k) Each permittee shall give oral notification to the department of a verified exceedence of the maximum permitted injection pressure within 24 hours of discovery of the exceedence and submit written notification within seven calendar days to the department.

(l) Each new well shall have a meter to measure injection or withdrawal volume. The permittee shall maintain records of these flow volumes at the facility and shall make the records available to the secretary upon request.

(m) Each permittee shall submit a ground subsidence monitoring plan to the secretary within two years after the effective date of these regulations. The following requirements shall apply:

(1) The ground subsidence monitoring plan shall include the following information:

(A) A description of the method for conducting an elevation survey; and

(B) the criteria for establishing monuments, benchmarks, and wellhead survey points.

(2) The ground subsidence monitoring plan shall meet all of the following criteria:

(A) Level measurements to the accuracy of 0.01 foot shall be made.

(B) Verified surface elevation changes in excess of 0.10 foot shall be reported within 24 hours of discovery to the department.

(C) No established benchmark shall be changed, unless the permittee submits a justification that the change is protective of public health, safety, and the environment.

(D) If a benchmark is changed, the elevation change from the previous benchmark shall be noted in the elevation survey report.

(E) Each permittee shall submit the elevation before and after any wellhead work that results in a change in the survey point at the wellhead.

(3) The elevation survey shall be conducted by a licensed professional land surveyor.

(4) All annual elevation survey results shall be submitted to the department within 45 days after completion of the survey.

(5) All certified and stamped field notes shall be made available by the permittee upon request by the secretary. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective Aug. 6, 2010.)

**28-46-30b. Groundwater monitoring for class III salt solution mining wells.** (a) Each permittee of a salt solution mining well shall submit a groundwater monitoring plan within two years after the effective date of these regulations to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment.

(b) Within two years after the effective date of these regulations, each permittee shall submit a quality assurance plan, including techniques for sampling and analysis, to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment.

(c) Each permittee shall collect groundwater samples and analyze the samples for chloride and any other parameters determined by the secretary to ensure the protection of public health, safety, and the environment. The sampling results shall be submitted to the department on forms provided by the department.

(d) Each permittee shall submit the results for chloride analyses from groundwater samples to the department on an annual basis or on a more

frequent basis as determined by the secretary to ensure the protection of public health, safety, and the environment. These results shall be submitted on forms provided by the department.

(e) Each permittee shall submit a static groundwater level measurement for each monitoring well with the chloride analyses results as specified in subsection (d).

(f) At any facility where chloride concentrations in the groundwater exceed 250 milligrams per liter or the established background chloride concentration, the permittee may be required to submit a workplan that describes the methods to delineate potential source areas and to control migration of the chloride contamination to the secretary for review and consideration for approval to ensure the protection of public health, safety, and the environment. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective Aug. 6, 2010.)

**28-46-31. Information to be considered by the secretary.** 40 CFR 146.14, except for reference to 40 CFR 122.42 (g), 40 CFR 146.62, 40 CFR 146.66, 40 CFR 146.70 and 40 CFR part 144, subpart F, for class I wells and 40 CFR 146.34, for class III wells, as in effect on July 1, 2008, are adopted by reference. In addition, all of the following requirements shall be applicable to class I hazardous waste injections wells:

(a) Each applicant shall demonstrate that the well meets the requirements of K.S.A. 65-3439, and amendments thereto, relating to hazardous waste injection wells and applicable to class I hazardous waste injection wells.

(b) Each applicant shall be responsible for providing information to the department necessary to substantiate that well injection of the hazardous waste liquid in question is the most reasonable method of disposal after all other options have been considered.

(1) Factors to be considered in determining the most reasonable method shall include those required by K.S.A. 65-3439, and amendments thereto.

(2) All factors considered shall be documented in a report submitted to the department for review and consideration for approval.

(c) Each applicant shall determine, through a detailed record search and field survey, the location of each abandoned oil and gas well and exploratory hole within the area of review, as specified in K.A.R. 28-46-32.

(1) An interview with those responsible for drilling, producing, plugging, or witnessing these activities shall be a part of the record.

(2) The results of the field survey shall be documented in a report submitted to the department.

(3) A map geographically documenting the location of all the holes and abandoned wells within the area of review, as specified in K.A.R. 28-46-32, shall be included as a part of the report specified in paragraph (c)(2). (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-33. Mechanical integrity testing.** (a) A mechanical integrity test consisting of a pressure test with a liquid to evaluate the absence of a significant leak in the casing, tubing, or packer and a test to determine the absence of significant fluid movement through vertical channels adjacent to the wellbore shall be required of each class I and class III permittee on each injection well at least once every five years.

(1) For class I hazardous waste injection wells, the mechanical integrity test shall be conducted in accordance with 40 CFR 146.8, except for reference to 40 CFR 146.33(b), as in effect July 1, 2008, which is hereby adopted by reference, and 40 CFR 146.68(d), as adopted in K.A.R. 28-46-30, by conducting all of the following:

(A) A pressure test with a liquid of the casing, tubing, and packer at least annually and if there has been a well workover;

(B) a test of the bottom-hole cement by use of an approved radioactive survey at least annually;

(C) a temperature, noise, or oxygen activation log to test for movement of fluid along the borehole at least once every five years; and

(D) a casing inspection log at least once every five years.

(2) For class I non-hazardous waste injection wells, the mechanical integrity test shall be conducted in accordance with 40 CFR 146.8.

(3) For class III injection wells, the mechanical integrity test shall be conducted in accordance with 40 CFR 146.8, except the casing shall be pressure tested by the use of a mechanical packer or retrievable plug.

(b) Each permittee shall be notified at least 30 days in advance by the secretary that a mechanical

integrity test shall be performed, or a permittee may notify the department that a voluntary mechanical integrity test will be performed at least 14 days in advance of the test.

(c) Each permittee shall be required to cease injection operations immediately and to conduct a mechanical integrity test if continued use of an injection well constitutes a threat to public health or to waters of the state. Injection operations shall not be resumed until all of the following conditions are met:

(1) The test has been conducted.

(2) The test has demonstrated that the well has mechanical integrity.

(3) The well has been approved for use by the secretary.

(d) The secretary's authorized representative shall witness all of the pressure mechanical integrity tests performed.

(e) Each permittee shall submit results of all mechanical integrity tests to the secretary, in writing, within 30 days after the test has been conducted.

(f) 40 CFR 144.51(q), as in effect on July 1, 2008, is adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-34. Plugging and abandonment.** 40 CFR 144.51(n), 40 CFR 144.52(a)(6), 40 CFR 146.10, except for reference to 40 CFR 144.23(b) and 40 CFR 146.04, 40 CFR 146.71, 40 CFR 146.72, and 40 CFR 146.73, as in effect on July 1, 2008, are adopted by reference. In addition, both of the following requirements shall apply to class III salt solution mining wells:

(a) The plugging of each salt solution mining well shall be conducted as specified in the departments document titled "procedure for plugging and abandonment of a class III salt mining well," procedure #: UICIII-7, dated March 2005, and hereby adopted by reference.

(b) Any permittee may use an alternative method for the plugging of each salt solution mining well if the secretary determines that the alternative method is substantially equivalent to the procedure specified in subsection (a) and is protective of public health, safety, and the environment. The permittee shall submit a detailed description of the alternative plugging method for the secretary's consideration. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-35. State inspection and right of entry.** Each well owner or operator shall allow an authorized representative of the secretary access to the well facility for the purpose of determining compliance with these regulations. (Authorized by K.S.A. 2009 Supp. 55-1,117 and 65-171d; implementing K.S.A. 2009 Supp. 55-1,117 and K.S.A. 65-170b; effective May 1, 1982; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended Aug. 6, 2010.)

**28-46-40. Exempted aquifers.** (a) An aquifer may be designated by the secretary as exempt from protection as an underground source of drinking water. Criteria for exemption may include whether the aquifer meets one of the following conditions:

(1) Contains water with more than 10,000 milligrams per liter of total dissolved solids;

(2) produces mineral, hydrocarbon, or geothermal energy; or

(3) is situated at a depth that makes the recovery of water economically impractical.

(b) Each request to exempt an aquifer under subsection (a) shall be first submitted to and approved by the administrator of the United States environmental protection agency. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective May 1, 1982; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended Aug. 6, 2010.)

**28-46-41. Sharing of information.** 40 CFR 145.14, as in effect on July 1, 2008, is adopted by reference. (Authorized by K.S.A. 2009 Supp. 55-1,117 and 65-171d; implementing K.S.A. 2009 Supp. 55-1,117 and 65-170g; effective May 1, 1982; amended, T-83-49, Dec. 22, 1982; amended May 1, 1983; amended, T-86-47, Dec. 19, 1985; amended May 1, 1986; amended March 21, 1994; amended Aug. 6, 2010.)

**28-46-44. Sampling and analysis techniques.** (a) Sampling and analysis shall be performed in accordance with the techniques specified in 40 CFR part 136 and the appendices, as in

effect on July 1, 2008, which are adopted by reference.

(b) If 40 CFR part 136 does not contain sampling and analytical techniques for the parameter in question or if the sampling and analytical techniques in part 136 are inappropriate for the parameter in question, the sampling and analysis shall be performed using validated analytical methods or other appropriate sampling and analytical procedures approved by the secretary to ensure the protection of public health, safety, and the environment. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117 and 65-171d; effective March 21, 1994; amended Aug. 6, 2010.)

**28-46-45. Salt solution mining well operations; fees.** (a) Each permittee shall submit an annual permit fee of $12,000 per facility and $175 per unplugged salt solution mining well to the department on or before April 1 of each year.

(b) Payment shall be made to the "Kansas department of health and environment - subsurface hydrocarbon storage fund."

(c) The fees collected under this regulation shall be nonrefundable.

(d) If ownership of a salt solution mining well or salt solution mining facility changes during the term of a valid permit, no additional fee shall be required unless a change occurs that results in a new salt solution mining well or expansion of the facility's operation. (Authorized by and implementing K.S.A. 2009 Supp. 55-1,117; effective Aug. 6, 2010.)

## Article 53.—CHARITABLE HEALTH CARE PROVIDERS

**28-53-1. Definitions.** (a) "Agreement" means a written understanding between the secretary and a "charitable health care provider," as defined in K.S.A. 75-6102 and amendments thereto, regarding the rendering of professional services to a medically indigent person.

(b) "Department" means Kansas department of health and environment.

(c) "Federally qualified health center" means one of the following:

(1) An entity that meets the requirements for federal funding in 42 USC 1396d(l)(2)(B) and has been designated as a "federally qualified health center" by the federal government; or

(2) an entity that, based on the recommendation of the federal health resources and services administration, is deemed to meet the requirements of the federal grant program and has been designated a "federally qualified health center look-alike" by the federal government but does not receive the federal grant funding specified in 42 USC 1396d(l)(2)(B).

(d) "Indigent health care clinic" has the meaning specified in K.S.A. 75-6102, and amendments thereto.

(e) "Local health department" has the meaning specified in K.S.A. 65-241, and amendments thereto.

(f) (1) "Point of entry" means an entity that performs the following:

(A) Determines whether an individual meets the criteria for a medically indigent person;

(B) refers any medically indigent person to a charitable health care provider;

(C) has submitted a completed application to the department on forms prescribed by the department; and

(D) agrees to maintain records and submit an annual activity report as prescribed by the secretary.

(2) This term may include any of the following:

(A) An entity meeting the definition of "federally qualified health center" or "federally qualified health center look-alike";

(B) an entity meeting the definition of "indigent health care clinic"; or

(C) an entity meeting the definition of "local health department."

(g) "Secretary" means secretary of the Kansas department of health and environment. (Authorized by K.S.A. 75-6120; implementing K.S.A. 2010 Supp. 75-6102 and K.S.A. 75-6120; effective April 1, 1991; amended July 13, 1992; amended March 20, 2009; amended May 6, 2011.)

**28-53-2. Agreement.** (a) Each person or entity applying for an agreement shall submit a completed application to the department on forms prescribed by the department.

(b) An agreement may be terminated by the secretary, the charitable health care provider, or the point of entry with 30 days of prior written notice to the department. Failure of the charitable health care provider to maintain the required licensure shall constitute concurrent cancellation of the agreement. (Authorized by K.S.A. 75-6120; implementing K.S.A. 2010 Supp. 75-6102 and K.S.A. 75-6120; effective April 1, 1991; amended July 13, 1992; amended March 20, 2009; amended May 6, 2011.)

**28-53-3. Eligibility criteria for a medically indigent person.** An individual shall qualify as a medically indigent person if a point of entry determines that the individual meets either of the following requirements:

(a) Is determined to be a member of a family unit earning at or below 200% of the current federal poverty level and is not indemnified against costs arising from medical and dental care by a policy of accident and sickness insurance, an employee health benefits plan, or any similar coverage; or

(b) is eligible for publicly funded health care programs administered by the Kansas health policy authority or the department or is qualified for Indian health services. (Authorized by and implementing K.S.A. 75-6120; effective April 1, 1991; amended March 20, 2009.)

**28-53-4. Records and reports.** (a) Each charitable health care provider either shall meet the following requirements or shall ensure that each point of entry through which the charitable health care provider delivers care meets the following requirements:

(1) Maintains the completed forms prescribed by the department; and

(2) submits a completed annual activity report to the department on a form prescribed by the department.

(b) Failure of the charitable health care provider or the point of entry to comply with this regulation shall be grounds for termination of the agreement with the charitable health care provider. (Authorized by K.S.A. 75-6120; implementing K.S.A. 2010 Supp. 75-6102 and K.S.A. 75-6120; effective April 1, 1991; amended March 20, 2009; amended May 6, 2011.)

**28-53-5. Referrals.** Each referral of professional services shall be documented in the records of the point of entry. (Authorized by and implementing K.S.A. 75-6120; effective April 1, 1991; amended March 20, 2009.)

## Article 61.—LICENSURE OF SPEECH LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

**28-61-1. Definitions.** (a) "American academy of audiology" means a national professional association for audiologists that provides continuing education programs and approves continuing education sponsors in clinical audiology.

(b) "American speech-language-hearing association" means a national professional association that accredits academic and clinical practicum programs and continuing education sponsors in speech-language pathology and audiology and that issues a certificate of clinical competence in speech-language pathology and audiology.

(c) "Department" means the Kansas department of health and environment.

(d) "Licensure period" means the period of time beginning on the date a license is issued and ending on the date the license expires. All full licenses shall expire biennially on October 31.

(e) "Screening" means a pass-fail procedure to identify any individual who requires further assessment.

(f) "Sponsorship" means an approved, long-term sponsoring of programs for the purpose of fulfilling renewal or reinstatement continuing education requirements. Each approved sponsor shall be accountable for upholding the department's standards for the approval of continuing education programs. Each sponsor shall submit an application and the sponsor's annual report on department-approved forms. The authority to sanction or otherwise discipline an approved sponsor shall be maintained by the department. These sanctions may include the following:

(1) Supplementary documentation;

(2) program restrictions; or

(3) temporary or permanent suspension of long-term sponsorship approval.

(g) "Supervision of methods and procedures related to hearing and the screening of hearing disorders" means consultation on at least a monthly basis by a licensed audiologist, a licensed speech-language pathologist, or any person exempted by K.S.A. 65-6511(a), (b), or (c), and amendments thereto. Any consultation may include any of the following:

(1) On-site visits;

(2) review of written documentation and reports; or

(3) conference calls. (Authorized by K.S.A. 65-6503; implementing K.S.A. 65-6501 and K.S.A. 65-6503; effective Dec. 28, 1992; amended March 16, 2001; amended Aug. 19, 2005; amended April 16, 2010.)

**28-61-2. Qualifications for licensure.** (a) To determine whether or not an applicant has completed the educational requirements in the area for which the applicant seeks licensure pur-

suant to K.S.A. 65-6505 and amendments thereto, consideration shall be given to whether or not the academic course of study and practicum content are accredited by the American speech-language-hearing association or are deemed equivalent to the course of study and practicum content of Kansas universities by the secretary.

(b) Each applicant who completed the educational requirements specified in K.S.A. 65-6505, and amendments thereto, in a program not accredited by the American speech-language-hearing association shall meet both of the following requirements:

(1) Obtain an equivalency validation of the academic course of study or practicum content, or both, from a Kansas college or university with a speech-language pathology or audiology program accredited by the American speech-language-hearing association; and

(2) provide transcripts and supervised practicum records verifying that the applicant has successfully completed coursework or supervised practicum experiences related to the principles and methods of prevention, assessment, and intervention for individuals with communication and swallowing disorders in the following subject areas:

(A) Articulation;

(B) fluency;

(C) voice and resonance, including respiration and phonation;

(D) receptive and expressive language in speaking, listening, reading, writing, and manual modalities;

(E) hearing, including the impact on speech and language;

(F) swallowing;

(G) cognitive aspects of communication;

(H) social aspects of communication; and

(I) communication modalities, including oral, manual, augmentative, and alternative communication, and assistive technologies.

(c) To determine whether or not an applicant has complied with the requirement that the degree be from an educational institution with standards consistent with the standards of Kansas universities pursuant to K.S.A. 65-6505 and amendments thereto, consideration shall be given to whether or not the institution is accredited by an accrediting body recognized by either the council on postsecondary accreditation or the secretary of the U.S. department of education, or is deemed equivalent by the secretary.

(d) Each applicant who completed the educational requirements specified in K.S.A. 65-6505, and amendments thereto, 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 to the secretary and, if necessary, supporting documents. The transcript shall be translated by a source and in a manner that are acceptable to the secretary.

(e) Each applicant who completed the educational requirements specified in K.S.A. 65-6505, and amendments thereto, outside the United States or its territories shall obtain an equivalency validation from an agency approved by the secretary that specializes in educational credential evaluations.

(f) Each applicant shall pay any transcription or equivalency validation fee directly to the transcriber or the validating agency.

(g) The supervised clinical practicum as specified in K.S.A. 65-6505, and amendments thereto, shall be at least 400 hours, 25 of which shall be observation and 375 of which shall be direct client contact. At least 325 of the 400 hours of supervised clinical practicum shall be earned at the graduate level in the area in which licensure is sought.

(h) Each applicant, after completing the requirements in K.S.A. 65-6505 and amendments thereto, shall successfully complete the supervised postgraduate professional experience requirement in the area for which the applicant seeks licensure. The applicant may complete the requirement on a full-time or part-time basis.

(1) "Full-time" means 35 hours per week for nine months.

(2) "Part-time" means 15 to 19 hours per week for 18 months, 20 to 24 hours per week for 15 months, or 25 to 34 hours per week for 12 months.

(3) Each applicant working full-time shall spend 80 percent of the week in direct client contact and activities related to client management.

(4) Each applicant working part-time shall spend 100 percent of the week in direct client contact and activities related to client management.

(5) "Direct client contact" means assessment, diagnosis, evaluation, screening, habilitation, or rehabilitation of persons with speech, language, or hearing handicaps.

(6) Each postgraduate professional experience supervisor shall be currently and fully licensed in

Kansas for speech-language pathology or audiology or, if the experience was completed in another state, either be currently and fully licensed in that state or hold the certificate of clinical competence issued by the American speech-language-hearing association. The supervisor's license or certificate shall be in the area for which the applicant seeks licensure.

(7) The supervisor shall evaluate the applicant on no less than 36 occasions of monitoring activities with at least four hours per month. The supervisor shall make at least 18 on-site observations with at least two hours per month.

(8) Monitoring occasions may include on-site observations, conferences in person or on the telephone, evaluation of written reports, evaluations by professional colleagues, or correspondence.

(9) The supervisor shall maintain detailed written records of all contacts and conferences during this period. If the supervisor determines that the applicant is not providing satisfactory services at any time during the period, the supervisor shall inform the applicant in writing and submit written reports to the applicant during the period of resolution.

(10) No licensee shall be approved to serve as a supervisor for a postgraduate professional experience once the secretary initiates a disciplinary proceeding pursuant to K.S.A. 65-6508, and amendments thereto. After the disciplinary action or actions have been concluded, a licensee whose license has been reinstated or otherwise determined to be in good standing may be considered as a supervisor.

(i) Each applicant shall be required to pass the specialty area test of the national teacher examination of the educational testing service in the area for which licensure is being sought. The passing score for the examination shall be 600.

(1) The educational testing service shall administer the examinations at least twice a year within Kansas.

(2) Each applicant shall register to take the examination through the educational testing service, pay the examination fee directly to the educational testing service, and request that the test score be sent directly to the department from the educational testing service. (Authorized by K.S.A. 65-6503; implementing K.S.A. 2010 Supp. 65-6505; effective Dec. 28, 1992; amended March 16, 2001; amended April 16, 2010; amended April 8, 2011.)

**28-61-3. Application for a license.** (a) Each individual applying for a license shall submit to the department a completed department-approved application form, the required supporting documentation showing completion of all qualifications for licensure, and the appropriate fee as specified in K.A.R. 28-61-9.

(b) Each applicant shall provide to the department the applicant's academic transcripts and proof of completion of the educational requirements specified in K.S.A. 65-6505, and amendments thereto. These documents shall be provided directly to the department by the academic institution.

(c) Each applicant who seeks licensure in both speech-language pathology and audiology shall submit a separate application for each license, meet the qualifications for each license, and pay the fee for each license as specified in K.A.R. 28-61-9. (Authorized by K.S.A. 65-6503; implementing K.S.A. 2010 Supp. 65-6505 and K.S.A. 65-6506; effective Dec. 28, 1992; amended March 16, 2001; amended April 8, 2011.)

**28-61-4. Application for a temporary license.** (a) Each applicant who has completed the education and clinical practicum pursuant to K.S.A. 65-6505, and amendments thereto, but has not completed a supervised postgraduate professional experience or examination, or both, shall apply for a temporary license. This temporary license shall be issued for a period of 12 months and may be renewed for one subsequent 12-month period upon request and with the secretary's approval.

(b) Each applicant applying for a temporary license shall submit to the department a completed department-approved application form, the required supporting documentation showing completion of education and clinical practicum, and the appropriate fee as specified in K.A.R. 28-61-9.

(c) Each applicant shall provide to the department the applicant's academic transcripts and proof of completion of the educational requirements specified in K.S.A. 65-6505, and amendments thereto. These documents shall be provided directly to the department by the academic institution.

(d) Each applicant seeking a temporary license for the purpose of completing a supervised postgraduate professional experience shall receive a

temporary license before beginning the supervised postgraduate professional experience.

(1) Each applicant shall provide to the department a plan for completion of the supervised postgraduate professional experience that has been signed by a supervisor who is currently fully licensed in Kansas in the area in which the applicant seeks licensure.

(2) Each applicant shall report any changes in the plan to the department.

(3) At the conclusion of the supervised postgraduate professional experience, each supervisor shall sign and submit to the department a report that documents satisfactory completion of the supervised postgraduate professional experience.

(e) To renew a temporary license, each applicant shall submit to the secretary a letter of appeal, supporting documentation showing that the examination or supervised postgraduate professional experience, or both, was not completed, and the temporary licensure fee as specified in K.A.R. 28-61-9.

(f) Each applicant who seeks temporary licensure in both speech-language pathology and audiology shall submit a separate application for each temporary license, meet the qualifications for each temporary license, and pay the fee for each temporary license.

(g) A temporary license may be issued to enable an applicant for reinstatement to complete the continuing education requirements. This license shall be valid for not more than 12 months and shall not be renewed. (Authorized by K.S.A. 65-6503; implementing K.S.A. 2010 Supp. 65-6505 and K.S.A. 65-6506; effective Dec. 28, 1992; amended March 16, 2001; amended April 8, 2011.)

**28-61-5. License renewal.** (a) Each applicant for renewal of a license shall submit the following to the secretary:

(1) A completed secretary-approved application form;

(2) the required supporting documentation; and

(3) the license renewal fee as specified in K.A.R. 28-61-9.

(b) Each applicant for renewal of a license shall have completed the required clock-hours of documented and approved continuing education during each licensure period immediately preceding renewal of the license. Approved continuing education clock-hours completed in excess of the requirement shall not be carried over to the subsequent renewal period. There shall be 20 hours of approved continuing education required for each applicant holding a single two-year license and 30 hours required if the applicant is licensed in both speech-language pathology and audiology.

(c) Each applicant shall maintain individual records consisting of documentation and validation of approved continuing education clock-hours, a summary of which shall be submitted to the secretary on the approved form as part of the license renewal application.

(d) For the purpose of measuring continuing education credit, "one clock-hour" shall mean at least 50 minutes of direct instruction, exclusive of registration, breaks, and meals.

(e) The content and objective of the continuing education activity shall be primarily related to the practice of speech-language pathology as defined by K.S.A. 65-6501, and amendments thereto, or the practice of audiology as defined by K.S.A. 65-6501, and amendments thereto.

(1) The educational activity shall be for the purpose of furthering the applicant's education in one of the following three content areas:

(A) Basic communication processes, including information applicable to the normal development and use of speech, language, and hearing. Issues related to this content area may include any of the following:

(i) Anatomic and physiologic bases of the normal development and use of speech, language, and hearing;

(ii) physical bases and processes of the production and perception of speech, language, and hearing;

(iii) linguistic and psycholinguistic variables related to normal development and use of speech, language, and hearing; or

(iv) technological, biomedical, engineering, and instrumentation information;

(B) professional areas, including information pertaining to disorders of speech, language, and hearing. Issues related to this content area may include any of the following:

(i) Various types of communication disorders, their manifestations, classifications, and causes;

(ii) evaluation skills, including procedures, techniques, and instrumentation for assessment; or

(iii) management procedures and principles in habilitation and rehabilitation of communication disorders; or

(C) related areas, including study pertaining to

the understanding of human behavior, both normal and abnormal, as well as services available from related professions that apply to the contemporary practice of speech-language pathology, audiology, or both. Issues related to this content area may include any of the following:

(i) Theories of learning and behavior;

(ii) services available from related professions that also deal with persons who have disorders of communications;

(iii) information from these professions about the sensory, physical, emotional, social, or intellectual states of child or adult; or

(iv) other areas, including general principles of program management, professional ethics, clinical supervision, counseling, and interviewing.

(2) Unacceptable content areas shall include marketing, personal development, time management, human relations, collective bargaining, and tours.

(3) The educational activity shall not be a part of the applicant's job responsibilities. In-service shall be considered part of the applicant's job responsibilities.

(f) Continuing education may be accrued by any of the following methods:

(1) Academic coursework related to the contemporary practice of speech-language pathology or audiology, offered by a regionally accredited college or university and documented by transcript or grade sheet:

(A) One academic-semester credit hour shall be equivalent to 15 clock-hours of continuing education. One academic-trimester credit hour shall be equivalent to 14 clock-hours of continuing education. One academic-quarter credit hour shall be equivalent to 10 clock-hours of continuing education; and

(B) one audited academic-semester credit hour shall be equivalent to eight clock-hours of continuing education. One audited academic-trimester credit hour shall be equivalent to seven clock-hours of continuing education. One audited academic-quarter credit hour shall be equivalent to five clock-hours of continuing education;

(2) workshops, seminars, poster sessions, and educational sessions sponsored by an organization, agency, or other entity that has been approved by the secretary:

(A) One clock-hour of contact between either a presenter or instructor and the applicant shall be equivalent to one clock-hour of continuing education for the applicant;

(B) contact time shall be rounded down to the nearest one-half hour interval; and

(C) one-half clock-hour of continuing education credit shall be awarded for attendance at two poster displays, with a maximum of two clock-hours of continuing education awarded for attendance at poster displays per licensure period;

(3) preparation and presentation of a new seminar, lecture, or workshop according to the following criteria:

(A) "New" shall mean that the applicant is preparing and making the presentation for the first time in any setting;

(B) credit shall be awarded only for the first presentation at the rate of two clock-hours of continuing education for every one clock-hour of contact between the instructor and attendees; and

(C) if the presentation was given by more than one instructor, the continuing education clock-hours shall be prorated among the instructors;

(4) preparation and presentation of a new undergraduate or graduate course in speech-language pathology or audiology at an accredited college or university:

(A) "New" shall mean that the applicant is teaching the course for the first time in any setting;

(B) six clock-hours of credit shall be awarded per new course, up to a maximum of 12 clock-hours per licensure period; and

(C) if the course was prepared and presented by more than one instructor, the continuing education clock-hours shall be prorated among the instructors;

(5) the successfully completed supervision of a postgraduate professional experience as specified in K.A.R. 28-61-2 and K.A.R. 28-61-4:

(A) The licensee's name and signature shall appear as the supervisor on the temporary license application submitted by the supervisee as specified in K.A.R. 28-61-4(d)(1);

(B) five clock-hours of credit per supervisee shall be awarded to the licensee; and

(C) the maximum amount of credit awarded for the supervision of a postgraduate professional experience shall be five clock-hours per licensee per licensure period; or

(6) self-directed study courses that are directly oriented to improving the applicant's professional competence and that are approved by the secretary:

(A) Self-directed study courses shall receive prior approval from the secretary;

(B) courses shall be sponsored by a nationally recognized professional organization in audiology or speech-language pathology and shall be accompanied by an examination or measurement tool to determine successful completion of the course;

(C) self-study materials may include audiotapes, videotapes, study kits, digital video discs (DVDs), and courses offered through the internet or other electronic medium; and

(D) one clock-hour of time required to complete the self-directed study material, as specified by the sponsor of the material, shall be equivalent to one clock-hour of continuing education.

(g) Continuing education sponsors seeking prior approval for a single offering of a continuing education activity shall apply to the secretary. Approval may be granted by the secretary by one of the following methods.

(1) An organization, institution, agency, or individual shall be qualified for approval as a sponsor of a continuing education activity if, after review of the application, the secretary determines that the applicant meets all of the following conditions:

(A) The sponsor presents organized programs of learning.

(B) The sponsor presents subject matters that integrally relate to the practice of speech-language pathology or audiology, or both, as specified in subsection (e).

(C) The sponsor's program activities contribute to the professional competency of the licensee.

(D) The sponsor's program presenters are individuals who have education, training, or experience that qualifies them to present the subject matter of the program.

(2) An organization, institution, agency, or individual shall be qualified for approval as a sponsor of continuing education if the American speech-language-hearing association or the American academy of audiology has approved the organization, institution, agency, or individual as a continuing education sponsor and the sponsor presents subject matter as specified in subsection (e).

(h) Continuing education sponsors seeking long-term sponsorship for continuing education activities shall apply to the secretary. Approval may be granted by the secretary if the organization, institution, agency, or individual agrees to perform all of the following:

(1) Present organized programs of learning;

(2) present subject matter that integrally relates to the practice of speech-language pathology or audiology, or both, and subsection (e);

(3) approve and present program activities that contribute to the professional competency of the licensee; and

(4) sponsor program presenters who are individuals with education, training, or experience that qualifies them to present the subject matter of the programs.

(i) All approved continuing education sponsors that received approval by the method specified in subsection (g) shall provide the following:

(1) A certificate of attendance to each licensee who attends a continuing education activity. The certificate shall state the following:

(A) The sponsor's name and approval number;

(B) the date of the program;

(C) the name of the participant;

(D) the total number of clock-hours of the program, excluding introductions, registration, breaks, and meals;

(E) the program's title and its presenter;

(F) the program site; and

(G) a designation of whether the program is approved for speech-language pathology or audiology, or both; and

(2) a list of attendees, license numbers, and the number of continuing education clock-hours completed by each licensee upon request and in a format approved by the secretary.

(j)(1) Each licensee who attends any activities of continuing education sponsored by the American speech-language-hearing association or the American academy of audiology shall retain either of the following:

(A) The letter of confirmation received from the continuing education registry of the American speech-language-hearing association or the American academy of audiology that includes the following:

(i) The licensee's name, address, and social security number;

(ii) the course title;

(iii) the sponsor's name; and

(iv) the number of continuing education units awarded; or

(B) the licensee's transcript from the continuing education registry of the American speech-language-hearing association or the American academy of audiology.

(2) One continuing education unit shall be equivalent to 10 clock-hours of continuing education.

(k) All continuing education sponsors that received approval by the method outlined in subsection (g) shall report to the secretary annually to maintain the designation as an approved sponsor. The application shall require a list of all continuing education programs provided by the approved sponsor during the previous calendar year and any additional documentation deemed necessary by the secretary to ensure that the approved sponsor is meeting or exceeding the standards set forth in this article.

(l) Each licensee who completes a continuing education activity that was not sponsored by an approved continuing education sponsor shall retain course documentation for review by the secretary at the time of license renewal.

(m) Each licensee whose initial licensure period is less than 24 months shall be required to obtain at least one clock-hour of continuing education for each month in the initial licensure period if the licensee holds a single license and at least one and one-quarter clock-hours of continuing education for each month in the initial licensure period if the licensee holds a dual license. (Authorized by K.S.A. 65-6503; implementing K.S.A. 65-6506; effective Dec. 28, 1992; amended March 16, 2001; amended April 16, 2010.)

**28-61-8. Assistants.** (a) Each speech-language pathology assistant and each audiology assistant shall meet the following criteria:

(1) Have received a high school diploma or equivalent;

(2) complete a training program conducted by a Kansas-licensed speech-language pathologist or audiologist. This training shall include the following:

(A) Ethical and legal responsibilities;

(B) an overview of the speech, language, and hearing disorders;

(C) response discrimination skills;

(D) behavior management;

(E) charting of behavioral objectives and recordkeeping;

(F) teaching principles, if applicable to the employment setting; and

(G) other skill training as required by the employment setting; and

(3) receive ongoing supervised training by a Kansas-licensed speech-language pathologist or audiologist for at least one hour per month.

(b) Any speech-language pathology assistant or audiology assistant may perform the following:

(1) Follow documented treatment plans and protocols that are planned, designed, and supervised by a Kansas-licensed speech-language pathologist or audiologist;

(2) record, chart, graph, report, or otherwise display data relative to client performance, including hearing screenings, and report this information to a supervising speech-language pathologist or audiologist;

(3) participate with a Kansas-licensed speech-language pathologist or audiologist in research projects, public relations programs, or similar activities;

(4) perform clerical duties, including preparing materials and scheduling activities as directed by a Kansas-licensed speech-language pathologist or audiologist;

(5) prepare instructional materials; and

(6) perform equipment checks and maintain equipment, including hearing aids.

(c) A speech-language pathology assistant or audiologist assistant shall not perform any of the following:

(1) Perform standardized or nonstandardized diagnostic tests, conduct formal or informal evaluations, or provide clinical interpretations of test results;

(2) participate in parent conferences, case conferences, or any interdisciplinary team without the presence of a supervising Kansas-licensed speech-language pathologist or audiologist;

(3) perform any procedure for which the assistant is not qualified, has not been adequately trained, or is not receiving adequate supervision;

(4) screen or diagnose clients for feeding or swallowing disorders;

(5) write, develop, or modify a client's individualized treatment plan in any way;

(6) assist clients without following the individualized treatment plan prepared by a Kansas-licensed speech-language pathologist or audiologist or without access to supervision;

(7) sign any formal documents, including treatment plans, reimbursement forms, or reports. An assistant shall sign or initial informal treatment notes for review and signing by a Kansas-licensed speech-language pathologist or audiologist;

(8) select clients for services;

(9) discharge a client from services;

(10) make referrals for additional services;

(11) use a checklist or tabulate results of feeding or swallowing evaluations;

(12) demonstrate swallowing strategies or precautions to clients, family, or staff; or

(13) represent that person as a speech-language pathologist or audiologist.

(d) Each assistant shall be supervised by a Kansas-licensed speech-language pathologist or audiologist. The supervisor shall be licensed to practice in the field in which the assistant is providing services.

(1) Each supervisor shall be responsible for determining that the assistant is satisfactorily qualified and prepared for the duties assigned to the assistant.

(2) Each supervisor shall obtain, retain, and maintain on file documentation of the assistant's qualifications and training outlined in subsection (a).

(3) Only the supervisor shall exercise independent judgment in performing professional procedures for the client. The supervisor shall not delegate the exercise of independent judgment to the assistant.

(4) A speech-language pathologist or audiologist who holds a temporary license shall not be eligible to supervise assistants.

(e) Each supervisor shall directly supervise at least 10 percent of the assistant's client contact time. No portion of the assistant's direct client contact shall be counted toward the ongoing training required in subsection (a). No portion of the assistant's time performing activities under indirect supervision shall be counted toward client contact time.

(f) "Direct supervision" shall mean the on-site, in-view observation and guidance provided by a speech-language pathologist or audiologist to an assistant while the assistant performs an assigned activity.

(g) "Indirect supervision" shall mean the type of guidance, other than direct supervision, that a speech-language pathologist or audiologist provides to an assistant regarding the assistant's assigned activities. This term shall include demonstration, record review, and review and evaluation of audiotaped sessions, videotaped sessions, or sessions involving interactive television.

(h) Each supervisor shall, within 30 days of employing an assistant, submit written notice to the department of the assistant's name, employment location, and verification that the assistant meets the qualifications listed in subsection (a). Each supervisor shall notify the department of any change in the status of an assistant.

(i) Each supervisor shall perform all of the following tasks:

(1) Develop a system to evaluate the performance level of each assistant under the licensee's supervision;

(2) retain and maintain on file documentation of the performance level of each assistant supervised; and

(3) report to the department at the time of the supervisor's license renewal, on a department-approved form, the name and employment location of each assistant. (Authorized by K.S.A. 65-6503; implementing K.S.A. 65-6501; effective Dec. 28, 1992; amended March 16, 2001; amended April 16, 2010.)

## Article 70.—CANCER REGISTRY

**28-70-4. Confidential data for follow-up patient studies.** (a) For the purposes of this regulation, the following definitions shall apply:

(1) "Institutional review board" means an institutional review board established and conducted pursuant to 45 CFR 46.101 through CFR 46.117, as revised on October 1, 2008.

(2) "Person" shall mean a state university, a state agency, or a county health department.

(b) Each person with a proposal for a follow-up cancer study ("study") shall submit the proposal to each of the following for approval before the commencement of the study:

(1) The person's institutional review board;

(2) the department's health and environmental institutional review board;

(3) the university of Kansas medical center's institutional review board; and

(4) the cancer registry data release board.

(c) Each study not approved by each board specified in subsection (b) shall be returned to the person for revisions. Any unapproved study may be resubmitted to each board.

(d) After receiving the approvals required in subsection (b) and before commencing the study, the person proposing the study shall submit the proposal for the study to the secretary or the secretary's designee for approval.

(e) Each person conducting an approved study shall reimburse the cancer registry for all costs pertaining to the retrieval of confidential data. The cancer registry shall be credited by the person on any publication or presentation when the cancer registry data is used.

(f) Before proceeding with each study, the can-

cer registry director shall obtain informed consent from each individual who is the subject of the data or from that individual's parent or legal guardian. The consent form shall accompany or follow the notice specified in subsection (g). Signing the consent form shall indicate that the individual has read and understands the information provided in the notice.

(g) The cancer registry director shall deliver a notice to each subject individual or the subject individual's parent or legal guardian. Each notice shall include the following information:

(1) All details of the study to be conducted, including the purpose, methodology, and public health benefit; and

(2) the following information:

(A) Participation in the study is voluntary;

(B) the method of data collection will be at the convenience of the subject individual. Data will be collected in writing, by telephone, or by personal interview; and

(C) the subject individual will be provided with a summary of the final report of the study. (Authorized by and implementing K.S.A. 2008 Supp. 65-1,172; effective June 12, 2009.)

## Article 72.—RESIDENTIAL CHILDHOOD LEAD POISONING PREVENTION PROGRAM

**28-72-1.** (Authorized by and implementing K.S.A. 2001 Supp. 65-1,202; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; revoked April 9, 2010.)

**28-72-1a. Definitions.** In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation: (a) "Abatement project reinspection fee" means the sum of money assessed to a KDHE-licensed lead activity firm by KDHE when KDHE is unable to inspect an abatement project due to the fault of the lead activity firm or its personnel.

(b) "Accreditation" means approval by KDHE of a training provider for a training course to train individuals for lead-based paint activities.

(c) "Accredited course" means a course that has been approved by the department for the training of lead professionals.

(d) "Act" means the residential childhood lead poisoning prevention act, and amendments thereto.

(e) "Adequate quality control" means a plan or design that ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or paint film samples. Adequate quality control shall also include provisions for representative sampling.

(f) "Audit" means the monitoring by KDHE of a certified individual, a licensed lead activity firm, or an accredited training provider to ensure compliance with the act and this article. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

**28-72-1c. Definitions.** In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation: (a) "Certified lead professional" means a person who is certified by the secretary as a lead inspector, elevated blood-lead level (EBL) investigator, lead abatement supervisor, lead abatement worker, project designer, or risk assessor.

(b) "Child-occupied facility" means a building, or portion of a building, constructed before 1978, that is visited regularly by the same child who is under six years of age on at least two different days within any calendar week, Sunday through Saturday, if each day's visit lasts at least three hours, the combined weekly visits last at least six hours, and the combined annual visits last at least 60 hours. This term may include residences, day care centers, preschools, and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. For common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under the age of six, including restrooms and cafeterias.

(c) "Classroom training" means training devoted to lecture, learning activities, small group activities, demonstrations, evaluations, or any combination of these educational activities.

(d) "Clearance levels" means the following values indicating the maximum amount of lead permitted in dust on a surface following completion of each abatement activity or lead hazard control:

(1) 40 micrograms per square foot on floors;

(2) 250 micrograms per square foot on windowsills; and

(3) 400 micrograms per square foot on window troughs.

(e) "Common area" means the portion of a

building that is generally accessible to all occupants. This term may include the following:

(1) Hallways;

(2) stairways;

(3) laundry and recreational rooms;

(4) playgrounds;

(5) community centers;

(6) garages;

(7) boundary fences; and

(8) porches.

(f) "Component" and "building component" mean building construction products manufactured independently to be joined with other building elements to create specific architectural design or structural elements or to act as fixtures of a building, residential dwelling, or child-occupied facility. Components are distinguished from each other by form, function, and location. These terms shall include the following:

(1) Interior components, including the following:

(A) Ceilings;

(B) crown moldings;

(C) walls;

(D) chair rails;

(E) doors and door trim;

(F) floors;

(G) fireplaces;

(H) radiators and other heating units;

(I) shelves and shelf supports;

(J) stair treads, risers, and stringers; newel posts; railing caps; and balustrades;

(K) windows and trim, including sashes, window heads, jambs, sills, stools, and troughs;

(L) built-in cabinets;

(M) columns and beams;

(N) bathroom vanities;

(O) countertops;

(P) air conditioners; and

(Q) any exposed piping or ductwork; and

(R) any product or device affixed to an interior surface of a dwelling; and

(2) exterior components, including the following:

(A) Painted roofing and chimneys;

(B) flashing, gutters, and downspouts;

(C) ceilings;

(D) soffits and fascias;

(E) rake boards, cornerboards, and bulkheads;

(F) doors and door trim;

(G) fences;

(H) floors;

(I) joists;

(J) latticework;

(K) railings and railing caps;

(L) siding;

(M) handrails;

(N) stair risers, treads, and stringers;

(O) columns and balustrades;

(P) windowsills and window stools, troughs, casing, sashes, and wells; and

(Q) air conditioners.

(g) "Containment" means a process to protect workers, residents, and the environment by controlling exposures to the lead-contaminated fumes, vapors, mist, dust, and debris created during lead abatement or lead hazard control.

(h) "Course agenda" means an outline of the main topics to be covered during a training course, including the time allotted to teach each topic.

(i) "Course exam blueprint" means written documentation identifying the proportion of course exam questions devoted to each major topic in the course curriculum.

(j) "Course test" means an evaluation of the overall effectiveness of the training, which shall test each trainee's knowledge and retention of the topics covered during the course. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

**28-72-1d. Definitions.** In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation: (a) "Department" means the Kansas department of health and environment.

(b) "Deteriorated paint" means paint that is cracking, flaking, chipping, chalking, peeling, or otherwise separating from the substrate of a building component.

(c) "Discipline" means one of the specific types or categories of lead-based paint activities identified in the act and this article in which individuals may receive training from accredited courses and become certified by the secretary.

(d) "Distinct painting history" means the application history over time, as indicated by the visual appearance or a record of application, of paint or other surface coatings to a component or room.

(e) "Documented methodologies" means the methods or protocols used to sample for the presence of lead in paint, dust, and soil. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

**28-72-1e. Definitions.** In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation: (a) "Elevated blood lead level (EBL) child" and "EBL child" mean any child who has an excessive absorption of lead with a confirmed concentration of lead in whole blood of 10 μg (micrograms) of lead per deciliter of whole blood, as specified in K.A.R. 28-1-18.

(b) "Encapsulant" means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating, with or without reinforcement materials, or an adhesively bonded covering material.

(c) "Encapsulation" means the application of an encapsulant.

(d) "Enclosure" has the meaning specified in 40 CFR 745.223, as adopted in K.A.R. 28-72-2.

(e) "EPA" means the United States environmental protection agency. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

**28-72-1g. Definition.** In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, the following term shall have the meaning assigned in this regulation:

"Guest instructor" means an individual who is designated by the training manager or principal instructor and who provides instruction specific to the lectures, hands-on work activities, or work practice components of a course. Each guest instructor shall be directly employed and monetarily compensated by the accredited training provider. A guest instructor shall not teach more than seven calendar days each quarter. Each guest instructor shall be KDHE-certified in the training course or in an associated advanced training course for which the guest instructor will be providing instruction. If a guest instructor is utilized, KDHE shall be notified at least 24 hours before the training course begins. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

**28-72-1h. Definitions.** In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation: (a) "Hands-on skills assessment" means an evaluation of the effectiveness of the hands-on training that tests the ability of the trainees to demonstrate satisfactory performance and understanding of work practices and procedures as well as any other skills demonstrated in the course.

(b) "Hands-on training" means training that involves the actual practice of a procedure or the use of equipment, or both.

(c) "Hazardous waste" means any waste as defined in K.S.A. 65-3430, and amendments thereto.

(d) "HEPA vacuum" has the meaning specified in 40 CFR 745.83, as adopted in K.A.R. 28-72-2. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

**28-72-1i. Definition.** In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, the following term shall have the meaning assigned in this regulation:

"Interim controls" means a set of repair or maintenance activities designed to last less than 20 years that temporarily reduce human exposure or likely exposure to lead hazards, including the following:

(a) Repairing deteriorated lead-based paint;

(b) specialized cleaning;

(c) maintenance;

(d) painting;

(e) temporary containment;

(f) ongoing monitoring of lead hazards or potential hazards; and

(g) the establishment and operation of management and resident education programs. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

**28-72-1k. Definition.** In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, the following term shall have the meaning assigned in this regulation:

"KDHE" means the Kansas department of health and environment. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

**28-72-1l. Definitions.** In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation:(a) "Large-scale abatement project" means lead abatement for 10 or more residential dwellings or multifamily dwellings for 10 or more units.

(b) "Lead abatement" means any repair or maintenance activity or set of activities designed to last at least 20 years or to permanently eliminate lead-based paint hazards in a residential

dwelling, child-occupied facility, or other structure designated by the secretary.

(1) Lead abatement shall include the following:

(A) The removal of lead-based paint and lead contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil;

(B) all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with these measures;

(C) any project for which there is a written contract or other documentation requiring an individual, firm, or other entity to conduct activities in any structure that are designed to permanently eliminate lead hazards;

(D) any project resulting in the permanent elimination of lead hazards that is conducted by lead activity firms; and

(E) any project resulting in the permanent elimination of lead hazards that is conducted in response to a lead hazard control order.

(2)(A) Lead abatement shall not include renovation, remodeling, landscaping, and other activities if these activities are not designed to permanently eliminate lead hazards, but are designed to repair, restore, or remodel a given structure or dwelling, even though these activities could incidentally result in a reduction or an elimination of lead hazards.

(B) Lead abatement shall not include operations and maintenance activities, and other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

(c) "Lead abatement supervisor" means an individual certified by the secretary to perform lead hazard control activities and to prepare occupant protection plans and abatement reports. Each applicant for a lead abatement supervisor shall meet all of the requirements specified in K.A.R. 28-72-8.

(d) "Lead abatement worker" means an individual certified by the secretary and meeting all of the requirements specified in K.A.R. 28-72-7.

(e) "Lead activity firm" means an individual or entity that meets all the requirements listed in K.A.R. 28-72-10.

(f) "Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-based paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces and that would result in adverse human health effects.

(g) "Lead-based paint inspection" means any effort to identify lead concentrations in surface coatings by means of a surface-by-surface investigation and the provision of a written report explaining the results of the investigation. The inspection shall not include any attempt to determine lead concentrations in soil, water, or dust.

(h) "Lead-based paint inspector" means an individual certified by the secretary to perform any efforts to identify lead concentrations in surface coatings by means of a surface-by-surface investigation. Each applicant for a lead-based paint inspector shall meet all of the requirements specified in K.A.R. 28-72-5.

(i) "Lead-contaminated dust" means surface dust in residential dwellings or child-occupied facilities that contains 40 micrograms per square foot or more on uncarpeted floors, 250 micrograms per square foot or more on windowsills, and 400 micrograms per square foot or more on window troughs or any other surface dust levels evidenced by research and determined by the secretary as contaminated.

(j) "Lead-contaminated soil" means bare soil on residential real property and on the property of a child-occupied facility that contains lead in excess of 400 parts per million for areas where child contact is likely and in excess of 1,200 parts per million in the rest of the yard, or any other lead in soil levels evidenced by research and determined by the secretary as contaminated.

(k) "Lead hazard" means any lead source that is readily accessible to humans in, on, or adjacent to a residential property, including paint, as defined in these regulations, in any condition, contaminated soils, dust, or any other item that contains lead in any amount and has been identified through an environmental investigation or risk assessment as a source of lead that could contribute to the lead poisoning of an individual.

(l) "Lead hazard control" means any activity implemented to control known or assumed lead hazards on or in any structure covered by this act. All implemented lead hazard control activities, at a minimum, shall utilize lead-safe work practices and shall be subject to work practice inspections by the KDHE.

(m) "Lead hazard control notice" means the written notification to compel the owner of a child-occupied facility that has been identified by

the secretary as the major contributing cause of poisoning an EBL child to eliminate or remediate the lead hazards to make the child-occupied facility safe from continued exposure to lead hazards.

(n) "Lead hazard screen" means a limited risk assessment activity that involves limited deteriorated paint and dust sampling as described in K.A.R. 28-72-13 and K.A.R. 28-72-15. In target housing or a child occupied facility, at least two samples shall be taken from the floors and at least one sample shall be taken from the windows in all of the rooms where one or more children could have access. Additionally, in multifamily dwellings and child-occupied facilities, dust samples shall be taken from any common areas where one or more children have access.

(o) "Lead inspector" means an individual certified by the secretary to perform a surface-by-surface investigation on a structure to determine the presence of lead-based paint and provide a written report explaining the results of the investigation as specified in K.A.R. 28-72-14.

(p) "Lead-safe work practices" means work practices standards established to work safely with lead-based surface coatings as presented in the joint EPA-HUD curriculum titled "lead safety for remodeling, repair, & painting," excluding the appendices, dated June 2003 and hereby adopted by reference, or an equivalent KDHE-approved curriculum.

(q) "Living area" means any area or room equivalent, as defined in the HUD "guidelines for the evaluation and control of lead-based paint hazards in housing," which is adopted by reference in K.A.R. 28-72-13. This term shall include any porch of a residential dwelling used by at least one child who is six years of age and under or by a woman of childbearing age.

(r) "Local government" means a county, city, town, district, association, or other public body, including an agency comprised of two or more of these entities, created under state law. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

**28-72-1m. Definition.** In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, the following term shall have the meaning assigned in this regulation:

"Multifamily dwelling" means a structure that contains more than one separate residential dwelling unit used or occupied, or intended to be used or occupied, in whole or in part as the residence of one or more persons. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

**28-72-1n. Definition.** In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, the following term shall have the meaning assigned in this regulation:

"Nonprofit" means an entity that has been determined by the IRS to be not-for-profit as evidenced by a "letter of determination" designating the tax code under which the entity operates. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

**28-72-1o. Definitions.** In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation: (a) "Occupant protection plan" means a plan developed by a lead abatement supervisor or project designer before the commencement of lead abatement or lead hazard control in any structure designated by the act that describes the measures and management procedures to be taken during lead abatement or lead hazard control to protect the building occupants from exposure to any lead hazards.

(b) "Occupation" means one of the specific disciplines of lead-based paint activities identified in this article for which individuals can receive training from training providers. This term shall include renovator, lead abatement worker, lead abatement supervisor, lead inspector, risk assessor, and project designer, and any combination of these.

(c) "Oral exam" means a test that is equivalent in content to a corresponding written exam but is read to the student by the principal instructor. Each student taking an oral exam shall be required to provide the answers to the exam in writing. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

**28-72-1p. Definitions.** In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation: (a) "Paint" means all types of surface coatings, including stain, varnish, epoxy, shellac, polyurethane, and sealants.

(b) "Passing score" means a grade of 80% or higher on the third-party examination and training

course examination for a lead occupation certificate.

(c) "Permanently covered soil" means soil that has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, including pavement and concrete. Soil covered with grass, mulch, and other landscaping materials shall not be deemed permanently covered soil.

(d) "Principal instructor" means an individual who meets the following requirements:

(1) Is directly employed and monetarily compensated by a training provider;

(2) is certified to perform the lead occupation in which the individual will provide instruction or has obtained certification in an advanced lead occupation; and

(3) has the primary responsibility for organizing and teaching a training course.

(e) "Project design" means lead abatement project designs, lead hazard control project designs, occupant protection plans, and lead abatement reports. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

**28-72-1r. Definitions.** In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation: (a) "Reaccreditation" means the renewal of accreditation of a training provider for a training course after the expiration of the initial accreditation.

(b) "Recognized laboratory" means a laboratory recognized by the EPA pursuant to section 405(b) of the toxic substances control act (TSCA) as being capable of performing analyses for lead compounds in paint chips, dust, and soil samples.

(c) "Reduction" means any measure designed and implemented to reduce or eliminate human exposure to lead-based paint hazards including interim controls and abatement.

(d) "Refresher course" means a training course taken by a certified lead professional to maintain certification in a particular discipline.

(e) "Renewal" means the reissuance of a lead occupation certificate, a lead activity firm license, or a training provider accreditation.

(f) "Risk assessment" means an on-site investigation to determine the existence, nature, severity, and location of lead hazards in a residential dwelling or child-occupied facility and the provision of a written report explaining the results of the investigation and options for reducing lead hazards.

(g) "Risk assessor" means an individual certified by the secretary who meets the requirements in K.A.R. 28-72-6. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

**28-72-1s. Definitions.** In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation. (a) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States.

(b) "Surface coatings" means paint as defined in K.A.R. 28-72-1p. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

**28-72-1t. Definitions.** In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, each of the following terms shall have the meaning assigned in this regulation: (a) "Target housing" means housing constructed before 1978, with the exception of housing for the elderly. If one or more children through the age of 72 months reside or are expected to reside in the housing built exclusively for the elderly, the housing shall be assumed to have been constructed before 1978 unless empirical data proves otherwise. This term shall include schools and any structure used for the care of children under six years of age.

(b) "Third-party examination" means a discipline-specific examination administered by the department to test the knowledge of a person who has completed the required training course and is applying for certification in a particular discipline.

(c) "Training course" means the approved course of instruction established by this article to prepare an individual for certification in a single discipline.

(d) "Training curriculum" means a set of course topics for instruction by a training provider for a particular occupation designed to provide specialized knowledge and skills.

(e) "Training hour" means at least 50 minutes of actual time used for learning, including time devoted to lectures, learning activities, small group activities, demonstrations, evaluations, and hands-on experience.

(f) "Training manager" means the individual who is a direct and monetarily compensated em-

ployee of a training provider, is subject to the employment standards of the fair labor standards act, and is responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

(g) "Training provider" means a person or entity who has met the requirements of K.A.R. 28-72-4 and provides training courses for the purpose of state certification or certification renewal in the occupations of lead-safe work practices, lead abatement worker, lead abatement supervisor, lead-based paint inspector, risk assessor, and project designer. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

**28-72-1v. Definition.** In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, the following term shall have the meaning assigned in this regulation:

"Visual inspection for clearance testing" means the visual examination of a residential dwelling, a child-occupied facility, or any other structure designated by the secretary following a lead abatement or lead hazard control to determine whether or not the lead abatement or lead hazard control has been successfully completed. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

**28-72-1x. Definition.** In addition to the definitions in K.S.A. 65-1,201 and amendments thereto, the following term shall have the meaning assigned in this regulation:

"X-ray fluorescence analyzer (XRF)" means an instrument that determines lead concentration in milligrams per square centimeter ($mg/cm^2$) using the principle of X-ray fluorescence. (Authorized by and implementing K.S.A. 65-1,202; effective April 9, 2010.)

**28-72-2. General requirements for accreditation, licensure, and certification; adoption by reference.** (a) Waiver. Any applicant for certification and any certified individual may authorize others, including the applicant's or individual's employer, to act on the applicant's or individual's behalf regarding the certification application. This authorization shall be indicated on the application form provided by KDHE. If at any time the applicant or certified individual decides to change this authorization, the applicant or certified individual shall notify KDHE in writing of the change.

(b) Change of address. Each certified individual shall notify KDHE in writing of a change of mailing address no later than 30 days following the change. Each lead activity firm shall notify KDHE in writing of a change in business mailing address no later than 30 days following the change. Until a change of address is received, all correspondence shall be mailed to the individual's mailing address and the lead activity firm's business address indicated on the most recent application form.

(c) Prior out-of-state certification. A lead occupation certificate may be issued by the secretary to any person if both of the following conditions are met:

(1) The person meets the following requirements:

(A) Has submitted a complete application;

(B) has taken the required third-party exam for the discipline applied for and received a passing score; and

(C) has provided proof of certification from another state, if KDHE has entered into an agreement with that state or if that state is a current EPA program state.

(2) All individual certification fees have been paid.

(d) Adoption by reference.

(1) 40 CFR 745.80 through 745.90, as in effect on July 1, 2008, are adopted by reference, except as specified in paragraph (d)(2). For the purpose of this regulation, each reference in the adopted CFRs to "EPA" shall mean "KDHE," and each reference to "administrator" shall mean "secretary."

(2) The following portions of 40 CFR 745.80 through 40 CFR 745.90 are not adopted:

(A) 40 CFR 745.81 and 40 CFR 745.82(c);

(B) in 40 CFR 745.83, the following terms and their definitions: child occupied facility, component or building component, interim controls, recognized test kit, renovator, and training hour;

(C) 40 CFR 745.85(a)(3)(iii). The use of a heat gun to remove lead-based paint shall not be allowed;

(D) 40 CFR 745.86(b)(6) and (c);

(E) 40 CFR 745.87;

(F) 40 CFR 745.88;

(G) 40 CFR 745.89;

(H) 40 CFR 745.90(a), (b)(6), and (c);

(I) 40 CFR 745.91; and

(J) 40 CFR 745.225(c)(6)(vii). (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202 and 65-1,203; effective, T-28-9-13-99, Sept. 13,

1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

**28-72-3. Fees.** The following fees shall apply: (a) Training providers. A separate accreditation fee shall be required for each training course. If a training course is taught in more than one language, a separate accreditation fee shall be required for each of these versions of the training course.

(1) Accreditation fee ..... $500
(2) Initial fee.
(A) Lead abatement supervisor, lead abatement worker, and project designer courses ..... $1,000
(B) Risk assessor and lead inspector courses ..... $1,000
(C) Lead-safe work practices ..... $300
(3) Refresher course fee.
(A) Lead abatement supervisor, lead abatement worker, and project designer courses ..... $500
(B) Risk assessor and lead inspector courses ..... $500
(C) Lead-safe work practices ..... $150
(4) Reaccreditation fee ..... $500
(A)(i) Reaccreditation for lead abatement supervisor, lead abatement worker, and project designer courses ..... $1,000
(ii) Reaccreditation for risk assessor and inspector courses ..... $1,000
(B)(i) Refresher reaccreditation for lead abatement supervisor, lead abatement worker, and project designer courses ..... $500
(ii) Refresher reaccreditation for risk assessor and lead inspector courses ..... $500
(b) Lead inspector.
(1) Individual certification ..... $200
(2) Individual recertification ..... $100
(c) Risk assessor.
(1) Individual certification ..... $300
(2) Individual recertification ..... $150
(3) Local health department or clinic that has received a certificate from KDHE for elevated blood lead level investigation risk assessments ..... $0
(d) Lead abatement supervisor.
(1) Individual certification ..... $150
(2) Individual recertification ..... $75
(e) Project designer.
(1) Individual certification ..... $150
(2) Individual recertification ..... $75
(f) Lead abatement worker.
(1) Individual certification ..... $50
(2) Individual recertification ..... $25
(g) Renovator.
(1) Individual certification ..... $0
(2) Individual recertification ..... $0
(h) Third-party examination ..... $50
(i) Lead activity firm.
(1) License ..... $500
(2) License renewal ..... $250
(3) Lead abatement project fee ... 1% of each project or $50, whichever is greater
(4) Abatement project reinspection fee ..... $150
(j) Renovation firm.
(1) License ..... $200
(2) License renewal ..... $100

(Authorized by and implementing K.S.A. 65-1,202; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

**28-72-4. Training provider accreditation.** (a) Good standing. Each applicant wishing to provide and teach lead activity training in Kansas shall be accredited as a training provider and licensed by KDHE as a lead activity firm. Each applicant desiring accreditation of the training courses for lead inspector, risk assessor, lead abatement worker, lead abatement supervisor, project designer, or lead-safe work practices, or any combination, under this regulation, who is required to be registered and in good standing with the Kansas secretary of state's office, shall submit a copy of the applicant's certificate of good standing to KDHE.

(b) Application to become a training provider for a training course. Completed applications shall be submitted to KDHE. Each application shall include the following:

(1) A completed training provider course accreditation application on a form provided by KDHE, which shall include the following:

(A) The training provider's name, address, and telephone number;

(B) the lead activity firm license number;

(C) the name and date of birth of the training manager;

(D) the name and date of birth of the principal instructor for each course;

(E) the name and date of birth for any guest instructor for each course;

(F) a list of locations at which training will take place;

(G) a list of courses for which the training provider is applying for accreditation; and

(H) a statement signed by the training manager certifying that the information in the application for accreditation, and any additional information included with the application, is true and accurate to the best of the training manager's knowledge and understanding, that the training provider will comply with K.A.R. 28-72-4 through K.A.R. 28-72-4c, and that the training provider will conduct lead training only in those occupations in which the training provider has received accreditation;

(2) a copy of the student and instructor manuals;

(3) the course agenda;

(4) the course examination blueprint;

(5) a copy of the quality control plan as described in paragraph (d)(9) of this regulation;

(6) a copy of a sample course completion diploma as described in paragraph (d)(8) of this regulation;

(7) a description of the facilities and equipment to be used for lectures and hands-on training;

(8) a description of the activities and procedures that will be used for conducting the skills assessment for each course;

(9) a payment to KDHE for the applicable nonrefundable accreditation fees specified in K.A.R. 28-72-3, unless the training provider is a state, federally recognized Indian tribe, local government, or nonprofit organization as evidenced by a letter of determination issued by the IRS, which shall accompany the application; and

(10) documentation supporting the training manager's, principal instructor's, and any guest instructor's qualifications.

(c) Procedure for issuance or denial of training provider accreditation for a training course. The applicant shall be informed by KDHE in writing that the application is approved, incomplete, or denied.

(1) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the application.

(A) Within 30 calendar days after the issuance date of the notice of incomplete application, the applicant shall submit to KDHE, in writing, the information requested in the written notice.

(B) Failure to submit the information requested in the written notice within 30 calendar days shall result in denial of the application for a training course accreditation.

(C) After the information in the written notice is received, the applicant shall be informed by KDHE in writing that the application is either approved or denied.

(2) If an application is approved, a two-year accreditation certificate shall be issued by KDHE.

(3) If an application for training course accreditation is denied, the specific reason or reasons for the denial shall be stated in the notice of denial to the applicant.

(A) Training course accreditation may be denied by the secretary pursuant to K.S.A. 65-1,207(c), and amendments thereto.

(B) If an application is denied, the applicant may reapply for accreditation at any time.

(C) If an applicant is aggrieved by a determination to deny accreditation, the applicant may request a hearing with the office of administrative hearings, in accordance with the Kansas administrative procedure act.

(d) Requirements for accreditation of a training provider for a training course. For a training provider to maintain accreditation from KDHE to offer a training course, the training provider shall meet the following requirements:

(1) Training manager. The training manager shall be a monetarily compensated direct employee of the training provider who meets the requirements in subsection (e). The training manager shall be responsible for ensuring that the training provider complies at all times with the requirements in these regulations. The training manager may designate guest instructors as needed to provide instruction specific to the lecture, hands-on activities, or work practice components of a course. The training manager shall ensure that each guest instructor meets the requirements in subsection (f).

(2) Principal instructor. The training provider, in coordination with the training manager, shall designate a qualified principal instructor who meets the requirements in subsection (f). The principal instructor shall be responsible for the organization of the course and oversight of the teaching of all course materials. The principal instructor shall be present during all classes or presentations given by any guest instructor.

(3) Guest instructor. The training manager may designate a guest instructor on an as-needed basis. No guest instructor shall be allowed to teach an

entire training course. Each guest instructor shall meet the requirements in subsection (f).

(4) Training provider. The training provider shall meet the curriculum requirements in K.A.R. 28-72-4a for each course contained in the application for accreditation of a training provider.

(5) Delivery of course. The training provider shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course exam, hands-on training, and assessment activities. This requirement shall include providing training equipment that reflects current work practice standards in K.A.R. 28-72-13 through K.A.R. 28-72-21 and maintaining or updating the course materials, equipment, and facilities as needed.

(6) Course exam. For each course offered, the training provider shall conduct a monitored, written course exam at the completion of each course. An oral exam may be administered in lieu of a written course exam for the lead abatement worker course only. If an oral examination is administered, the student shall be required to provide the answers to the exam in writing.

(A) The course exam shall evaluate each trainee's competency and proficiency.

(B) Each individual shall be required to achieve a passing score on the course exam in order to successfully complete any course and receive a course completion diploma.

(C) The training provider and the training manager shall be responsible for maintaining the validity and integrity of the course exam to ensure that the exam accurately evaluates each trainee's knowledge and retention of the course topics.

(7) Hands-on skills assessment. For each course offered, except for project designers, the training provider shall conduct a hands-on skills assessment. The training manager shall maintain the validity and integrity of the hands-on skills assessment to ensure that the assessment accurately evaluates each trainee's performance of the work practice procedures associated with the course topics.

(8) Course completion diploma. The training provider shall issue a unique course completion diploma to each individual who passes the training course. Each course completion diploma shall include the following:

(A) The name, a unique identification number, and the address of the individual;

(B) the name of the particular course that the individual completed;

(C) the dates of course attendance; and

(D) the name, address, and telephone number of the training provider.

(9) Quality control plan. The training manager shall develop and implement a quality control plan. The plan shall be used to maintain or progressively improve the quality of the accredited provider.

(A) This plan shall contain at least the following elements:

(i) Procedures for periodic revision of training materials and the course exam to reflect innovations in the field;

(ii) procedures for the training manager's annual review of the competency of the principal instructor; and

(iii) a review to ensure the adequacy of the facilities and equipment.

(B) An annual report discussing the results of the quality control plan shall be submitted to KDHE within one year following accreditation and at each subsequent renewal.

(10) Access by KDHE. The training provider shall allow KDHE to conduct audits as needed in order for KDHE to evaluate the training provider's compliance with KDHE accreditation requirements. During this audit, the training provider shall make available to KDHE all information necessary to complete the evaluation. At KDHE's request, the training provider shall also make documents available for photocopying.

(11) Recordkeeping. The training provider shall maintain at its principal place of business, for at least five years, the following records:

(A) All documents specified in paragraphs (e)(2) and (f)(2) that demonstrate the qualifications listed in paragraph (e)(1) for the training manager, and paragraph (f)(1) for the principal instructor and any guest instructor;

(B) curriculum or course materials, or both, and documents reflecting any changes made to these materials;

(C) the course examination and blueprint;

(D) information regarding how the hands-on skills assessment is conducted, including the following:

(i) The name of the person conducting the assessment;

(ii) the criteria for grading skills;

(iii) the facilities used;

(iv) the pass and fail rate; and

(v) the quality control plan as described in paragraph (d)(9);

(E) results of the students' hands-on skills assessments and course exams, and a record of each student's course completion diploma; and

(F) any other material not listed in this paragraph (d)(11) that was submitted to KDHE as part of the training provider's application for accreditation.

(12) Course notification. The training provider shall notify KDHE in writing at least 14 calendar days before conducting an accredited training course.

(A) Each notification shall include the following information:

(i) The location of the course, if it will be conducted at a location other than the training provider's training facility;

(ii) the dates and times of the course;

(iii) the name of the course; and

(iv) the name of the principal instructor and any guest instructors conducting the course.

(B) If the scheduled training course has been changed or canceled, the training provider shall notify KDHE in writing at least 24 hours before the training course was scheduled to begin.

(13) Changes to a training course. Before any one of the following changes is made to a training course, that change shall be submitted in writing to KDHE for review and approval before the continuation of the training course:

(A) The course curriculum;

(B) the course examination;

(C) the course materials;

(D) the training manager, principal instructors, or guest instructors; or

(E) the course completion diploma.

Within 60 calendar days after receipt of a change to a training course, the provider shall be informed by KDHE in writing that the change is either approved or disapproved. If the change is approved, the training provider shall include the change in the training course. If the change is disapproved, the training provider shall not include the change in the training course.

(14) Change of ownership. If a training provider changes ownership, the new owner shall notify KDHE in writing at least 30 calendar days before the change of ownership becomes effective. The notification shall include a new training course provider accreditation application, the appropriate fee or fees, and the date that the change of ownership will become effective. The new training course provider accreditation application shall be processed according to this regulation. The current training provider's accreditation shall expire on the effective date specified in the notification of the change of ownership.

(15) Change of address. The training provider shall submit to KDHE a written notice of the training provider's new address and telephone number, and a description of the new training facility. The training provider shall submit this information to KDHE not later than 30 days before relocating its business or transferring its records.

(e) Training, education, and experience requirements for the training manager.

(1) The education or experience requirements for the training manager shall include one year of experience in lead or asbestos abatement, painting, carpentry, renovation, remodeling, safety and health, or industrial hygiene, and at least one of the following:

(A) A minimum of two years of experience in teaching or training adults;

(B) a bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, business administration, or education; or

(C) a minimum of two years of experience in managing a training program specializing in environmental hazards.

(2) The following records of experience and education shall be recognized by KDHE as evidence that the individual meets or exceeds KDHE requirements for a training manager:

(A) Resumes, letters of reference from past employers, or documentation to evidence past experience that includes specific dates of employment, the employer's name, address, telephone number, and specific job duties, as evidence of meeting the experience requirements; and

(B) official academic transcripts or diplomas, as evidence of meeting the education requirements.

(f) Training, education, and experience requirements for the principal instructor and any guest instructor.

(1) The training, education, and experience requirements for the principal instructor and any guest instructor of a training course shall include the following:

(A) At least one year of experience in teaching or training adults; and

(B) at least one year of experience in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene, or an associate degree or higher from a postsecondary educational institu-

tion in building construction technology, engineering, safety, public health, or industrial hygiene.

(2) The following records of experience and education shall be recognized by KDHE as evidence that the individual meets or exceeds KDHE requirements for a principal instructor:

(A) Course completion diplomas issued by the training provider as evidence of meeting the training requirements and a current copy of the KDHE certification for the disciplines that the principal instructor desires to teach;

(B) official academic transcripts or diplomas, as evidence of meeting the education requirements; and

(C) resumes, letters of reference from past employers, or documentation to evidence past experience that includes specific dates of employment, the employer's name, address, telephone number, and specific job duties, as evidence of meeting the experience requirements.

(g)(1) Training provider accreditation may be suspended or revoked by the secretary pursuant to K.S.A. 65-1,207(c), and amendments thereto.

(2) Before suspending or revoking a training provider's accreditation, a training provider shall be given written notice of the reasons for the suspension or revocation. The training provider may request a hearing with the office of administrative hearings, in accordance with the Kansas administrative procedure act.

(h) Renewal of accreditation.

(1) Unless revoked sooner, a training provider's accreditation shall expire two years after the date of issuance. If a training provider meets the requirements of this regulation and K.A.R. 28-72-4a, the training provider shall be reaccredited.

(2) Each training provider seeking reaccreditation shall submit an application to KDHE at least 60 calendar days before the provider's accreditation expires. If a training provider does not submit its application for reaccreditation by that date, the provider's reaccreditation before the end of the accreditation period shall not be guaranteed by KDHE.

(3) The training provider's application for reaccreditation shall contain the following:

(A) A completed training provider course accreditation application on a form provided by KDHE, which shall include the following:

(i) The training provider's name, address, and telephone number;

(ii) the name and date of birth of the training manager;

(iii) the name and date of birth of the principal instructor for each course;

(iv) a list of locations at which training will take place;

(v) a list of courses for which the training provider is applying for reaccreditation; and

(vi) a statement signed by the training manager certifying that the information provided in the application for reaccreditation, and any additional information included with the application, is true and accurate to the best of the training manager's knowledge and understanding, that the training provider will comply with K.A.R. 28-72-4 and K.A.R. 28-72-4a, and that the training provider will conduct lead training only in those occupations in which the training provider has received accreditation;

(B) a list of courses for which the training provider is applying for reaccreditation;

(C) a description of any changes to the training facility, equipment, or course materials since the training provider's last application was approved that adversely affects the students' ability to learn; and

(D) a payment to KDHE for the nonrefundable fees specified in K.A.R. 28-72-3, as applicable, unless the training provider is a state, federally recognized Indian tribe, local government, or nonprofit organization as evidenced by a letter of determination issued by the IRS, which shall accompany the application.

(i) If the training provider has allowed its accreditation to expire and the provider desires to be accredited, it shall reapply in the same manner as that required for an application for an original accreditation in accordance with this regulation. (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

**28-72-4a. Curriculum requirements for training providers.** (a)(1) Each training provider of a lead inspector training course shall ensure that the lead inspector training course curriculum includes, at a minimum, 16 hours of classroom training and eight hours of hands-on training.

(2) Each lead inspector training course shall include, at a minimum, the following course topics:

(A) The role and responsibilities of an inspector;

(B) background information on lead, including the history of lead use and sources of environmental lead contamination;

(C) the health effects of lead, including the following:

(i) The ways that lead enters and affects the body;

(ii) the levels of concern; and

(iii) symptoms, diagnosis, and treatments;

(D) the regulatory background and an overview of lead in applicable state and federal guidelines or regulations pertaining to lead-based paint, including the current version of each of the following:

(i) 40 CFR part 745;

(ii) U.S. HUD guidelines for the evaluation and control of lead-based paint hazards in housing as adopted in K.A.R. 28-72-13;

(iii) 29 CFR 1910.1200;

(iv) 29 CFR 1926.62; and

(v) title X: the residential lead-based paint hazard reduction act of 1992;

(E) the regulations in this article pertaining to lead licensure, the Kansas work practice standards for lead-based paint activities specific to lead inspection activities, K.A.R. 28-72-2, and K.A.R. 28-72-51 through 28-72-54;

(F) quality control and assurance procedures in testing analysis;

(G) legal liabilities and obligations; and

(H) recordkeeping.

(3) Each lead inspector training course shall also include, at a minimum, the following course topics, the presentation of which shall require hands-on training as an integral component of the course:

(A) Lead-based paint inspection methods, including the selection of rooms and components for sampling or testing;

(B) preinspection planning and review, including developing a schematic site plan and determining inspection criteria and locations to collect samples in single-family and multifamily housing;

(C) paint, dust, and soil sampling methodologies, including the following:

(i) Lead-based paint testing or X-ray fluorescence paint analyzer (XRF) use, including the types of XRF units, their basic operation, and interpretation of XRF results, including substrate correction;

(ii) soil sample collection, including soil sampling techniques, the number and location of soil samples, and interpretation of soil sampling results; and

(iii) dust sample collection techniques, including the number and location of wipe samples and the interpretation of test results;

(D) clearance standards and testing, including random sampling; and

(E) preparation of the final inspection report.

(b) Each training provider of a risk assessor training course shall ensure that the risk assessor training course curriculum includes, at a minimum, 12 hours of classroom training and four hours of hands-on training.

(1) Each risk assessor training course shall include, at a minimum, the following course topics:

(A) The role and responsibilities of the risk assessor;

(B) the collection of background information to perform a risk assessment, including information on the age and history of the housing and occupancy by children under six years of age and women of childbearing age;

(C) sources of environmental lead contamination, including paint, surface dust and soil, water, air, packaging, and food;

(D) the regulations in this article pertaining to lead certification, Kansas work practice standards for lead-based paint specific to risk assessment activities, K.A.R. 28-72-2, and K.A.R. 28-72-51 through 28-72-54;

(E) development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards; and

(F) legal liabilities and obligations specific to a risk assessor.

(2) Each risk assessor training course shall also include, at a minimum, the following course topics, the presentation of which shall require hands-on training as an integral component of the course:

(A) Visual inspection for the purposes of identifying potential sources of lead hazards;

(B) lead-hazard screen protocols;

(C) sampling for other sources of lead exposure, including drinking water;

(D) interpretation of lead-based paint and other lead sampling results related to the Kansas clearance standards; and

(E) preparation of a final risk assessment report.

(c) Each training provider of a lead abatement

worker course shall ensure that the lead abatement worker training course curriculum includes, at a minimum, 16 hours of classroom training and eight hours of hands-on training.

(1) Each lead abatement worker training course shall include, at a minimum, the following course topics:

(A) The role and responsibilities of a lead abatement worker;

(B) background information on lead, including the history of lead use and sources of environmental lead contamination;

(C) the health effects of lead, including the following:

(i) The ways that lead enters and affects the body;

(ii) the levels of concern; and

(iii) symptoms, diagnosis, and treatments;

(D) the regulatory background and an overview of lead in applicable state and federal guidelines or regulations pertaining to lead-based paint, including the current version of each of the following:

(i) 40 CFR part 745;

(ii) U.S. HUD guidelines for the evaluation and control of lead-based paint hazards in housing;

(iii) 29 CFR 1910.1200;

(iv) 29 CFR 1926.62; and

(v) title X: the residential lead-based paint hazard reduction act of 1992;

(E) the regulations in this article pertaining to lead certification, the Kansas work practice standards for lead-based paint activities specific to lead abatement activities, K.A.R. 28-72-2, and K.A.R. 28-72-51 through 28-72-54; and

(F) waste disposal techniques.

(2) Each lead abatement training course shall also include, at a minimum, the following course topics, the presentation of which shall require hands-on training as an integral component of the course:

(A) Personal protective equipment information, including respiratory equipment selection, air-purifying respirators, care and cleaning of respirators, respiratory program, protective clothing and equipment, and hygienic practices;

(B) lead hazard recognition and control, including site characterization, exposure measurements, medical surveillance, and engineering controls;

(C) preabatement set-up procedures, including containment for residential and commercial buildings and for superstructures;

(D) lead abatement and lead-hazard reduction methods for residential and commercial buildings and for superstructures, including prohibited practices;

(E) interior dust abatement methods and cleanup techniques; and

(F) soil and exterior dust abatement methods.

(d) Each training provider of a lead abatement supervisor training course shall ensure that the lead abatement supervisor training course curriculum includes, at a minimum, 28 hours of classroom training and 12 hours of hands-on training.

(1) Each lead abatement supervisor training course shall include, at a minimum, the following course topics:

(A) The role and responsibilities of a supervisor;

(B) background information on lead, including the history of lead use and sources of environmental lead contamination;

(C) the health effects of lead, including the following:

(i) The ways that lead enters and affects the body;

(ii) the levels of concern; and

(iii) symptoms, diagnosis, and treatments;

(D) the regulatory background and an overview of lead in applicable state and federal guidelines or regulations pertaining to lead-based paint, including the current version of each of the following:

(i) 40 CFR part 745;

(ii) U.S. HUD guidelines for the evaluation and control of lead-based paint hazards in housing;

(iii) 29 CFR 1910.1200;

(iv) 29 CFR 1926.62; and

(v) title X: the residential lead-based paint hazard reduction act of 1992;

(E) liability and insurance issues relating to lead abatement;

(F) the community relations process;

(G) hazard recognition and control techniques, including site characterization, exposure measurements, material identification, safety and health planning, medical surveillance, and engineering controls;

(H) the regulations in this article pertaining to lead certification and to the Kansas work practice standards for lead-based paint activities specific to lead abatement activities;

(I) clearance standards and testing;

(J) cleanup and waste disposal; and

(K) recordkeeping.

(2) Each lead abatement supervisor training course shall also include, at a minimum, the fol-

lowing course topics, the presentation of which shall require hands-on training as an integral component of the course:

(A) Cost estimation;

(B) risk assessment and inspection report interpretation;

(C) the development and implementation of an occupant protection plan and pre-abatement work plan, including containment for residential and commercial buildings and for superstructures;

(D) lead hazard recognition and control;

(E) personal protective equipment information, including respiratory equipment selection, air-purifying respirators, care and cleaning of respirators, respiratory program, protective clothing and equipment, and hygienic practices;

(F) lead abatement and lead-hazard reduction methods, including prohibited practices, for residential and commercial buildings and superstructures;

(G) project management, including supervisory techniques, contractor specifications, emergency response planning, and blueprint reading;

(H) interior dust abatement and cleanup techniques;

(I) soil and exterior dust abatement methods; and

(J) the preparation of an abatement report.

(e) Each training provider of a project designer training course shall ensure that the project designer training course curriculum includes, at a minimum, eight hours of classroom training. Each project designer training course shall include, at a minimum, the following course topics:

(1) The role and responsibilities of a project designer;

(2) the development and implementation of an occupant protection plan for large-scale abatement projects;

(3) lead abatement and lead-hazard reduction methods, including prohibited practices, for large-scale abatement projects;

(4) interior dust abatement or cleanup or lead-hazard control, and reduction methods for large-scale abatement projects;

(5) soil and exterior dust abatement methods for large-scale abatement projects;

(6) clearance standards and testing for large-scale abatement projects;

(7) integration of lead abatement methods with modernization and rehabilitation projects for large-scale abatement projects; and

(8) the Kansas administrative regulations pertaining to lead-hazard disclosure. (Authorized by and implementing K.S.A. 65-1,202; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

**28-72-4b.** (Authorized by K.S.A. 2001 Supp. 65-1,202; implementing K.S.A. 2001 Supp. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; revoked April 9, 2010.)

**28-72-4c. Training provider accreditation; refresher training course.** (a) Application for accreditation of a training provider for a refresher training course. A training provider may seek accreditation to offer refresher training courses in any occupation. To obtain KDHE accreditation to offer refresher training courses, each training provider shall meet the following minimum requirements:

(1) Each refresher course shall review the curriculum topics of the full-length courses listed in K.A.R. 28-72-4a as appropriate. In addition, each training provider shall ensure that the refresher course of study includes, at a minimum, the following:

(A) An overview of current safety practices relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate occupation;

(B) current laws and regulations relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate occupation; and

(C) current technologies relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate occupation.

(2) Each refresher course, except for the project designer course and the lead-safe work practices course, shall last at least eight training hours. The project designer and lead-safe work practices refresher courses shall last at least four training hours.

(3) For each refresher training course offered, the training provider shall conduct a hands-on assessment, if applicable.

(4) For each refresher training course offered, the training provider shall conduct a course exam at the completion of the course.

(b) Any training provider may apply for accreditation of a refresher training course concurrently with its application for accreditation of the corresponding training course as described in K.A.R.

28-72-4. If the training provider submits both applications concurrently, the procedures and requirements specified in K.A.R. 28-72-4 shall be used by KDHE for accreditation of the refresher course and the corresponding training course.

(c) Each training provider seeking accreditation to offer only refresher training courses shall submit a written application to KDHE, which shall include the following:

(1) A completed training course accreditation application on a form provided by KDHE, which shall include the following:

(A) The training provider's name, address, and telephone number;

(B) the name and date of birth of the training manager;

(C) the name and date of birth of the principal instructor for each course;

(D) a list of locations at which training will take place;

(E) a list of courses for which the training provider is applying for accreditation; and

(F) a statement signed by the training manager certifying that the information provided in the application for accreditation, and any additional information included with the application, is true and accurate to the best of the training manager's knowledge and understanding, that the training provider will comply with K.A.R. 28-72-4 through K.A.R. 28-72-4c, and that the training provider will conduct lead training only in those occupations in which the training provider has received accreditation;

(2) a copy of the student and instructor manuals;

(3) the course agenda;

(4) the course examination blueprint;

(5) a copy of the quality control plan as described in K.A.R. 28-72-4(d)(9);

(6) a copy of a sample course completion diploma as described in K.A.R. 28-72-4(d)(8);

(7) a description of the facilities and equipment to be used for lecture and hands-on training; and

(8) a payment to KDHE for the applicable nonrefundable reaccreditation fees, unless the training provider is a state, federally recognized Indian tribe, local government, or nonprofit organization as evidenced by a letter of determination issued by the IRS, which shall accompany the application.

(d) The following shall apply to each training provider applying for the accreditation of refresher training courses:

(1) The good standing requirements in K.A.R. 28-72-4(a);

(2) the procedures for training provider accreditation issuance or denial in K.A.R. 28-72-4(c);

(3) the requirements for accreditation of a training provider for a training course;

(4) the training, education, and the experience requirements for training managers and principal instructors in K.A.R. 28-72-4(e) and (f); and

(5) the provisions relating to suspension or revocation of accreditation in K.A.R. 28-72-4(g).

(e)(1) Unless revoked sooner, each training provider's accreditation, including refresher training courses, shall expire two years after the date of issuance. If a training provider meets the requirements of subsections (a), (c), and (d), the training provider shall be reaccredited.

(2) Each training provider seeking reaccreditation of one or more refresher training courses shall submit an application to KDHE at least 60 calendar days before the training provider's accreditation expires. If a training provider does not submit its application for reaccreditation by that date, the provider's reaccreditation before the end of the accreditation period shall not be guaranteed by KDHE.

(3) The training provider's application for reaccreditation shall contain the following:

(A) A completed training provider course accreditation application on a form provided by KDHE, which shall include the following:

(i) The training provider's name, address, and telephone number;

(ii) the name and date of birth of the training manager;

(iii) the name and date of birth of the principal instructor for each course;

(iv) a list of locations at which training will take place;

(v) a list of refresher training courses for which the training provider is applying for reaccreditation; and

(vi) a statement signed by the training manager certifying that the information provided in the application for reaccreditation, and any additional information included with the application, is true and accurate to the best of the training manager's knowledge and understanding, that the training provider will comply with K.A.R. 28-72-4, K.A.R. 28-72-4a, and K.A.R. 28-72-4c, and that the training provider will conduct lead training only in those occupations in which the training provider has received accreditation;

(B) a list of refresher training courses for which the training provider is applying for reaccreditation;

(C) a description of any changes to the training facility, equipment, or course materials since the training provider's last application was approved that adversely affect the students' ability to learn; and

(D) a payment to KDHE for the nonrefundable fees specified in K.A.R. 28-72-3, as applicable, unless the training provider is a state, federally recognized Indian tribe, local government, or nonprofit organization as evidenced by a letter of determination issued by the IRS, which shall accompany the application.

(4) If the training provider has allowed its accreditation to expire and the provider desires to be accredited, the training provider shall reapply in the same manner as that required for an application for an original accreditation in accordance with this regulation. (Authorized by and implementing K.S.A. 65-1,202 and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

**28-72-5. Application process and requirements for the certification of lead inspectors.** (a) Application for a lead inspector certificate.

(1) Each applicant for a lead inspector certificate shall submit a completed application to KDHE before consideration for certificate issuance. All applications for certification shall be received by KDHE at least 30 days before the date of the third-party examination, but the deadline for filing applications may be waived by KDHE as particular circumstances justify.

(2) Each application shall include the following:

(A) A completed lead occupation certificate application on a form provided by KDHE, which shall include the following:

(i) The applicant's full legal name, home address, and telephone number;

(ii) the name, address, and telephone number of the applicant's current employer;

(iii) the applicant's state-issued identification number or federal employment identification number;

(iv) the county or counties in which the applicant is employed;

(v) the address where the applicant would like to receive correspondence regarding the application or certification;

(vi) the occupation for which the applicant wishes to be certified;

(vii) proof of any certification for lead occupations in other states, including the names of the other states, type of certification, certification expiration date, certificate number, and copies of the other states' certificate or license;

(viii) proof of any certification by the EPA, including the EPA region number, type of certification, certification expiration date, certificate number, and a copy of the EPA certificate;

(ix) the type of training completed, including the name of the training provider, certificate identification number, and dates of course attendance;

(x) any employment history or education that meets the experience requirements in subsection (b); and

(xi) the signature of the applicant, which shall certify that all information in the application is complete and true to the best of the applicant's knowledge and that the applicant will comply with applicable state statutes and regulations;

(B) a copy of the lead inspector training course completion diploma or equivalent EPA training course diplomas, and any required refresher course completion diplomas;

(C) documentation pursuant to subsection (b) as evidence of meeting the education or experience requirements for lead inspectors; and

(D) a payment to KDHE for the nonrefundable fee specified in K.A.R. 28-72-3.

(3) Each applicant for a lead inspector certificate shall apply to KDHE within one year after the applicant's successful completion of the lead inspector training course, as indicated on the course completion diploma. Applicants failing to apply within one year after the date on the training course completion diploma shall, before making application for certification, be required to successfully complete the eight-hour lead inspector refresher training course accredited by KDHE.

(4) Each applicant who fails to apply within two years after the lead inspector training and who has not successfully completed refresher training shall be required to successfully complete the lead inspector training course before submitting an application for a lead inspector certificate.

(b) Training, education, and experience requirements for a lead inspector certificate.

(1) Each applicant for certification as a lead inspector shall complete a lead inspector training course or its equivalent and shall be required to

achieve passing scores on the course examination and the third-party examination.

(2) Each applicant for certification as a lead inspector shall meet the minimum education or experience requirements for a certified lead inspector.

(A) The minimum education or experience requirements for a certified lead inspector shall include at least one of the following:

(i) A bachelor's degree;

(ii) an associate's degree and one year of experience in a related field, including housing repair and inspection, and lead, asbestos, and environmental remediation work; or

(iii) either a high school diploma or a certificate of high school equivalency (GED), in addition to two years of experience in a related field, including housing repair and inspection, and lead, asbestos, and environmental remediation work.

(B) The following documents shall be recognized by KDHE as evidence of meeting the requirements listed in paragraph (b)(2)(A):

(i) Official academic transcripts or diplomas as evidence of meeting the education requirements;

(ii) resumes, letters of reference, or documentation of work experience, which at a minimum shall include specific dates of employment, each employer's name, address, and telephone number, and specific job duties, as evidence of meeting the work experience requirements;

(iii) course completion diplomas issued by the training provider as evidence of meeting the training requirements; and

(iv) appropriate documentation of certification or registration.

(c) Procedure for issuance or denial of a lead inspector certificate.

(1) The applicant shall be informed by the secretary in writing that the application is approved, incomplete, or denied.

(A) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the application.

(i) Within 30 calendar days after the issuance date of the notice of an incomplete application, the applicant shall submit, to the secretary in writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days shall result in the secretary's denial of the individual's application for certification.

(iii) After receipt of the information requested in the written notice, the applicant shall be informed by the secretary in writing that the application is either approved or denied.

(B) If an application for certification is denied, the written notice of denial to the applicant shall specify the reason or reasons for the denial. Certification may be denied by the secretary pursuant to K.S.A. 65-1,207(b), and amendments thereto.

(C) If an application is denied, the applicant may reapply to KDHE for a lead inspector certificate by submitting a complete lead occupation application form with another nonrefundable certification fee, as specified in K.A.R. 28-72-3.

(D) If an applicant is aggrieved by a determination to deny certification, the applicant may request a hearing with the office of administrative hearings, in accordance with the Kansas administrative procedure act.

(2) Within 180 calendar days after application approval, the applicant shall be required to attain a passing score on the third-party examination for lead inspectors.

(A) An applicant shall not sit for the third-party examination for lead inspectors more than three times within 180 calendar days after the issuance date of the notice of an approved application.

(B) The applicant's failure to obtain a passing score on the third-party examination for lead inspectors within the 180-day period following the notice of an approved application for a certificate shall result in KDHE's denial of the individual's application for a certificate. The individual may reapply to KDHE pursuant to this regulation but only after retaking the lead inspector training course.

(3) After the applicant passes the third-party examination, a two-year lead inspector certificate shall be issued by KDHE.

(4) A certificate may be issued with specific restrictions pursuant to an agreement between the applicant and KDHE. (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

**28-72-6. Application process and requirements for the certification of risk assessors.** (a) Application for a risk assessor certificate.

(1) Each applicant for a risk assessor certificate shall submit a completed application to KDHE before consideration for certificate issuance. All

applications for certification shall be received by KDHE at least 30 days before the date of the third-party examination, but the deadline for filing applications may be waived by KDHE as particular circumstances justify.

(2) Each application shall include the information specified in K.A.R. 28-72-5(a)(2)(A) and the following:

(A) A copy of the risk assessor and lead inspector training course completion diploma, and any required refresher course completion diplomas;

(B) documentation pursuant to subsection (b) as evidence of meeting the education or experience requirements for risk assessors; and

(C) a payment to KDHE for the nonrefundable fee specified in K.A.R. 28-72-3.

(3) Each applicant for a risk assessor certificate shall apply to KDHE within one year after the applicant's successful completion of the risk assessor training course, as indicated on the course completion diploma. Applicants failing to apply within one year after the date on the training course completion certificate shall, before making application for certification, be required to successfully complete the eight-hour risk assessor refresher training course accredited by KDHE.

(4) Each applicant who fails to apply within two years after the risk assessor training and who has not successfully completed the refresher training course shall be required to successfully complete the risk assessor training course before submitting an application for a risk assessor certificate.

(b) Training, education, and experience requirements for a risk assessor certificate.

(1) Each applicant for a certificate as a risk assessor shall complete a risk assessor training course and a lead inspector training course and shall be required to achieve passing scores on both the course examinations and the third-party examination for risk assessors.

(2) Each applicant for a certificate as a risk assessor shall meet the minimum education and experience requirements for a certified risk assessor.

(A) The minimum education and experience requirements for a certified risk assessor shall include at least one of the following:

(i) A bachelor's degree and at least one year of experience in a related field, including housing repair and inspection, and lead, asbestos, and environmental remediation work;

(ii) an associate's degree and two years of experience in a related field, including housing repair and inspection, and lead, asbestos, and environmental remediation work;

(iii) certification as an industrial hygienist, professional engineer, or registered architect, or certification in a related engineering, health, or environmental field, including a safety professional and environmental scientist; or

(iv) either a high school diploma or a certificate of high school equivalency (GED), in addition to three years of experience in a field, including housing repair and inspection, and lead, asbestos, and environmental remediation work.

(B) The following documents shall be recognized by KDHE as evidence of meeting the requirements listed in paragraph (b)(2)(A):

(i) Official academic transcripts or diplomas as evidence of meeting the education requirements;

(ii) resumes, letters of reference, or documentation of work experience, which at a minimum shall include specific dates of employment, each employer's name, address, and telephone number, and specific job duties, as evidence of meeting the work experience requirements;

(iii) course completion diplomas issued by the training provider as evidence of meeting the training requirements; and

(iv) appropriate documentation of certifications or registrations.

(c) Procedure for issuance or denial of a risk assessor certificate.

(1) Each applicant shall be informed by the secretary in writing that the application is approved, incomplete, or denied.

(A) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the application.

(i) Within 30 calendar days after the issuance date of the notice of an incomplete application, the applicant shall submit, to the secretary in writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days shall result in the secretary's denial of the individual's application for certification.

(iii) After receipt of the information requested in the written notice, the applicant shall be informed by the secretary in writing that the application is either approved or denied.

(B) If an application for certification is denied, the written notice of denial to the applicant shall specify the reason or reasons for the denial. Cer-

tification may be denied by the secretary pursuant to K.S.A. 65-1,207(b), and amendments thereto.

(C) If an application is denied, the applicant may reapply to KDHE for a risk assessor certificate by submitting a complete lead occupation application form with another nonrefundable certification fee, as specified in K.A.R. 28-72-3.

(D) If an applicant is aggrieved by a determination to deny certification, the applicant may request a hearing with the office of administrative hearings, in accordance with the Kansas administrative procedure act.

(2) Within 180 calendar days after application approval, the applicant shall be required to attain a passing score on the third-party examination for risk assessors.

(A) An applicant shall not sit for the third-party examination for risk assessors more than three times within 180 calendar days after the issuance date of the notice of an approved application.

(B) The applicant's failure to obtain a passing score on the third-party examination for risk assessors within the 180-day period following the notice of an approved application for a certificate shall result in KDHE's denial of the individual's application for a certificate. The individual may reapply to KDHE pursuant to this regulation but only after retaking the risk assessor training course.

(3) After the applicant passes the third-party examination, a two-year risk assessor certificate shall be issued by KDHE.

(4) A certificate may be issued with specific restrictions pursuant to an agreement between the applicant and KDHE. (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

**28-72-6a. Application process and requirements for the certification of an elevated blood lead level investigator.** (a) Application for an elevated blood lead (EBL) level investigator certificate.

(1) Each applicant for an elevated blood lead level investigator certificate shall be selected by KDHE. Each selected applicant shall submit a completed application to KDHE before issuance of a certificate.

(2) Each application shall include the following:

(A) A completed lead occupation certificate application on a form provided by KDHE, which shall include the following:

(i) The applicant's full legal name, home address, and telephone number;

(ii) the name, address, and telephone number of the applicant's current employer;

(iii) the applicant's state-issued identification number or federal employment identification number;

(iv) the county or counties in which the applicant is employed;

(v) the address where the applicant would like to receive correspondence regarding the application or certification;

(vi) the occupation for which the applicant wishes to be certified;

(vii) proof of any certification for lead occupations in other states, including the names of the other states, type of certification, certification expiration date, certificate number, and copies of the other states' certificate or license;

(viii) proof of any certification by the EPA, including the EPA region number, type of certification, certification expiration date, certificate number, and a copy of the EPA certificate;

(ix) the type of training completed, including the name of the training provider, diploma identification number, and dates of course attendance;

(x) any employment history or education that meets the experience requirements in subsection (b);

(xi) any criminal history; and

(xii) the signature of the applicant, which shall certify that all information in the application is complete and true to the best of the applicant's knowledge and that the applicant will comply with applicable state statutes and regulations;

(B) a copy of the risk assessor and lead inspector training course completion diploma and any required refresher course completion diplomas; and

(C) documentation pursuant to subsection (b) as evidence of meeting the education or experience requirements for an elevated blood lead level investigator.

(b) Training, education, and experience requirements for an elevated blood lead level investigator certificate.

(1) Each applicant for a certificate as an elevated blood lead level investigator shall complete a risk assessor training course and a lead inspector training course and shall be required to attain passing scores on both course examinations.

(2) Each applicant for a certificate as an ele-

vated blood level investigator shall complete a KDHE-sponsored EBL training course, shall meet the minimum education and experience requirements for a certified elevated blood lead level investigator, and shall be required to attain a passing score on the third-party elevated blood lead level investigator examination.

(3) (A) The minimum education and experience requirements for a certified elevated blood lead level investigator shall include at least one of the following:

(i) A bachelor's degree and experience in a related field, including nursing, public health, housing repair and inspection, lead hazard investigation, or environmental remediation work; or

(ii) an associate's degree and experience in a related field, including nursing, public health, housing repair and inspection, lead hazard investigation, or environmental remediation work; or

(iii) certification as an industrial hygienist, or certification in public health or environmental health; or

(iv) a high school diploma or a certificate of high school equivalency (GED), in addition to experience in a related field, including nursing, public health, housing repair and inspection, lead hazard investigation, or environmental remediation work.

(B) The following documents shall be recognized by KDHE as evidence of meeting the requirements listed in paragraph (b)(3)(A):

(i) Official academic transcripts or diplomas as evidence of meeting the education requirements;

(ii) resumes, letters of reference, or documentation of work experience, which at a minimum shall include specific dates of employment, each employer's name, address, and telephone number, and specific job duties, as evidence of meeting the work experience requirements;

(iii) course completion diplomas issued by the training provider as evidence of meeting the training requirements; and

(iv) appropriate documentation of certifications or registrations.

(4) Upon receipt of a complete and qualifying application, an elevated blood lead level investigator certificate may be issued with specific restrictions pursuant to an agreement between the applicant, the applicant's employer or the applicant's controlling agency, and KDHE.

(c) Procedure for issuance or denial of an elevated blood lead level investigator certificate.

(1) Each applicant shall be informed in writing by the secretary that the application is approved, incomplete, or denied.

(A) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the application.

(i) Within 30 calendar days after the issuance date of the notice of an incomplete application, the applicant shall submit, to the secretary in writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days shall result in the retraction of KDHE's request to the applicant to become an elevated blood lead level investigator and result in the denial of the individual's application for certification.

(iii) After receipt of the information requested in the written notice, the applicant shall be informed by the secretary that the application is either approved or denied.

(B) If an application for certification is denied, the written notice of denial to the applicant shall specify the reason or reasons for the denial. Certification may be denied by the secretary pursuant to K.S.A. 65-1,207(b), and amendments thereto.

(C) If an application is denied, the applicant may, at the request of KDHE, reapply to KDHE for an elevated blood lead level investigator certificate by submitting a complete lead occupation application form.

(D) If an applicant is aggrieved by a determination to deny certification, the applicant may request a hearing with the office of administrative hearings, in accordance with the Kansas administrative procedure act.

(2) Within 180 calendar days after application approval, the applicant shall be required to attain a passing score on the third-party examination for elevated blood lead level investigators.

(A) An applicant shall not sit for the third-party examination for elevated blood lead level investigators more than three times within 180 calendar days after the issuance date of the notice of an approved application.

(B) The applicant's failure to obtain a passing score on the third-party examination for elevated blood lead level investigators within the 180-day period following the notice of an approved application for a certificate shall result in KDHE's denial of the individual's application for a certificate. At the request of KDHE, the individual may reapply to KDHE pursuant to this regulation, but

only after retaking the KDHE risk-assessor training course.

(3) After the applicant passes the third-party examination, a two-year elevated blood lead level investigator certificate shall be issued by KDHE.

(4) The certificate shall be issued with specific restrictions pursuant to an agreement between the applicant or the applicant's employer and KDHE. (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202, 65-1,203 and 65-1,207; effective April 9, 2010.)

**28-72-7. Application process and requirements for the certification of lead abatement workers.** (a) Application for a lead abatement worker certificate.

(1) Each applicant for a lead abatement worker certificate shall submit a completed application to KDHE before consideration for certificate issuance. Each application for certification shall be received by KDHE within one year after successful completion of the lead abatement worker training course.

(2) Each application shall include the information specified in K.A.R. 28-72-5(a)(2)(A) and the following:

(A) A copy of the lead abatement worker training course completion diploma, and any required refresher course completion diplomas; and

(B) a payment to KDHE for the nonrefundable fee specified in K.A.R. 28-72-3.

(3) Each applicant for a lead abatement worker certificate shall apply to KDHE within one year after the applicant's successful completion of the lead abatement worker training course, as indicated on the certificate of completion. Applicants failing to apply within one year after the date on the training course completion diploma shall, before making application for certification, successfully complete the eight-hour lead abatement worker refresher training course.

(4) Each applicant who fails to apply within two years after the lead abatement worker training and who has not successfully completed refresher training shall be required to successfully complete the lead abatement worker training course before submitting an application for a lead abatement worker certificate.

(b) Training, education, and experience requirements for a lead abatement worker's certificate. Each applicant for a certificate as a lead abatement worker shall complete a lead abatement worker training course and shall be required to achieve a passing score on the course examination. The applicant shall submit a course completion diploma issued by the training provider as evidence of meeting this requirement.

(c) Procedure for issuance or denial of a lead abatement worker certificate.

(1) Each applicant shall be informed by the secretary in writing that the application is approved, incomplete, or denied.

(A) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the application.

(i) Within 30 calendar days after the issuance date of the notice of an incomplete application, the applicant shall submit, to the secretary in writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days shall result in the secretary's denial of the individual's application for certification.

(iii) After receipt of the information requested in the written notice, the applicant shall be informed by KDHE in writing that the application is either approved or denied.

(B) If an application for certification is denied, the written notice of denial to the applicant shall specify the reason or reasons for the denial. Certification may be denied by the secretary pursuant to K.S.A. 65-1,207(b), and amendments thereto.

(C) If an application is denied, the applicant may reapply to KDHE for a lead abatement worker certificate by submitting a complete lead occupation application form with another nonrefundable certification fee, as specified in K.A.R. 28-72-3.

(D) If an applicant is aggrieved by a determination to deny certification, the applicant may request a hearing with the office of administrative hearings, in accordance with the Kansas administrative procedure act.

(2) If the application is approved, a two-year lead abatement worker certificate shall be issued by KDHE.

(3) A certificate may be issued with specific restrictions pursuant to an agreement between the applicant and KDHE. (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

**28-72-7a. Application process for renovators and requirements for certification in lead-safe work practices.** (a) Application for renovator certification.

(1) Each applicant seeking certification shall submit a completed application to KDHE before consideration for the certificate issuance. Each application for certification shall be received by KDHE within one year after successful completion of the "lead-safe work practices in Kansas" training course.

(2) Each application shall include the following:

(A) A completed certificate application on a form provided by KDHE, which shall include the following:

(i) The applicant's full legal name, home address, and telephone number;

(ii) the name, address, and telephone number of the applicant's current employer;

(iii) the applicant's state-issued identification number or federal employment identification number;

(iv) the county or counties in which the applicant is employed;

(v) the address where the applicant would like to receive correspondence regarding the application or certification;

(vi) proof of any certification as a renovator in other states, including the names of the other states, type of certification, certification expiration date, certificate number, and copies of the other states' certificate or license;

(vii) proof of any certification by the EPA, including the EPA region number, type of certification, certification expiration date, certificate number, and a copy of the EPA certificate;

(viii) the type of training completed, including the name of the training provider, diploma identification number, and date of course attendance; and

(ix) the signature of the applicant, which shall certify that all information in the application is complete and true to the best of the applicant's knowledge and that the applicant will comply with applicable state statutes and regulations;

(B) a copy of the "lead-safe work practices in Kansas" training course completion diploma, and any required refresher course completion diplomas; and

(C) a payment to KDHE for the nonrefundable fee specified in K.A.R. 28-72-3.

(3) Each applicant for a renovator certificate shall apply to KDHE within one year after the applicant's successful completion of the "lead-safe work practices in Kansas" training course, as indicated on the certificate of completion. Applicants failing to apply within one year after the date on the training course completion diploma shall, before making application for certification, be required to successfully complete the four-hour lead-safe work practices in Kansas refresher training course.

(b) Training, education, and experience requirements for a renovator certificate. Each applicant shall complete a "lead-safe work practices in Kansas" training course and shall be required to achieve a passing score on the course examination. The applicant shall submit a course completion certificate issued by the training provider as evidence of meeting this requirement.

(c) Procedure for issuance or denial of a renovator certificate.

(1) Each applicant shall be informed by the secretary in writing that the application is approved, incomplete, or denied.

(A) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the application.

(i) Within 30 calendar days after the issuance date of the notice of an incomplete application, the applicant shall submit, to the secretary in writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days shall result in the secretary's denial of the individual's application for certification.

(iii) After receipt of the information requested in the written notice, the application shall be approved by the secretary, or the applicant shall be informed in writing that the application is denied.

(B) If an application for certification is denied, the written notice of denial to the applicant shall specify the reason or reasons for the denial. Certification may be denied by the secretary pursuant to K.S.A. 65-1,207(b), and amendments thereto.

(C) If an application is denied, the applicant may reapply to KDHE for a renovator certificate by submitting a complete lead occupation application form with another nonrefundable certification fee, as specified in K.A.R. 28-72-3.

(D) If an applicant is aggrieved by a determination to deny certification, the applicant may request a hearing with the office of administrative

hearings, in accordance with the Kansas administrative procedure act.

(2) If the application is approved, a five-year renovator certificate shall be issued by KDHE.

(3) A certificate may be issued with specific restrictions pursuant to an agreement between the applicant and KDHE. (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202, 65-1,203, and 65-1,207; effective April 9, 2010.)

**28-72-8. Application process and requirements for the certification of lead abatement supervisors.** (a) Application for a lead abatement supervisor certificate.

(1) Each applicant for a lead abatement supervisor certificate shall submit a completed application to KDHE before consideration for certificate issuance. Each application for certification shall be received by KDHE at least 30 days before the date of the third-party examination, but the deadline for filing applications may be waived by KDHE as particular circumstances justify.

(2) Each application shall include the information specified in K.A.R. 28-72-5(a)(2)(A) and the following:

(A) A copy of the lead abatement supervisor training course completion diploma, and any required refresher course completion diplomas;

(B) documentation pursuant to subsection (c) as evidence of meeting the education or experience requirements for lead abatement supervisors; and

(C) a payment to KDHE for the nonrefundable fee specified in K.A.R. 28-72-3.

(3) Each applicant for a lead abatement supervisor certificate shall apply to KDHE within one year after the applicant's successful completion of the lead abatement supervisor training course, as indicated on the course completion diploma. Each applicant failing to apply within one year after the date on the training course completion certificate shall, before making application for certification, be required to successfully complete the eight-hour lead abatement supervisor refresher training course.

(4) Each applicant who fails to apply within two years after the lead abatement supervisor training and who has not successfully completed refresher training shall be required to successfully complete the lead abatement supervisor training course before submitting an application for a lead abatement supervisor certificate.

(b) Training and experience requirements for a lead abatement supervisor certificate.

(1) Each applicant for a certificate as a lead abatement supervisor shall complete a lead abatement supervisor training course and shall be required to achieve passing scores on the course examination and the third-party examination.

(2) Each applicant for a certificate as a lead abatement supervisor shall meet the minimum experience requirements for a certified lead abatement supervisor.

(A) The minimum experience requirements for a lead abatement supervisor certificate shall include at least one of the following:

(i) At least one year of experience as a certified lead abatement worker certified by the secretary, the EPA, or an EPA-approved state;

(ii) at least two years of experience in asbestos abatement work as a construction manager or superintendent;

(iii) at least two years of experience as a manager for environmental hazard remediation projects; or

(iv) at least two years of experience as a supervisor in residential construction.

(B) The following documents shall be recognized by KDHE as evidence of meeting the requirements listed in paragraph (b)(2)(A):

(i) Resumes, letters of reference, or documentation of work experience, which shall include specific dates of employment, each employer's name, address, and telephone number, and specific job duties, as evidence of meeting the work experience requirements;

(ii) course completion diplomas issued by a training provider as evidence of meeting the training requirements; and

(iii) a copy of the lead abatement supervisor certificate or identification badge as evidence of having been a certified lead abatement supervisor.

(c) Procedure for issuance or denial of a lead abatement supervisor certificate.

(1) Each applicant shall be informed by the secretary in writing that the application is approved, incomplete, or denied.

(A) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the application.

(i) Within 30 calendar days after the issuance date of the notice of an incomplete application, the applicant shall submit, to the secretary in writ-

ing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days shall result in the secretary's denial of the individual's application for certification.

(iii) After receipt of the information requested in the written notice, the applicant shall be informed by the secretary in writing that the application is either approved or denied.

(B) If an application for certification is denied, the written notice of denial to the applicant shall specify the reason or reasons for the denial. Certification may be denied by the secretary pursuant to K.S.A. 65-1,207(b), and amendments thereto.

(C) If an application is denied, the applicant may reapply to KDHE for a lead abatement supervisor certificate by submitting a complete lead occupation application form with another nonrefundable certification fee, as specified in K.A.R. 28-72-3.

(D) If an applicant is aggrieved by a determination to deny certification, the applicant may request a hearing with the office of administrative hearings, in accordance with the Kansas administrative procedure act.

(2) Within 180 calendar days after application approval, the applicant shall be required to attain a passing score on the third-party examination for lead abatement supervisors.

(A) An applicant shall not sit for the third-party examination for lead abatement supervisors more than three times within 180 calendar days after the issuance date of the notice of an approved application.

(B) The applicant's failure to obtain a passing score on the third-party examination for lead abatement supervisors within the 180-day period following the notice of an approved application for a certificate shall result in the secretary's denial of the individual's application for a certificate. The individual may reapply to KDHE pursuant to this regulation but only after retaking the lead abatement supervisor training course.

(3) After the applicant passes the third-party examination, a two-year lead abatement supervisor certificate shall be issued by KDHE.

(4) A certificate may be issued with specific restrictions pursuant to an agreement between the applicant and KDHE. (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

**28-72-9. Application for the certification of project designers.** (a) Application for a project designer certificate.

(1) Each applicant for a project designer certificate shall submit a completed application to KDHE before consideration for certificate issuance. Each application for certification shall be received by KDHE within one year of successful completion of the project designer training course.

(2) Each application shall include the information specified in K.A.R. 28-72-5(a)(2)(A) and the following:

(A) A copy of the project designer training course completion diploma, and any required refresher course completion diplomas;

(B) documentation pursuant to subsection (b) as evidence of meeting the education or experience requirements for project designers; and

(C) a payment to KDHE for the nonrefundable fee specified in K.A.R. 28-72-3.

(3) Each applicant for a project designer certificate shall apply to KDHE within one year of the applicant's successful completion of the project designer training course, as indicated on the course completion diploma. Each applicant failing to apply within one year after the date on the training course completion diploma shall, before making application for certification, be required to successfully complete the four-hour project designer refresher training course.

(4) Each applicant who fails to apply within two years of the project designer training course and who has not successfully completed a refresher training course shall successfully complete the project designer training course before submitting an application for a project designer certificate.

(b) Training, education, and experience requirements for a project designer certificate.

(1) Each applicant for a certificate as a project designer shall complete a lead abatement supervisor training course and a project designer course and shall be required to achieve passing scores on both course examinations.

(2) Each applicant for a certificate as a project designer shall meet the minimum education and experience requirements for a certified project designer.

(A) The minimum education and experience

requirements for a certified project designer shall include at least one of the following:

(i) A bachelor's degree in engineering, architecture, or a related profession, and one year of experience in building construction and one year of experience as a certified lead professional;

(ii) at least one year of experience as a certified lead hazard risk assessor, certified by the secretary, the EPA, or an EPA-approved state, and at least two years of experience in building construction and design; or

(iii) at least four years of experience as a lead abatement supervisor and four years of experience in building construction and design.

(B) The following documents shall be recognized by KDHE as evidence of meeting the requirements listed in paragraph (b)(2)(A):

(i) Official academic transcripts or diplomas, as evidence of meeting the education requirements;

(ii) resumes, letters of reference, or documentation of work experience, which shall include specific dates of employment, each employer's name, address, and telephone number, and specific job duties, as evidence of meeting the work experience requirements;

(iii) course completion diplomas issued by the training provider as evidence of meeting the training requirements; and

(iv) a copy of the project designer certificate or identification badge as evidence of having been a certified project designer.

(c) Procedure for issuance or denial of a project designer certificate.

(1) The applicant shall be informed by the secretary in writing that the application is approved, incomplete, or denied.

(A) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the application.

(i) Within 30 calendar days after the issuance date of the notice of an incomplete application, the applicant shall submit, to the secretary in writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days shall result in the secretary's denial of the individual's application for certification.

(iii) After receipt of the information requested in the written notice, the applicant shall be informed by the secretary in writing that the application is either approved or denied.

(B) If an application for certification is denied, the written notice of denial to the applicant shall specify the reason or reasons for the denial. Certification may be denied by the secretary pursuant to K.S.A. 65-1,207(b), and amendments thereto.

(C) If an application is denied, the applicant may reapply to KDHE for a project designer certificate by submitting a complete lead occupation application form with another nonrefundable certification fee, as specified in K.A.R. 28-72-3.

(D) If an applicant is aggrieved by a determination to deny certification, the applicant may request a hearing with the office of administrative hearings, in accordance with the Kansas administrative procedure act.

(2) If the application is approved, a two-year project designer certificate shall be issued by KDHE.

(3) A certificate may be issued with specific restrictions pursuant to an agreement between the applicant and KDHE. (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

**28-72-10. Application process and licensure renewal requirements for lead activity firms.** (a) Application for a lead activity firm license.

(1) Each applicant for a lead activity firm license shall submit a completed application to KDHE for consideration for license issuance.

(2) The application shall include the following:

(A) A completed lead activity firm application on a form provided by KDHE, which shall include the following:

(i) The applicant's name, address, and telephone number;

(ii) if the applicant is a sole proprietorship, the applicant's social security number or, if the applicant is a corporation, the applicant's federal employee identification number;

(iii) the county or counties in which the applicant is located;

(iv) a description of any lead-based paint activities that the applicant will be conducting, including lead inspection, risk assessments, lead abatement projects, lead hazard control, and project design;

(v) a certification that the lead activity firm will directly employ only KDHE-certified individuals

to conduct lead-based paint activities or any KDHE-approved lead hazard control; and

(vi) a certification that the lead activity firm and the firm's employees will follow the Kansas work practice standards for lead-based paint activities specified in K.A.R. 28-72-13 through K.A.R. 28-72-21;

(B) if the applicant is required to be registered and in good standing with the Kansas secretary of state's office, the applicant shall submit a copy of the applicant's certificate of good standing to KDHE; and

(C) payment to KDHE for the applicable nonrefundable fee specified in K.A.R. 28-72-3, unless the lead activity firm is a state, federally recognized Indian tribe, local government, or nonprofit organization as evidenced by a letter of determination issued by the IRS, which shall accompany the application.

(b) Procedure for issuance or denial of a lead activity firm license.

(1) Each applicant shall be informed by the secretary in writing that the application is approved, incomplete, or denied.

(A) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the application.

(i) Within 30 calendar days after the issuance date of the notice of an incomplete application, the applicant shall submit, to the secretary in writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days shall result in the secretary's denial of the lead activity firm's application for licensure.

(iii) After receipt of the information requested in the written notice, the applicant shall be informed by the secretary in writing that the application is either approved or denied.

(B) If an application is approved, a two-year lead activity firm license shall be issued by the secretary.

(C) If an application for licensure is denied, the written notice of denial to the applicant shall specify the reason or reasons for the denial. Licensure may be denied by the secretary pursuant to K.S.A. 65-1,207(b), and amendments thereto.

(D) If an application is denied, the applicant may reapply at any time to KDHE for a lead activity firm license by submitting a complete lead activity firm application form with another nonrefundable license fee, as specified in K.A.R. 28-72-3.

(E) If an applicant is aggrieved by a determination to deny licensure, the applicant may request a hearing with the office of administrative hearings, in accordance with the Kansas administrative procedure act.

(F) A license may be issued with specified restrictions pursuant to an agreement between the applicant and the secretary.

(2) If a licensed lead activity firm changes ownership, the new owner shall notify KDHE in writing no later than 30 calendar days before the change of ownership becomes effective. The notification shall include the following information:

(A) A new lead activity firm license application;

(B) the applicable nonrefundable fee specified in K.A.R. 28-72-3; and

(C) the date that the change of ownership will become effective.

(3) The new lead activity firm application shall be processed in the same manner as that required for an initial license in accordance with this regulation.

(4) The current lead activity firm's license shall expire on the effective date specified in the notification of the change of ownership.

(5) A completed application for a lead activity firm license renewal shall be submitted to KDHE at least 60 days before the expiration date on the license, accompanied by the applicable nonrefundable renewal fee specified in K.A.R. 28-72-3. However, each lead activity firm that is a state, federally recognized Indian tribe, local government, or nonprofit organization as evidenced by a letter of determination issued by the IRS and accompanying the application shall be exempt from payment of this fee. If the licensee fails to apply at least 60 days before the license expiration date, renewal of the license by the secretary before the end of the licensing period shall not be guaranteed by KDHE.

(6) If a licensed lead activity firm allows the firm's license to expire, the firm shall be required to submit an application in the same manner as that required for an application for an initial license, in accordance with this regulation. (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

**28-72-10a. Application process and li-**

**censure renewal requirements for renovation firms.** (a) Application for a renovation firm license.

(1) Each applicant for a renovation firm license shall submit a completed application to KDHE for consideration for license issuance.

(2) The application shall include the following:

(A) A completed renovation firm application on a form provided by KDHE, which shall include the following:

(i) The applicant's name, address, and telephone number;

(ii) if the applicant is a sole proprietorship, the applicant's social security number or, if the applicant is a corporation, the applicant's federal employee identification number;

(iii) the county or counties in which the applicant is located;

(iv) a description of any renovation activities that the applicant will be conducting, including remodeling, room addition, window-door removal or replacement, general repair projects, weatherization projects, interior and exterior paint projects, exterior siding installation, or other renovation activity;

(v) a certification that the renovation firm will employ KDHE-certified individuals to conduct renovation activities; and

(vi) a certification that the renovation firm and the firm's employees will follow the Kansas work practice standards for renovation activities specified in K.A.R. 28-72-2 and K.A.R. 28-72-51 through K.A.R. 28-72-54;

(B) if the applicant is required to be registered and in good standing with the Kansas secretary of state's office, a copy of the applicant's certificate of good standing; and

(C) a payment to KDHE for the applicable nonrefundable fee specified in K.A.R. 28-72-3.

(b) Procedure for issuance or denial of a renovation firm license.

(1) Each applicant shall be informed by the secretary in writing that the application is approved, incomplete, or denied.

(A) If an application is approved, a five-year renovation firm license shall be issued by the secretary.

(B) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the application.

(i) Within 30 calendar days after the issuance date of the notice of an incomplete application, the applicant shall submit, to the secretary in writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days shall result in the secretary's denial of the firm's application for licensure.

(iii) After receipt of the information requested in the written notice, the applicant shall be informed by the secretary in writing that the application is either approved or denied.

(C) If an application for licensure is denied, the written notice of denial to the applicant shall specify the reason or reasons for the denial. Licensure may be denied by the secretary pursuant to K.S.A. 65-1,207(a), and amendments thereto.

(D) If an application is denied, the applicant may reapply at any time to KDHE for a renovation firm license by submitting a complete renovation firm application form with another nonrefundable license fee, as specified in K.A.R. 28-72-3.

(E) If an applicant is aggrieved by a determination to deny licensure, the applicant may request a hearing with the office of administrative hearings, in accordance with the Kansas administrative procedure act.

(F) A license may be issued with specified restrictions pursuant to an agreement between the applicant and the secretary.

(2) If a licensed renovation firm changes ownership, the new owner shall notify KDHE in writing, no later than 30 calendar days before the change of ownership becomes effective. The notification shall include the following information:

(A) A new renovation firm license application;

(B) the applicable nonrefundable fee specified in K.A.R. 28-72-3; and

(C) the date that the change of ownership will become effective.

(3) The new renovation firm application shall be processed in the same manner as that required for an initial license in accordance with this regulation.

(4) The current renovation firm's license shall expire on the effective date specified in the notification of the change of ownership.

(5) A completed application for a renovation firm license renewal shall be submitted to KDHE at least 60 days before the expiration date on the license and shall be accompanied by the applicable nonrefundable renewal fee specified in K.A.R. 28-72-3. If the licensee fails to apply at least 60

days before the license expiration date, renewal of the license by the secretary before the end of the licensing period shall not be guaranteed.

(6) If a licensed renovation firm allows the firm's license to expire, the firm shall be required to submit an application in the same manner as that required for an application for an initial license, in accordance with this regulation. (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202, 65-1,203, and 65-1,207; effective April 9, 2010.)

**28-72-11. Renewal of lead occupation certificates.** (a) Renewal application for lead inspector, risk assessor, elevated blood lead level investigator, lead abatement supervisor, lead abatement worker, renovator, and project designer.

(1) If a certified individual wishes to renew a lead occupation certificate, the individual shall submit a completed application for renewal of certificate, including the required supporting documentation, to KDHE at least 60 days before the certificate's expiration date as indicated on the certificate. Failure of the certified individual to submit an application at least 60 days before the certificate's expiration date may result in the certificate not being renewed before the current license expires.

(2) The certified individual applying for renewal shall complete the refresher training course for the appropriate occupation within the 12-month period immediately preceding the certificate expiration date.

(3) Each renewal application shall include the following:

(A) A completed lead occupation certificate application on a form provided by KDHE, which shall include the following:

(i) The applicant's full legal name, home address, and telephone number;

(ii) the name, address, and telephone number of the applicant's current employer;

(iii) the certified individual's state-issued identification number or federal employment identification number;

(iv) the county or counties in which the certified individual is employed;

(v) the address where the certified individual would like to receive correspondence regarding the certification;

(vi) the lead occupation certificate that the applicant wishes to have renewed;

(vii) the type of refresher training course completed, including the name of the training provider, diploma identification number, and dates of course attendance; and

(viii) the signature of the applicant, which shall certify that all information in the application is complete and true to the best of the applicant's knowledge and that the applicant will comply with applicable state statutes and regulations;

(B) a copy of the refresher training course completion diploma for the appropriate occupation; and

(C) a payment to KDHE for the appropriate nonrefundable recertification fee, as specified in K.A.R. 28-72-3.

(b) Procedure for issuance or denial of a renewal lead occupation certificate.

(1) The applicant shall be informed by the secretary in writing that the application is approved, incomplete, or denied.

(A) If an application is incomplete, the notice shall include a list of additional information or documentation required to complete the renewal application.

(i) Within 30 calendar days after the issuance date of the notice of an incomplete application, the applicant shall submit, to the secretary in writing, the information requested in the written notice.

(ii) Failure to submit the information requested in the written notice within 30 calendar days after the issuance of the notice shall result in the secretary's denial of the individual's application for recertification.

(iii) After receipt of the information requested in the written notice, the applicant shall be informed by the secretary in writing that the application is either approved or denied.

(B) If a renewal application for certification is denied, the written notice of denial to the applicant shall specify the reason or reasons for denial. Certification may be denied by the secretary pursuant to K.S.A. 65-1,207(b), and amendments thereto.

(C) If a renewal application is denied, the applicant may reapply to KDHE for a lead occupation certificate by submitting a complete lead occupation application form with the appropriate nonrefundable recertification fee, as specified in K.A.R. 28-72-3.

(2) If an applicant is aggrieved by a determination to deny certification, the applicant may request a hearing with the office of administrative

hearings, in accordance with the Kansas administrative procedure act.

(3) If a renewal application is approved, a two-year certificate shall be issued by KDHE.

(4) A certificate may be issued with specific restrictions pursuant to an agreement between the certified individual and KDHE. (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202, 65-1,203, and 65-1,207; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

**28-72-12. Application process and requirements for reapplication after certificate expiration.** (a) Unless renewed or revoked sooner, each certificate shall expire two years after its effective date indicated on the current certificate. If a certified individual allows the certificate to expire before renewal but desires to be certified, the individual shall reapply to KDHE.

(b) Each application shall include the information specified in K.A.R. 28-72-5(a)(2)(A) and the following:

(1) Any employment history or education that meets the experience requirements in K.A.R. 28-72-5 through K.A.R. 28-72-9, as applicable;

(2) the signature of the applicant, which shall certify that all information in the application is complete and true to the best of the applicant's knowledge and that the applicant will comply with applicable state statutes and regulations;

(3) a copy of the lead occupation training course completion diploma for the appropriate occupation; and

(4) a payment to KDHE for the nonrefundable certification fee appropriate to the lead occupation, as specified in K.A.R. 28-72-3.

(c)(1) Each applicant who fails to reapply before the certificate expiration date and who has not successfully completed a refresher training course shall be required to successfully complete the appropriate refresher training course. The applicant may be required to complete the initial training course again.

(2) Each certified lead inspector, risk assessor, or lead abatement supervisor who allows the certification to expire before renewal shall retake the third-party examination for the appropriate occupation.

(d) The procedure for issuance or denial of a certificate after its expiration shall be that specified in K.A.R. 28-72-11(b). (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202 and 65-1,203; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

**28-72-13. Work practice standards; general standards.** (a) Except as provided in K.S.A. 65-1,203 and amendments thereto, all lead-based paint activities, as defined in the act, shall be performed pursuant to the work practice standards in this article.

(b) Except as provided in K.S.A. 65-1,203 and amendments thereto, when performing any lead-based paint activity that involves an inspection, lead-hazard screen, risk assessment, or abatement, a certified individual shall perform that activity in compliance with the applicable requirements in this regulation.

(c) Certified lead inspectors and risk assessors conducting lead inspection activities shall avoid potential conflicts of interest by not being contracted, subcontracted, or employed by any lead activity firm performing lead abatement activities on the same lead abatement project.

(d)(1) Each certified individual shall comply with the following documented methodologies, which are hereby adopted by reference, when performing any lead-based paint activity:

(A) The U.S. department of housing and urban development (HUD) "guidelines for the evaluation and control of lead-based paint hazards in housing," dated June 1995, excluding chapters 1 and 2 and including appendices 7, 8, 11, 12, 13, and 14. Chapter 7 in the June 1995 edition is not adopted; instead, the 1997 revision of chapter 7 is adopted; and

(B) the EPA "residential sampling for lead: protocols for dust and soil sampling," EPA final report, MRI project no. 9803, published March 29, 1995.

(2) If a conflict exists between either of the methodologies listed in this subsection and any federal or state statute or regulation or any city or county ordinance, the most stringent of these shall be adhered to by the certified lead inspector or risk assessor. (Authorized by and implementing K.S.A. 65-1,202 and 65-1,203; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

**28-72-14. Work practice standards; inspection.** (a) Except as provided in K.S.A. 65-1,203 and amendments thereto, a lead inspection or any portion of a lead inspection shall be conducted only by a lead inspector or risk assessor,

and all inspections shall be conducted according to the procedures specified in this regulation.

(b) When conducting an inspection, the lead inspector or risk assessor shall select the following locations according to the documented methodologies in K.A.R. 28-72-13 (d)(1) and shall test for the presence of lead-based paint:

(1) In a residential dwelling and child-occupied facility, each interior component with a distinct painting history and each exterior component with a distinct painting history shall be tested for lead-based paint, except those components that the lead inspector or risk assessor determines to have been replaced after 1978 or not to contain lead-based paint; and

(2) in a multifamily dwelling or child-occupied facility, each component with a distinct painting history in every common area, except those components that the lead inspector or risk assessor determines to have been replaced after 1978 or not to contain lead-based paint.

(c)(1) Paint shall be sampled according to both of the following requirements:

(A) The analysis of paint to determine the presence of lead shall be conducted using the documented methodologies in K.A.R. 28-72-13 (d)(1).

(B) All collected paint chip samples shall be analyzed according to K.A.R. 28-72-19 to determine if the samples contain detectable levels of lead that can be quantified numerically.

(2) The lead inspector or risk assessor shall prepare an inspection report, which shall include the following information:

(A) The date of each inspection;

(B) the address of the building;

(C) the date of the construction;

(D) apartment numbers, if applicable;

(E) the name, address, and telephone number of the owner or owners of each residential dwelling;

(F) the name, signature, and certificate number of each certified lead inspector or risk assessor, or both, conducting testing;

(G) the name, address, and telephone number of the lead activity firm employing each lead inspector or risk assessor, or both, if applicable;

(H) each testing method and device or sampling procedure, or both, employed for paint analysis, including quality control data and, if used, the serial number of any x-ray fluorescence (XRF) device and a copy of the XRF device user's certificate of training provided by the equipment manufacturer;

(I) a summary of laboratory results, categorized as positive or negative, and the name of each recognized laboratory that conducted the analysis, along with the laboratory's certification number;

(J) floor plans or sketches of the units inspected, showing the appropriate test locations and any identifying number systems;

(K) a summary of the substrates tested, including the identification of component, component integrity, paint condition and color, and test identification numbers associated with the results; and

(L) the results of the inspection expressed in terms appropriate to the sampling method used.

(d) Time frame for submission of reports. The inspection report shall be provided to the owner of the property within 20 business days after completion of the lead inspection. (Authorized by and implementing K.S.A. 65-1,202 and 65-1,203; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

**28-72-15. Work practice standards; lead hazard screen.** (a) Except as provided in K.S.A. 65-1,203 and amendments thereto, a lead hazard screen shall be conducted only by a risk assessor.

(b) If a lead hazard screen is conducted, the risk assessor shall conduct each lead hazard screen as follows:

(1) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant-use patterns that could cause lead-based paint exposure to one or more children through the age of 72 months shall be collected.

(2) An inspection of the residential dwelling or child-occupied facility shall be conducted to achieve the following:

(A) Determine if any deteriorated paint is present; and

(B) locate at least two dust sampling locations.

(3) If deteriorated paint is present, each surface with deteriorated paint that is determined, using one or more of the documented methodologies in K.A.R. 28-72-13 (d)(1), to be in poor condition and to have a distinct painting history shall be tested for the presence of lead.

(4) In residential dwellings, a dust sample shall be collected from the floor and from each window, and in rooms, hallways, or stairwells where one or more children through the age of 72 months are most likely to come in contact with dust.

(5) In multifamily dwellings and child-occupied facilities, in addition to the floor and window samples required in paragraph (b)(4), the risk assessor shall also collect dust samples from common areas where one or more children through the age of 72 months are most likely to come into contact with dust.

(c) Dust samples shall be collected and analyzed in the following manner:

(1) All dust samples shall be taken using one or more of the documented methodologies in K.A.R. 28-72-13 (d)(1).

(2) All collected dust samples shall be analyzed according to K.A.R. 28-72-19 to determine if the samples contain detectable levels of lead that can be quantified numerically.

(d) Paint shall be sampled according to both of the following requirements:

(1) The analysis of paint to determine the presence of lead shall be conducted using one or more of the documented methodologies in K.A.R. 28-72-13 (d)(1).

(2) All collected paint chip samples shall be analyzed according to K.A.R. 28-72-19 to determine if the samples contain detectable levels of lead that can be quantified numerically.

(e) The risk assessor shall prepare a lead hazard screen report, which shall include the following information:

(1) The date of the assessment;

(2) the address of each building;

(3) the date of construction of each building;

(4) the apartment number, if applicable;

(5) the name, address, and telephone number of each owner of each building;

(6) the name, signature, and certificate number of the certified risk assessor conducting the assessment;

(7) the name, address, and telephone number of each recognized laboratory conducting analysis of collected samples, along with the laboratory's certificate number;

(8) the results of the visual inspection;

(9) the testing method and sampling procedure employed for the paint analysis;

(10) specific locations of each paint component tested for the presence of lead;

(11) all data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device, and a copy of the XRF device user's certificate of training provided by the equipment manufacturer;

(12) all results of laboratory analysis on collected paint, soil, and dust samples;

(13) any other sampling results;

(14) any background information collected regarding the physical characteristics of the residential dwelling or multifamily dwelling and occupant-use patterns that could cause lead-based paint exposure to one or more children through the age of 72 months; and

(15) recommendations, if warranted, for a follow-up risk assessment and, as appropriate, any further actions.

(f) Time frame for submission of reports. The lead hazard screen report shall be provided to the owner of the property within 20 business days after completion of the lead hazard screen. (Authorized by and implementing K.S.A. 65-1,202 and 65-1,203; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

**28-72-16. Work practice standards; risk assessment.** (a) Except as provided by K.S.A. 65-1,203 and amendments thereto, a risk assessment shall be conducted only by a person certified by KDHE, according to K.A.R. 28-72-2 and K.A.R. 28-72-6 through K.A.R. 28-72-12 as a risk assessor. If a risk assessment is conducted, the assessment shall be conducted according to the procedures specified in this regulation.

(b) An inspection of the residential dwelling or child-occupied facility shall be undertaken to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and assess other potential lead-based paint hazards.

(c) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant-use patterns that could cause lead-based paint exposure to one or more children through the age of 72 months shall be collected.

(d) Each surface with deteriorated paint that is determined, using one or more of the documented methodologies in K.A.R. 28-72-13 (d)(1), to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead. Each other surface determined, using one or more of the documented methodologies in K.A.R. 28-72-13 (d)(1), to be a potential lead-based paint hazard and to have a distinct painting history shall also be tested for the presence of lead.

(e) In residential dwellings, single-surface dust

samples from at minimum one window and at minimum one floor area shall be collected in all living areas where one or more children through the age of 72 months are most likely to come into contact with dust.

(f) For multifamily dwellings and child-occupied facilities, the samples required in subsection (e) of this regulation shall be taken. In addition, window and floor dust samples shall be collected in the following locations:

(1) Common areas adjacent to the sampled residential dwelling or child-occupied facility; and

(2) other common areas in the building where the risk assessor determines that one or more children through the age of 72 months are likely to come into contact with dust.

(g) For child-occupied facilities, window and floor dust samples shall be collected in each room, hallway, or stairwell utilized by one or more children through the age of 72 months and in other common areas in the child-occupied facility where the risk assessor determines that one or more children through the age of 72 months are likely to come into contact with dust.

(h) Soil samples shall be collected and analyzed for lead concentrations in the following locations:

(1) Exterior play areas where bare soil is present; and

(2) dripline or foundation areas where bare soil is present.

(i) All paint, dust, or soil sampling or testing shall be conducted using one or more of the documented methodologies in K.A.R. 28-72-13(d)(1).

(j) All collected paint chip, dust, or soil samples shall be analyzed according to K.A.R. 28-72-19 to determine if the samples contain detectable levels of lead that can be quantified numerically.

(k) The risk assessor shall prepare a risk assessment report, which shall include the following information:

(1) The date of the assessment;

(2) the address of each building;

(3) the date of construction of the buildings;

(4) the apartment number, if applicable;

(5) the name, address, and telephone number of each owner of each building;

(6) the name, signature, and certificate number of the risk assessor conducting the assessment;

(7) the name, address, and telephone number of each recognized laboratory conducting an analysis of collected samples, along with the laboratory's certificate number;

(8) the results of the visual inspection;

(9) the testing method and sampling procedure used for each paint analysis;

(10) specific locations of each painted component tested for the presence of lead;

(11) all data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device and a copy of the XRF device user's certificate of training provided by the equipment manufacturer;

(12) all results of laboratory analyses on collected paint, soil, and dust samples;

(13) any other sampling results;

(14) any background information collected pursuant to subsection (c);

(15) to the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint-related hazards;

(16) a description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards; and

(17) a description of interim controls or abatement options, or both, for each identified lead-based paint hazard and the suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(l) Time frame for submission of reports. The risk assessment report shall be provided to the owner of the property and to the person requesting the risk assessment within 20 business days after completion of the lead-based paint hazard risk assessment. (Authorized by and implementing K.S.A. 65-1,202 and 65-1,203; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

**28-72-17. Work practice standards; elevated blood lead level investigation risk assessments.** (a) In order to perform an elevated blood lead (EBL) level investigation risk assessment, the EBL inspector shall have a certificate from KDHE.

(b) The EBL inspector shall have the parents or guardians of the EBL child complete an approved KDHE questionnaire before sampling. Environmental testing shall be linked to the EBL child's history and may include the testing of a prior residence or other areas frequented by the EBL child.

(c) Background information regarding the

physical characteristics of the residential dwelling or child-occupied facility and occupant-use patterns that could cause lead-based paint exposure to one or more children through the age of 72 months shall be collected.

(d) Each surface of the dwelling itself, furniture, or play structures frequented by the EBL child that has deteriorated surface coatings shall be tested for the presence of lead.

(e) Dust samples from areas frequented by the EBL child, including play areas, porches, kitchens, bedrooms, and living and dining rooms, shall be collected. Dust samples shall also be collected from automobiles, work shoes, and laundry rooms if occupational lead exposure is a possibility.

(f) Soil samples shall be collected from bare soil areas of play, areas near the foundation of the house, and areas from the yard. If the EBL child spends significant time at the park or other play area, samples shall be collected from these areas, unless the area has already been sampled and documented.

(g) If necessary, water samples of the first-drawn water from the tap most commonly used for drinking water, infant formula, or food preparation shall be collected. For the purpose of this regulation, the term "first-drawn water" shall mean water that is taken from the tap after an undisturbed period of at least six hours, during which time the water has been in contact with the pipes and fixtures allowing any available lead to dissolve into the water.

(h) All paint, dust, and soil collection and testing shall be conducted using the documented methodologies in K.A.R. 28-72-13 (d)(1).

(i) No later than 20 days following the completion of the environmental investigation, the EBL investigator shall issue a report to the secretary that details the findings of the investigation and includes all the empirical data gathered during the investigation.

(j) All environmental investigation reports shall be reviewed by KDHE to determine if the exposure to lead hazards found on the property are a contributing cause of the EBL in the child.

(k) If a determination is made by KDHE that lead hazards found on the property are a contributing cause of the EBL in the child, a lead hazard control notice shall be issued by the secretary to the owner and occupants of the property. The lead hazard control notice shall include the following:

(1) Detailed, specific actions that must be taken to make the property lead-safe and suitable for habitation by the EBL child or any other children through 72 months of age;

(2) detailed strategies for both abatement and interim control of the lead hazards found;

(3) the date by which the remediation activities will be concluded; and

(4) the method of proving that the remediation activities are successfully completed.

(l) The verified findings of the environmental investigation and the lead hazard control notice shall not be used to the detriment of occupants by the owner of the property. The failure of any person to comply with the lead hazard control notice shall be considered a violation of K.S.A. 65-1,210, and amendments thereto, and the person shall be subject to the penalties provided in that statute. (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202, 65-1,208, and 65-1,210; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

**28-72-18. Work practice standards; lead abatement.** (a) Except as provided in K.S.A. 65-1,203 and amendments thereto, a lead abatement shall be conducted only by an individual certified by KDHE and shall be conducted according to the procedures specified in this article.

(b) A lead abatement supervisor shall be required for each lead abatement project and shall be on-site during all work-site preparation and during the postabatement cleanup of work areas.

(1) At all other times when lead abatement activities are being conducted, the lead abatement supervisor shall be on-site or available by telephone, pager, or answering service and shall be able to be present at the work site in no more than one hour.

(2) The lead abatement supervisor shall report to the work site during each lead abatement work practice standards inspection performed by KDHE. The lead activity firm that employs the lead abatement supervisor shall be subject to an abatement project reinspection fee if the lead abatement supervisor fails to be present at the work site as specified in this regulation.

(c) The lead abatement supervisor and licensed lead activity firm employing that supervisor shall ensure that all lead abatement activities are conducted according to the requirements of the Kansas work practice standards in this article and all other federal, state, and local requirements.

(d) Notification of the commencement of lead-based paint activities in a residential dwelling or child-occupied facility or as the result of a federal, state, or local order shall be given to KDHE before the commencement of abatement activities. The procedure for this notification shall be as follows:

(1) Each person or lead activity firm conducting a lead abatement project in target housing or in any child-occupied facility shall submit a notification to KDHE at least 10 business days before the onset of the lead abatement project.

(2) The notification shall be submitted to KDHE with a payment to KDHE for the nonrefundable project fee specified in K.A.R. 28-72-3.

(3) The notification form provided to the department shall include the following:

(A) The street address, city, state, zip code, and county of each location where lead abatement will occur;

(B) the name, address, and telephone number of the property owner;

(C) an indication of the type of structure or structures being abated, including single-family or multifamily dwelling, child-occupied facility, or any combination of these types;

(D) the date of the onset of the lead abatement project;

(E) the estimated completion date of the lead abatement project;

(F) the work days and hours of operation during which the lead abatement project will be conducted;

(G) the name, address, telephone number, and license number of the lead activity firm;

(H) the name and certificate number of each lead abatement worker;

(I) the type or types of lead abatement strategy or strategies that will be utilized, including enclosure, encapsulation, replacement, removal, or any combination of these strategies, and the specific locations within the unit where these strategies will be utilized;

(J) the signature of each lead abatement supervisor, which shall certify that all information provided in the project notification is complete and true to the best of the supervisor's knowledge; and

(K) a written certification from the lead abatement supervisor, which shall include a copy of the clearance report, within 10 days after successfully achieving clearance, that clearly states that all abatement control options were conducted in accordance with all local, state, and federal regulations, as well as in accordance with the preabatement notification letter submitted to KDHE.

(e) Emergency notification. If the lead activity firm is unable to comply with the 10-day notification period due to an emergency situation, the lead activity firm shall perform the following:

(1) Notify KDHE by telephone, facsimile, or electronic mail within 24 hours after the onset of the lead abatement project; and

(2) submit written notification and payment of fees as described in subsection (d) no more than two business days after the onset of the lead abatement project.

(f) A written occupant protection plan, which shall be unique to each residential dwelling or child-occupied facility, shall be developed before the lead abatement begins. The occupant protection plan shall describe the measures and management procedures that will be taken during the lead abatement to protect the building occupants from exposure to any lead-based paint hazards.

(1) The certified lead abatement supervisor or project designer responsible for the project shall prepare the occupant protection plan.

(2) The occupant protection plan shall meet the following requirements:

(A) Describe the work practices and strategies that will be taken during the lead abatement project to protect the building occupants from exposure to any lead hazards;

(B) include the results of any lead inspections or risk assessments completed before the commencement of the lead abatement project;

(C) be provided to an adult occupant of each dwelling or dwelling unit being abated and to the property owner, or property owner's designated representative, before the commencement of the lead abatement project; and

(D) be submitted to KDHE with the lead abatement project notification.

(g) The work practices listed below shall be restricted as follows:

(1) Open-flame burning or torching of lead-based paint shall be prohibited.

(2) Machine sanding or grinding, or abrasive blasting or sandblasting of lead-based paint shall be prohibited unless used with high efficiency particulate air (HEPA) exhaust control that removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency.

(3) Dry scraping of lead-based paint shall be permitted only within 12 inches of electrical outlets or when treating defective paint spots totaling

no more than two square feet in any one room, hallway, or stairwell, or totaling no more than 20 square feet on exterior surfaces.

(4) Operating a heat gun on lead-based paint shall be prohibited.

(5) Hydro blasting or pressurized water washing of lead-based paint shall be prohibited.

(6) The use of methylene chloride-based chemical strippers shall be prohibited.

(7) Solvents that have flashpoints below 140 Fahrenheit shall be prohibited.

(8) Enclosure strategies shall be prohibited if the barrier is not warranted by the manufacturer to last at least 20 years under normal conditions or if the primary barrier is not a solid barrier.

(9) Encapsulation strategies shall be prohibited if the encapsulant is not warranted by the manufacturer to last at least 20 years under normal conditions or if the encapsulant has been improperly applied.

(h) Permissible lead abatement project strategies.

(1) The following strategies shall be permissible for lead abatement projects:

(A) Replacement;

(B) the use of an enclosure;

(C) encapsulation; and

(D) removal.

(2) Each lead abatement strategy not specified in this article shall be submitted to and approved by KDHE for evaluation before implementation. (Authorized by and implementing K.S.A. 65-1,202 and 65-1,203; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

**28-72-18a. Work practice standards; lead abatement: replacement.** When conducting a lead abatement project using the replacement strategy, the certified lead professional or licensed firm shall meet the following minimum requirements: (a) The site shall be prepared by first establishing a regulated area using fencing, barrier tape, or other appropriate barriers. The regulated area shall be marked to prevent uncertified personnel and restricting the general public from approaching closer than 20 feet to the abatement operation.

(b) Signs shall be posted at all entrances to the regulated area and shall include the words "WARNING: LEAD AREA. POISON. NO SMOKING OR EATING" in bold lettering not smaller than two inches tall, with additional language or symbols prohibiting entry to the regulated area by uncertified personnel and the general public. All signs shall be in a language that is easily recognizable by all certified lead professionals and by members of the general public where the lead abatement activities are taking place.

(c) Any heating and cooling system within the regulated area shall be shut down and the vents sealed with 6-mil polyethylene sheeting to prevent lead dust accumulation within the system.

(d) All items shall be cleaned within the regulated area by HEPA vacuuming or wet wiping with a cleaning solution, or both. Items shall then be either removed from the area or covered with 6-mil polyethylene sheeting and sealed with duct tape, to provide an airtight and watertight seal.

(e) At least two layers of 6-mil, or thicker, polyethylene sheeting shall be placed on the floor at the base of the component and extend at least 10 feet beyond the perimeter of the component to be replaced.

(f) The component and the area adjacent to the component shall be thoroughly wetted using a garden sprayer, airless mister, or other appropriate means to reduce airborne dust.

(g) After removal of the component, the surface behind the removed component shall be thoroughly wetted to reduce airborne dust.

(h) The component shall be wrapped or bagged completely in 6-mil polyethylene sheeting and sealed with duct tape to prevent loss of debris or dust.

(i) Before installing a new component, the area of replacement shall be cleaned by HEPA vacuuming the area again. Cleaning shall begin at the end of the work area farthest from the main entrance to the area and from the top to the bottom of the regulated area. (Authorized by and implementing K.S.A. 65-1,202; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended April 9, 2010.)

**28-72-18b. Work practice standards; lead abatement: enclosure.** When conducting a lead abatement project using the enclosure strategy, the certified lead professional shall meet the following minimum requirements: (a) The site shall be prepared by first establishing a regulated area using fencing, barrier tape, or other appropriate barriers. The regulated area shall be marked to prevent uncertified personnel and the general public from approaching closer than 20 feet to the abatement project.

(b) Signs shall be posted at all entrances to the regulated area and shall include the words "WARNING: LEAD AREA. POISON. NO SMOKING OR EATING" in bold lettering not smaller than two inches tall, with additional language or symbols prohibiting entry to the regulated area by uncertified personnel and the general public. All signs shall be in a language that is easily recognized by all certified lead professionals and by members of the general public where the lead abatement activities are taking place.

(c) Any heating and cooling systems within the regulated area shall be shut down and the vents sealed with 6-mil polyethylene sheeting to prevent lead dust accumulation within the system.

(d) All items shall be cleaned within the regulated area by HEPA vacuuming or wet wiping with a cleaning solution, or both. Items shall then be either removed from the area or covered with 6-mil polyethylene sheeting and sealed with duct tape.

(e) At least one layer of 6-mil, or thicker, polyethylene sheeting shall be placed on the floor at the base of the component and extend at least 10 feet beyond the perimeter of the component to be enclosed.

(f) The surface to be enclosed shall be permanently labeled behind the enclosure horizontally and vertically, approximately every two feet with this warning: "Danger: Lead-Based Paint." The lettering on the label shall be boldfaced, at least two inches tall, and in a contrasting color.

(g)(1) The enclosure shall be applied directly onto the painted surface, or a frame shall be constructed of wood or metal, using nails, staples, or screws. Glue may be used in conjunction with the aforementioned fasteners, but shall not be used alone. All enclosure items shall be back-caulked at all edges, seams, and abutment edges.

(2) The material used for the enclosure barrier shall be solid and rigid enough to provide adequate protection. Wallpaper, contact paper, films, folding walls, drapes, and similar materials shall not meet this requirement.

(3) Enclosure systems and their adhesives shall be designed to last at least 20 years.

(4) The substrate or building structure to which the enclosure is fastened shall be structurally sufficient to support the enclosure barrier for at least 20 years. If there is deterioration of the substrate or building structure that may impair the enclosure from remaining dust-tight for a minimum of 20 years, the substrate or building structure shall be repaired before attaching the enclosure. This deterioration may include mildew, water damage, dry rot, termite damage, or any structural damage.

(h) Preformed steel, aluminum, vinyl, or other construction material may be used for window frames, exterior siding, trim casings, column enclosures, moldings, or other similar components if they can be sealed.

(i) A material equivalent to one-quarter inch rubber or vinyl may be used to enclose stairs.

(j) The seams, edges, and fastener holes shall be sealed with caulk or other sealant, providing a dust-tight system.

(k) All equipment used in the regulated area shall be thoroughly cleaned with a cleaning solution or vacuumed with a HEPA vacuum, or both, before removal from the regulated area.

(l) Before clearance, the installed enclosure and surrounding regulated area shall be cleaned by vacuuming with a HEPA vacuum, wiping down all surfaces with a cleaning solution, rinsing all surfaces, and then HEPA vacuuming the area again. Cleaning shall begin at the end of the work area farthest from the main entrance to the area and from the top to the bottom of the regulated area.

(m) All enclosure systems used shall meet the requirements of all applicable building codes and fire, health, safety, and environmental regulations. (Authorized by and implementing K.S.A. 65-1, 202; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended April 9, 2010.)

**28-72-18c. Work practice standards; lead abatement: encapsulation.** (a) The encapsulation strategy of lead abatement shall not be used on the following:

(1) Friction surfaces, including window sashes and parting beads, door jambs and hinges, floors, and door thresholds;

(2) deteriorated components, including rotten wood, rusted metal, spalled or cracked plaster, and loose masonry;

(3) impact surfaces, including doorstops, window wells, and headers;

(4) deteriorated surface coatings if the adhesion or cohesion of the surface coating is uncertain or indeterminable; and

(5) incompatible coatings.

(b) When conducting a lead abatement project using the encapsulation strategy, the certified personnel shall comply with the following minimum requirements:

(1) The certified lead professional or licensed

firm shall select an encapsulant that is a low volatile organic compound (V.O.C.), that is warranted by the manufacturer to last for at least 20 years, and that meets the requirements of all applicable building codes as well as fire, health, and environmental regulations.

(2) Each surface to be encapsulated shall have sound structural integrity and sound surface coating integrity and shall be prepared according to the manufacturer's recommendations.

(3) The site shall be prepared by first establishing a regulated area using fencing, barrier tape, or other appropriate barriers. The regulated area shall be marked to prevent uncertified personnel and the general public from approaching closer than 20 feet to the abatement project.

(4) Signs shall be posted at all entrances to the regulated area and shall include the words "WARNING: LEAD AREA. POISON. NO SMOKING OR EATING" in bold lettering at least two inches tall, with additional language or symbols prohibiting entry to the regulated area by uncertified personnel and the general public. All signs shall be in a language that is easily recognized by all certified lead professionals and by members of the general public where the lead abatement activities are taking place.

(5) Any heating and cooling systems within the regulated area shall be shut down and the vents sealed with 6-mil polyethylene sheeting to prevent lead dust accumulation within the system.

(6) All items shall be cleaned within the regulated area by HEPA vacuuming or wet wiping with a cleaning solution, or both. Items shall then be either removed from the area or covered with 6-mil polyethylene sheeting and sealed with duct tape.

(7) At least two layers of 6-mil, or thicker, polyethylene sheeting shall be placed on the ground at the base of the component and shall extend at least 10 feet beyond the perimeter of the component to be encapsulated.

(8) A patch test shall be conducted in accordance with the HUD guidelines adopted by reference in K.A.R. 28-72-13 (d)(1) before general application of the encapsulant to determine the adhesive and cohesive properties of the encapsulant on the surface to be encapsulated. The encapsulant shall be applied in accordance with the manufacturer's recommendations.

(9) After the manufacturer's recommended curing time, the entire encapsulated surface shall be inspected by a lead abatement supervisor or a project designer. Each unacceptable area shall be evaluated to determine if a complete failure of the system is indicated or if the system can be patched or repaired. Unacceptable areas shall be evidenced by delamination, wrinkling, blistering, cracking, cratering, and bubbling of the encapsulant.

(10) After the encapsulation is complete, the regulated area shall be cleaned by vacuuming with a HEPA vacuum, wiping down all surfaces with a cleaning solution, rinsing all surfaces, and then HEPA vacuuming the area again. Cleaning shall begin at the end of the work area farthest from the main entrance to the area and from the top to the bottom of the regulated area.

(11) All equipment used in the regulated area shall be thoroughly cleaned with a cleaning solution or vacuumed with a HEPA vacuum, or both, before removal from the regulated area. (Authorized by and implementing K.S.A. 65-1, 202; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended April 9, 2010.)

**28-72-18d. Work practice standards; lead abatement: removal.** (a) Removal strategies. Acceptable removal strategies shall include the following:

(1) Manual wet strategies. Manual wet scraping or manual wet sanding shall be acceptable for the removal of lead surface coatings.

(2) Mechanical removal strategies. Using power tools that are HEPA-shrouded or locally exhausted shall be acceptable removal strategies for lead surface coatings. HEPA-shrouded or exhausted mechanical abrasion devices, including sanders, saws, drills, roto-peens, vacuum blasters, and needle guns shall be acceptable.

(3) Chemical removal strategies. Chemical strippers shall be used in compliance with the manufacturer's recommendations.

(b) Soil abatement. When soil abatement is conducted, the lead-bearing soil shall be removed, tilled, or permanently covered in place as indicated in this subsection.

(1) Removed soil shall be replaced with fill material containing no more than 100 ppm of lead. Soil that is removed shall not be reused as topsoil.

(2) If tilling is selected, soil in a child-accessible area shall be tilled to a depth that results in less than 400 ppm lead of the homogenized soil, or other concentrations approved by the department. Soil in an area not accessible to children

shall be tilled to a depth that results in less than 1,200 ppm lead of the homogenized soil.

(3) "Permanently covered soil" shall have the meaning specified in K.A.R. 28-72-1p(c).

(4) Soil abatement shall be conducted to prevent lead-contaminated soil from being blown from the site or from being carried away by water runoff or through percolation to groundwater.

(c) Interior removal. When conducting a lead abatement project using the removal strategy on interior surfaces, the certified lead professional or licensed firm shall meet the following minimum requirements:

(1) The site shall be prepared by first establishing a regulated area using fencing, barrier tape, or other appropriate barriers. The regulated area shall be marked to prevent uncertified personnel and the general public from approaching closer than 20 feet to the abatement project.

(2) Signs shall be posted at all entrances to the regulated area and shall include the words "WARNING: LEAD AREA. POISON. NO SMOKING OR EATING" in bold lettering at least two inches tall, with additional language or symbols prohibiting entrance to the regulated area by uncertified personnel and the general public. All signs shall be in a language that is easily recognized by all certified lead professionals and by members of the general public where the lead abatement activities are taking place.

(3) Each heating and cooling system within the regulated area shall be shut down and the vents shall be sealed with 6-mil polyethylene sheeting to prevent lead dust accumulation within the system.

(4) All items within the regulated area shall be cleaned by HEPA vacuuming or wet wiping with a cleaning solution, or both. Items shall then be either removed from the area or covered with 6-mil polyethylene sheeting and sealed with duct tape.

(5) All windows below and within the regulated area shall be closed.

(6) A critical barrier shall be constructed.

(7) At least two layers of 6-mil, or thicker, polyethylene sheeting shall be placed on the floor at the base of the component and shall extend at least 10 feet beyond the perimeter of the component being abated. If the chemical strategy is used, the certified lead professional or licensed firm shall follow the manufacturer's recommendations regarding a chemical-resistant floor cover.

(8) All equipment used in the regulated area shall be thoroughly cleaned with a cleaning solution or vacuumed with a HEPA vacuum, or both, before removal from the regulated area.

(9) At the end of each work shift, the top layer of 6-mil polyethylene sheeting shall be removed and used to wrap and contain the debris generated by the shift. The 6-mil polyethylene sheeting shall then be sealed with duct tape and kept in a secured area until final disposal. The second layer of 6-mil polyethylene sheeting shall be HEPA vacuumed, left in place, and used during the next shift. A single layer of 6-mil polyethylene sheeting shall be placed on this remaining polyethylene sheeting before lead abatement resumes.

(10) After the removal is complete, the regulated area shall be cleaned by vacuuming with a HEPA vacuum, wiping down all surfaces with a cleaning solution, rinsing all surfaces, and then HEPA vacuuming the area again. Cleaning shall begin at the end of the work area farthest from the entrance to the area and from the top to the bottom of the regulated area.

(d) Exterior removal. When conducting a lead abatement project using the removal strategy on exterior surfaces, these minimum requirements shall be met:

(1) The site shall be prepared by first establishing a regulated area using fencing, barrier tape, or other appropriate barriers. The regulated area shall be marked to prevent uncertified personnel and the general public from approaching closer than 20 feet to the abatement project.

(2) Signs shall be posted at all entrances to the regulated area and shall include the words "WARNING: LEAD AREA. POISON. NO SMOKING OR EATING" in bold lettering at least two inches tall, with additional language or symbols prohibiting entry to the regulated area by uncertified personnel. All signs shall be in a language that is easily recognized by all certified lead professionals and by members of the general public where the abatement activities are taking place.

(3) All movable items shall be moved 20 feet from working surfaces. Items that cannot be readily moved 20 feet from working surfaces shall be covered with 6-mil polyethylene sheeting and sealed with duct tape.

(4) At least one layer of 6-mil, or thicker, polyethylene sheeting shall be placed on the ground and shall extend at least 10 feet from the abated surface, plus another five feet out for each additional 10 feet in surface height over 20 feet. In

addition, the polyethylene sheeting shall meet the following criteria:

(A) Be securely attached to the side of the building, with cover provided to all ground plants and shrubs in the regulated area;

(B) be protected from tearing or perforating;

(C) contain any water, including rainfall, that may accumulate during the lead abatement; and

(D) be weighted down to prevent disruption by wind gusts.

(5) All windows in the regulated area and all windows below and within 20 feet of working surfaces shall be closed.

(6) Work shall cease if constant wind speeds are greater than 15 miles per hour.

(7) Work shall cease and cleanup shall occur if rain begins.

(8) All equipment used in the regulated area shall be thoroughly cleaned with a cleaning solution or vacuumed with a HEPA vacuum, or both, before removal from the regulated area.

(9) The regulated area shall be HEPA vacuumed and cleaned of lead-based paint chips, polyethylene sheeting, and other debris generated by the abatement project work at the end of each workday. Debris shall be kept in a secured area until final disposal. (Authorized by and implementing K.S.A. 65-1,202; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended April 9, 2010.)

**28-72-18e. Work practice standards; postabatement clearance procedures.** Except as provided in K.S.A. 65-1-203 and amendments thereto, the following postabatement or lead hazard control clearance procedures shall be performed only by a risk assessor: (a) Following lead abatement or required lead hazard control, a visual inspection shall be performed to determine if deteriorated painted surfaces or visible amounts of dust, debris, or residue are still present. These conditions shall be eliminated before continuation of the clearance procedures.

(b) Following the visual inspection and any post-abatement or lead hazard control cleanup required by subsection (a), clearance sampling for lead-contaminated dust shall be conducted. Clearance sampling shall be conducted by employing single-surface sampling techniques.

(c)(1) Dust samples for clearance purposes shall be taken using one or more of the documented methodologies in K.A.R. 28-72-13(d)(1).

(2) Dust samples for clearance purposes shall be taken a minimum of one hour after completion of final postabatement or lead hazard control cleanup activities.

(d) The following postabatement or lead hazard control activities shall be conducted as appropriate, based upon the extent or manner of lead abatement activities conducted in or to the residential dwelling or child-occupied facility:

(1) After conducting a lead abatement or lead hazard control with containment between abated and unabated areas, one dust sample shall be taken from one window, if available, and at least one dust sample shall be taken from the floors of no fewer than four rooms, hallways, or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are fewer than four rooms, hallways, or stairwells within the containment area, then all rooms, hallways, or stairwells shall be sampled.

(2) After conducting a lead abatement or lead hazard control in which no containment was utilized, two dust samples shall be taken from no fewer than four rooms, hallways, or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one window, if available, and one dust sample shall be taken from the floor of each room, hallway, or stairwell selected. If there are fewer than four rooms, hallways, or stairwells within the residential dwelling or child-occupied facility, then all rooms, hallways, or stairwells shall be sampled.

(3) Following an exterior paint abatement or lead hazard control, a visual inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surface shall be found to be free of visible dust and debris. In addition, a visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior surface abated. If paint chips are present, they shall be removed from the site and properly disposed of, according to all applicable federal, state, and local requirements.

(e) The rooms, hallways, or stairwells selected for sampling shall be selected according to one or more of the documented methodologies in K.A.R. 28-72-13(d)(1).

(f) The risk assessor shall compare the residual lead level, as determined by the laboratory analysis, from each dust sample with applicable clearance levels for lead in dust on floors and windows as established below in this subsection. If the re-

sidual lead levels in a dust sample exceed the clearance levels, all the components represented by the failed sample shall be recleaned and retested until clearance levels are met. Following completion of a lead abatement activity, all dust, soil, and water samples shall comply with the following clearance levels:

(1) Dust samples:

| **Media** | **Clearance Level** |
|---|---|
| Floors | less than 40 $\mu g/ft^2$ |
| Interior windowsills | less than 250 $\mu g/ft^2$ |
| Window troughs and exterior walking surfaces | less than 400 $\mu g/ft^2$ |

(2) Soil samples:

| **Media** | **Clearance Level** |
|---|---|
| Bare soil (rest of yard) | less than 1,200 ppm or 1,200 mg/l |
| Bare soil (small, high-contact areas, including sand boxes and gardens) | less than 400 ppm |
| (3) Water | less than 15 ppb or 15$\mu$g/L |

(g) In a multifamily dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted if the following conditions are met:

(1) The certified individuals who abate, perform lead hazard control, or clean the residential dwelling do not know which residential dwelling will be selected for the random sample.

(2) A sufficient number of residential dwellings are selected for dust sampling to provide a 95 percent level of confidence that no more than five percent or 50 of the residential dwellings, whichever is smaller, in the randomly sampled population exceed the appropriate clearance levels.

(3) The randomly selected residential dwellings are sampled and evaluated for the clearance according to the procedures found in this regulation.

(h) A postabatement or post-lead hazard control clearance report shall be prepared by a lead abatement supervisor. The postabatement or post-lead hazard control clearance report shall include the following information:

(1) The start and completion dates of the lead abatement or lead hazard control;

(2) the name and address of each licensed lead activity firm conducting the lead abatement or lead hazard control and the name of each lead abatement supervisor assigned to the lead abatement or lead hazard control project;

(3) the name, address, and signature of each risk assessor conducting clearance sampling and the date of clearance testing;

(4) the results of clearance testing and soil analysis, if applicable, and the name of each recognized laboratory that conducted the analysis;

(5) a detailed written description of the abatement or lead hazard control, including the lead abatement or lead hazard control methods used, locations of rooms or components where abatement or lead hazard control occurred, reason for selecting particular abatement or lead hazard control methods for each component, and any suggested monitoring of encapsulants or enclosures; and

(6) a written certification from the firm stating that all lead abatement or lead hazard control has taken place in accordance with all applicable local, state, and federal laws and regulations.

(i) Time frame for submission of reports. The clearance report shall be provided to the owner of the property within 20 business days after completion of the clearance inspection. (Authorized by and implementing K.S.A. 65-1,202 and 65-1,203; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

**28-72-19. Work practice standards; collection and laboratory analysis of samples.** All paint chip, dust, and soil samples collected pursuant to the work practice standards contained in this article shall meet the following conditions:

(a) Be collected by a lead inspector, risk assessor, or elevated blood lead level investigator using adequate quality control; and

(b) be analyzed by a recognized laboratory. (Authorized by and implementing K.S.A. 65-1,202; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

**28-72-20. Work practice standards; composite dust sampling prohibited.** Composite dust sampling shall not be allowed. (Authorized by and implementing K.S.A. 65-1,202; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended April 9, 2010.)

**28-72-21. Work practice standards; quarterly reports; recordkeeping.** (a) All re-

ports and plans required in this article shall be maintained for at least three years by the licensed lead activity firm or certified individual who prepared the report or plan.

(b) Each lead activity firm that employs or contracts with lead abatement professionals shall submit to KDHE a written report listing all lead abatement, lead hazard control, and lead abatement clearance projects occurring during each calendar quarter in the state of Kansas, on or before the following dates each year:

(1) January 10;

(2) April 10;

(3) July 10; and

(4) October 10.

(c) Each report shall include the following information:

(1) The name, address, and license number of the lead activity firm;

(2) the complete mailing address of the property where the lead activity work occurred, including the zip code;

(3) a description of the type of activity that occurred;

(4) the date the activity was completed;

(5) a listing of the names of all lead professionals who performed the work for the lead activity firm during the reporting period, including the complete names, certificate numbers, and certificate expiration dates; and

(6) the signature of the owner or authorized representative of the lead activity firm. (Authorized by and implementing K.S.A. 65-1,202; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended Dec. 6, 2002; amended April 9, 2010.)

**28-72-22. Enforcement.** (a) A notice of noncompliance (NON) may be issued by the secretary for any violation of the act or this article. A NON shall be the recommended response for a first-time violator of this article. Compliance assistance information shall be included in the NON to ensure future compliance with KDHE regulations.

(b)(1) The NON shall require the violator to take corrective action in order to comply with this article. The corrective action shall depend upon the specific violations. The NON may require that proof of action be submitted to the secretary by a date specified in the NON.

(2) Mitigating factors in each case in which a NON has been issued shall be documented in the case file. (Authorized by K.S.A. 65-1,202; implementing K.S.A. 65-1,202 and 65-1,208; effective, T-28-9-13-99, Sept. 13, 1999; effective Jan. 7, 2000; amended April 9, 2010.)

**28-72-51. Definitions.** For purposes of this article, the definitions in K.A.R. 28-72-1a through K.A.R. 28-72-1x, as well as the following definitions, shall apply:

(a) "Acknowledgment statement" means a form that is signed by the owner or occupant of housing confirming that the owner or occupant received a copy of the pamphlet and renovation notice before the renovation began.

(b) "Certificate of mailing" means a receipt from the postal service that provides evidence that the renovator mailed the pamphlet and a renovation notice to each owner or occupant. The pamphlet and renovation notice shall be mailed at least seven days before the start of renovation.

(c) "Compensation" means payment or goods received for services rendered. Payment may be in the form of money, goods, services, or bartering.

(d) "Emergency renovation operations" means unplanned renovation activities performed in response to a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard or threatens property with significant damage. Emergency renovation operations shall include renovations to repair damage from a tree that fell on a house and renovations to repair a water pipe break in an apartment complex.

(e) "EPA" is defined in K.A.R. 28-72-1e.

(f) "Housing for the elderly" means retirement or similar types of housing specifically reserved for households of one or more persons 62 years of age or older at the time the unit is first occupied.

(g) "Lead-based-paint-free housing" means target housing that has been determined by a certified inspector or certified risk assessor to be free of paint or other surface coatings that contain lead equal to or in excess of one milligram per square centimeter or 0.5 percent by weight.

(h) "Lessor" means any entity that offers target housing for lease, rent, or sublease, including the following:

(1) Individuals;

(2) partnerships;

(3) corporations;

(4) trusts;

(5) government agencies;

(6) housing agencies; and

(7) nonprofit organizations.

(i) "Minor repair and maintenance" means activities including the following:

(1) Performing minor electrical work that disturbs six square feet or less of painted surface per component;

(2) drilling holes in the wall to run an electrical line; or

(3) replacing a light fixture.

(j) "Occupant" means any person or entity that enters into an agreement to lease, rent, or sublease target housing or any person that inhabits target housing, including the following:

(1) Individuals;

(2) partnerships;

(3) corporations;

(4) trusts;

(5) government agencies;

(6) housing agencies; and

(7) nonprofit organizations.

(k) "Owner" means any person or entity that has legal title to housing, including the following:

(1) Individuals;

(2) partnerships;

(3) corporations;

(4) trusts;

(5) government agencies;

(6) housing agencies; and

(7) nonprofit organizations.

(l) "Pamphlet" has the meaning specified in 40 CFR 745.83 as adopted in K.A.R. 28-72-2.

(m) "Record of notification" means a written statement documenting the steps taken to provide pamphlets and renovation notices to occupants and owners in residential dwellings.

(n) "Renovation" has the meaning specified in 40 CFR 745.83 as adopted in K.A.R. 28-72-2.

(o) "Renovation firm" means any individual, organization, or entity that has met the requirements for licensing by KDHE as specified in K.A.R. 28-72-10a.

(p) "Renovation notice" means a notice of renovation activities to occupants and owners of residential dwellings. The notice shall describe the scope, location, and expected duration of the renovation activity.

(q) "Renovator" means a person who has received certification from the secretary, as specified in K.A.R. 28-72-7a, and is receiving compensation for a renovation.

(r) "Self-certification of delivery" means an alternative method of documenting the delivery of the pamphlet and renovation notice to the occupant. This method may be used whenever the occupant is unavailable or unwilling to sign a confirmation of receipt of pamphlet.

(s) "Supplemental renovation notice" means any additional notification that is required when the scope, location, or duration of a project changes.

(t) "Zero-bedroom dwelling" means any residential dwelling in which the living area is not separated from the sleeping area. This term shall include dormitory housing and military barracks. This term shall not include efficiency and studio apartments. (Authorized by and implementing K.S.A. 65-1,202; effective June 23, 2000; amended April 9, 2010.)

**28-72-52. Applicability.** (a) Except as provided in subsection (b) of this regulation, this article and the requirements of 40 CFR 745.80 through 745.91, as adopted in K.A.R. 28-72-2, shall apply to all renovation of target housing performed for compensation.

(b) This article shall not apply to renovation activities that are limited to any of the following:

(1) Minor repair and maintenance activities, including minor electrical work and plumbing, that disrupt six square feet or less of painted surface per component;

(2) emergency renovation operations; or

(3) if the renovator has obtained a copy of the determination, any renovation in target housing in which a written determination has been made by an inspector or risk assessor who has been certified in accordance with this article that the components affected by the renovation are free of paint and other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight. (Authorized by and implementing K.S.A. 65-1,202; effective June 23, 2000; amended April 9, 2010.)

**28-72-53. Information distribution requirements.** (a) Renovations in target housing. No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the renovator shall perform the following:

(1) Provide the owner of the unit with the pamphlet and renovation notice and comply with one of the following:

(A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet and renovation notice; or

(B) obtain a certificate of mailing at least seven days before the renovation; and

(2) if the owner does not occupy the dwelling unit, provide an adult occupant of the unit with the pamphlet and renovation notice and comply with one of the following:

(A) Obtain from the adult occupant a written acknowledgment that the occupant has received the pamphlet and renovation notice, or certify in writing that the pamphlet and renovation notice have been delivered to the dwelling and that the renovator has been unsuccessful in obtaining a written acknowledgment from an adult occupant. This certification shall include the following:

(i) The address of the unit undergoing renovation;

(ii) the date and method of delivery of the pamphlet and renovation notice;

(iii) the names of persons delivering the pamphlet and renovation notice;

(iv) the reasons for lack of acknowledgment, including the occupant's refusal to sign and unavailability of adult occupants;

(v) the signature of the renovator; and

(vi) the date of signature; or

(B) obtain a certificate of mailing at least seven days before the renovation.

(b) Renovations in common areas. No more than 60 days before beginning renovation activities in common areas of multifamily housing, the renovator shall perform the following:

(1) Provide the owner with the pamphlet and renovation notice and comply with one of the following:

(A) Obtain from the owner a written acknowledgment that the owner has received the pamphlet and renovation notice; or

(B) obtain a certificate of mailing at least seven days before the renovation;

(2) provide a pamphlet and a renovation notice to each unit of the multifamily housing before the start of renovation. This notification shall be accomplished by distributing written notice to each affected unit. The notice from the renovator shall describe the general nature and locations of the planned renovation activities and the expected starting and ending dates; and

(3) if the scope, location, or expected starting and ending dates of planned renovation activities change after the initial notification, provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification shall be provided before the renovator initiates work beyond that which was described in the original notice.

(c) Written acknowledgment. Sample language for the written acknowledgments required in paragraphs (a)(1)(A), (a)(2)(A), and (b)(1)(A) shall be provided by the KDHE upon request from the renovator. These acknowledgments shall be written in the same language as that in the text of the contract agreement for the renovation or, in the case of non-owner-occupied target housing, in the same language as that in the lease or rental agreement or the pamphlet and shall include the following:

(1) A statement recording the owner or occupant's name and acknowledging receipt of the pamphlet and renovation notice before the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of the signature; and

(2) either a separate sheet or part of any written contract or service agreement for the renovation.

(d) Lead poisoning prevention poster.

(1) Each commercial establishment that offers paint or supplies intended for the removal or application of paint shall display, in a conspicuous location near the painting supplies, a poster containing a warning statement, with the following information at a minimum:

(A) The dry sanding and the dry scraping of paint in dwellings built before 1978 are dangerous.

(B) The improper removal of old paint is a significant source of lead dust and the primary cause of lead poisoning.

(C) Renovators are required by regulation to notify owners and occupants of the hazards associated with lead paint before doing work.

The commercial establishment shall also include contact information so that consumers and renovators can obtain more information.

(2) Sample posters and materials that commercial establishments may use to comply with this subsection shall be available from KDHE.

(e) Compliance. A commercial establishment shall be deemed to be in compliance with this regulation if the commercial establishment displays the lead poisoning prevention poster as required in subsection (d) and makes the pamphlet available to its customers. (Authorized by and implementing K.S.A. 65-1,202; effective June 23, 2000; amended April 9, 2010.)

## Article 73.—ENVIRONMENTAL USE CONTROLS PROGRAM

**28-73-1. Definitions.** (a) "Act" means K.S.A. 65-1,221 et seq. and amendments thereto.

(b) "Applicant" means the owner, as defined in K.S.A. 65-1,222 (c) and amendments thereto, of an eligible property who submits to the secretary an application for approval of environmental use controls for the eligible property.

(c) "Eligible property" means real property that exhibits environmental contamination exceeding department standards for unrestricted use and that is being or has been investigated or remediated, or both, as a result of participating in a department-approved program.

(d) "Environmental contamination" means "pollution" or "contamination," as those terms are used in the following acts and statutes, as well as any regulations adopted under the authority of those statutes, unless this act or any of the following acts specifically exclude or exempt certain forms of pollution or contamination from the provisions of this act:

(1) K.S.A. 65-3452a through K.S.A. 65-3457a, and amendments thereto, concerning hazardous substances;

(2) the voluntary cleanup and property redevelopment act, K.S.A. 65-34,161 through K.S.A. 65-34,174, and amendments thereto;

(3) the Kansas drycleaner environmental response act, K.S.A. 65-34,141 through K.S.A. 65-34,155, and amendments thereto;

(4) K.S.A. 65-3430 through K.S.A. 65-3447, and amendments thereto, concerning hazardous waste;

(5) K.S.A. 65-161 through K.S.A. 65-171y, and amendments thereto, concerning the waters of the state;

(6) the Kansas storage tank act, K.S.A. 65-34,100 through K.S.A. 65-34,130, and amendments thereto; and

(7) K.S.A. 65-3401 through K.S.A. 65-3427, and amendments thereto, concerning solid waste.

(e) "Environmental use control agreement" means a legal document specifically defining the environmental use controls and other related requirements for an eligible property according to K.A.R. 28-73-3. The agreement shall be issued by the secretary and shall be signed by the applicant. The signatures of the secretary and applicant shall be notarized, and as required by K.S.A. 65-1,225 and amendments thereto, the agreement shall be recorded by the register of deeds in the county where the eligible property is located.

(f) "Financial assurance" means any method of guaranteeing or ensuring adequate financial capability that is approved by the secretary as part of a long-term care agreement. One or more of the following methods of financial assurance may be required by the secretary as a part of a long-term care agreement:

(1) An environmental insurance policy;

(2) a financial guarantee;

(3) a surety bond guaranteeing payment or performance or a similar performance bond;

(4) an irrevocable letter of credit;

(5) documentation of the applicant's qualification as self-insurer; and

(6) other methods the secretary determines are adequate to ensure the protection of public health and safety and the environment.

Federal and state governmental entities that qualify as applicants under these regulations shall not be required to provide financial assurance.

(g) "Legal description" means identification of the land boundaries of an eligible property that is subject to an environmental use control agreement. The identification of land boundaries shall be provided by one or more of the following methods:

(1) A definite and unequivocal identification of lines and boundaries that contains dimensions to enable the description to be plotted and retraced and that describes the legal surveys by county and by at least one of the following additional identifiers:

(A) Government lot;

(B) aliquot parts; or

(C) quarter section, section, township, and range;

(2) a metes and bounds legal survey commencing with a corner marked and established in the U.S. public land survey system; or

(3) the identifying number or other description of the subject lot, block, or subdivision if the land is located in a recorded subdivision or recorded addition to the subdivision.

(h) "Legal survey" means a boundary survey or land survey that is performed by a land surveyor licensed in the state of Kansas and that is conducted for both of the following purposes:

(1) Describing, documenting, and locating the boundary lines of an eligible property, a portion of an eligible property, or both; and

(2) plotting a parcel of land that includes the eligible property.

(i) "Long-term care agreement" means a legally binding document that is entered into as provided in K.A.R. 28-73-4 by an applicant and the secretary and that describes the responsibilities and financial obligations of the applicant to fund the department's inspection and maintenance activities at a category 3 property, as described in K.S.A. 65-1,226 and amendments thereto.

(j) "Residual contamination" means environmental contamination remaining at a property that prohibits the unrestricted use of that property.

(k) "Unrestricted use" means that there are no limits or conditions placed on the use of a property, including use for residential purposes. (Authorized by K.S.A. 2007 Supp. 65-1,232; implementing K.S.A. 2007 Supp. 65-1,224 and 65-1,228; effective April 7, 2006; amended Jan. 30, 2009.)

# Agency 30

# Department of Social and Rehabilitation Services

*Articles*

30-4. Public Assistance Program.
30-5. Provider Participation, Scope of Services, and Reimbursements for the Medicaid (Medical Assistance) Program.
30-45. Youth Services.
30-46. Child Abuse and Neglect.
30-63. Developmental Disabilities—Licensing Providers of Community Services.

## Article 4.—PUBLIC ASSISTANCE PROGRAM

**30-4-90. Eligibility factors specific to the GA program.** (a) To be eligible for GA, each applicant or recipient shall meet the applicable general eligibility requirements of K.A.R. 30-4-50 and the following specific eligibility requirements:

(1) Each applicant or recipient shall be ineligible for GA under any of the following circumstances:

(A) The applicant or recipient is eligible for a federal cash program.

(B) The applicant or recipient has been denied or rendered ineligible for a federal cash program due to a voluntary action on the part of the applicant or recipient.

(C) The applicant or recipient has been determined ineligible for or has been denied social security disability benefits, unless both of the following conditions are met:

(i) The individual is exercising appeal rights at any level through the appeals council. In this case, the individual may receive assistance until social security disability benefits are awarded or until the individual is denied either disability benefits or consideration by the appeals council.

(ii) Credible, competent medical evidence exists, as determined by the social security administration or by an entity designated by the social security administration or the state of Kansas to make the determination that the individual is disabled as defined in title XVI of the social security act and is unable to engage in employment.

(D) The applicant or recipient does not have a medically determinable severe impairment, as defined in title XVI of the social security act, as determined by the social security administration or by an entity designated by the social security administration or the state of Kansas to make this determination.

(2) Each applicant or recipient is disabled or has a medically determinable severe impairment, as defined in title XVI of the social security act, as determined by the social security administration or by an entity designated by the social security administration or the state of Kansas to make this determination.

(3) The needs of the applicant or recipient and the spouse of the applicant or recipient shall be included in the same assistance plan, if the applicant or recipient and the spouse are living together, except for persons who are not otherwise eligible. In determining eligibility, the needs of each of the following persons in the family group who are not otherwise eligible shall be excluded while the resources of those persons shall be included, unless the resources are specifically exempt:

(A) Any SSI recipient;

(B) any person denied assistance based on the provisions of K.A.R. 30-4-50 (c) or (d);

(C) any person who is ineligible due to a sanction; and

(D) any alien who is ineligible because of the citizenship and alienage requirements or sponsorship provisions.

(b)(1) A presumptive eligibility determination shall be made for each person who is being released from Osawatomie state hospital, rainbow mental health facility, Larned state security hospital, or Larned correctional mental health facility, in accordance with an approved discharge plan. Minimally, the presumptive determination shall be based on available information concerning the

person's income and resources. The general eligibility requirements of K.A.R. 30-4-50 may be waived until a formal eligibility determination is completed. The time limit specified in subsection (e) of this regulation shall be waived for the period during which assistance is provided in accordance with paragraph (b)(2) of this regulation.

(2) The assistance provided shall equal 100 percent of the applicable GA budgetary standards, and the requirements of K.A.R. 30-4-140 (a)(1) shall be waived. The assistance shall not extend beyond the month of discharge and the two following months, except that the assistance may be extended by the secretary beyond the three-month limitation for good cause.

(c) Each applicant or recipient who refuses to authorize the department to file for and claim reimbursement from the social security administration for the amount of GA provided to the individual, pending a determination of eligibility for the supplemental security income program, shall be ineligible for GA.

(d) Each applicant or recipient who fails or refuses to cooperate with legal counsel or any other entity assigned by the agency or retained by the applicant or recipient to aid, advise, assist, or represent the applicant or recipient with regard to applying for and securing social security disability benefits shall be ineligible for GA.

(e) Assistance under this regulation shall be limited to a lifetime maximum of 18 calendar months, or a time frame to be determined by the secretary. This determination shall be based on the level of appropriations received for the program.

(f) The lifetime maximum of 18 calendar months or the time frame established by the secretary shall not apply if the GA recipient is also receiving Medicaid benefits and one of the following conditions is met:

(1) The individual's initial application for social security disability benefits is still pending the initial determination or is currently on appeal. If the individual is otherwise eligible and is either awaiting the initial determination or exercising appeal rights at any level through the appeals council, the individual may receive assistance until social security disability benefits are awarded or until the individual is denied either disability benefits or consideration by the appeals council.

(2) The individual has reapplied for social security disability benefits and establishes by credible, competent medical evidence, as determined by the social security administration or by an entity designated by the social security administration or the state of Kansas to make such a determination, either that a new impairment exists or that the existing impairment has increased in severity since the individual originally applied for social security disability benefits. The individual may receive assistance until social security disability benefits are awarded or until the individual is denied either disability benefits or consideration by the appeals council.

(g) This regulation shall be effective on and after July 1, 2009. (Authorized by K.S.A. 39-708c; implementing K.S.A. 39-708c and K.S.A. 2008 Supp. 39-709; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended May 1, 1982; amended, T-84-8, March 29, 1983; amended May 1, 1983; amended, T-84-9, March 29, 1983; amended May 1, 1984; amended, T-85-34, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-88-14, July 1, 1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended Sept. 26, 1988; amended July 1, 1989; amended Oct. 1, 1989; amended, T-30-6-10-91, July 1, 1991; amended Oct. 28, 1991; amended, T-30-6-10-92, July 1, 1992; amended Oct. 1, 1992; amended Dec. 31, 1992; amended, T-30-2-15-93, Feb. 15, 1993; amended June 1, 1993; amended July 1, 1994; amended Jan. 1, 1997; amended March 1, 1997; amended Oct. 1, 1997; amended July 1, 2002; amended, T-30-5-27-04, July 1, 2004; amended Aug. 6, 2004; amended July 1, 2006; amended July 1, 2009.)

## Article 5.—PROVIDER PARTICIPATION, SCOPE OF SERVICES, AND REIMBURSEMENTS FOR THE MEDICAID (MEDICAL ASSISTANCE) PROGRAM

**30-5-118a.** (Authorized by and implementing K.S.A. 1997 Supp. 39-708c; effective, T-30-10-1-90, Oct. 1, 1990; effective Jan. 30, 1991; amended July 1, 1994; amended July 1, 1997; amended Jan. 1, 1999; revoked March 19, 2010.)

## Article 45.—YOUTH SERVICES

**30-45-20. Foster child educational assistance.** Any individual meeting the definition of foster child in K.S.A. 75-53,112 (b), and amendments thereto, and wanting to receive the benefits of the foster child educational assistance act may

obtain an application form from any office of the department of social and rehabilitation services ("department") or from any Kansas educational institution, as defined in K.S.A. 75-53,112 and amendments thereto. The individual shall submit the completed application to the registrar's office at the educational institution where the applicant enrolls. The applicant's eligibility shall be verified by the department upon receipt of the application from the educational institution. Within 30 days after enrollment, the student shall notify the department of that student's enrollment status and intended program of study. (Authorized by K.S.A. 2008 Supp. 75-53,117; implementing K.S.A. 2008 Supp. 75-53,113 and K.S.A. 2008 Supp. 75-53,120; effective July 6, 2009.)

## Article 46.—CHILD ABUSE AND NEGLECT

**30-46-10. Definitions.** For the purpose of the child abuse and neglect registry, the following definitions shall apply.

(a) "Abuse" means any act specified in K.S.A. 38-2202(x) or (cc), and amendments thereto, involving a child who resides in Kansas or is found in Kansas, regardless of where the act occurred. This term shall include any act that occurred in Kansas, regardless of where the child is found or resides.

(b) "Alleged perpetrator" means the person identified in the initial report or during the investigation as the person suspected of perpetrating an act of abuse or neglect.

(c) "Child" means anyone under the age of 18 or anyone under the age of 21 and in the custody of the secretary pursuant to K.S.A. 38-2255 and amendments thereto.

(d) "Child abuse and neglect registry" means the list of names for individuals identified by the department as substantiated perpetrators.

(e) "Child care facility" has the meaning specified in K.S.A. 65-503 and amendments thereto.

(f) "Department" means the Kansas department of social and rehabilitation services.

(g) "Investigation" means the gathering and assessing of information to determine if a child has been harmed, as defined in K.S.A. 38-2202 (k) and amendments thereto, as the result of abuse or neglect, to identify the individual or individuals responsible, and to determine if the individual or individuals identified should reside, work, or regularly volunteer in a child care facility.

(h) "Mental or emotional abuse" has the meaning specified in K.S.A. 38-2202(x), and amendments thereto, and shall include any act, behavior, or omission that impairs or endangers a child's social or intellectual functioning. This term may include the following:

(1) Terrorizing a child, by creating a climate of fear or engaging in violent or threatening behavior toward the child or toward others in the child's presence that demonstrates a flagrant disregard for the child;

(2) emotionally abandoning a child, by being psychologically unavailable to the child, demonstrating no attachment to the child, or failing to provide adequate nurturance of the child; and

(3) corrupting a child, by teaching or rewarding the child for unlawful, antisocial, or sexually mature behavior.

(i) "Neglect" has the meaning specified in K.S.A. 38-2202(s), and amendments thereto, involving a child who resides in Kansas or is found in Kansas, regardless of where the act or failure to act occurred. This term shall include any act or failure to act that occurred in Kansas, regardless of where the child is found or resides.

(j) "Sexual abuse" has the meaning specified in K.S.A. 38-2202(cc), and amendments thereto, and shall include contact solely between children only if the contact also involves force, intimidation, difference in maturity, or coercion.

(k) "Substantiated perpetrator" and "perpetrator" mean a person who has been validated by the secretary or designee, using clear and convincing evidence, to have committed an act of abuse or neglect, regardless of where the person resides and who should not be permitted to reside, work, or regularly volunteer in a child care facility. These terms shall replace the term "validated perpetrator." (Authorized by K.S.A. 39-708c; implementing K.S.A. 2008 Supp. 38-2226 and 38-2230; effective Jan. 2, 1989; amended Jan. 2, 1990; amended Oct. 1, 1993; amended Jan. 1, 1997; amended Oct. 3, 1997; amended July 9, 2004; amended July 6, 2009.)

**30-46-17. Expungement of record of perpetrator from central registry.** (a) Application for expungement.

(1) Any perpetrator of abuse or neglect may apply in writing to the secretary to have the perpetrator's record expunged from the central registry when three years have passed since the perpetrator's name was entered on the central

registry or when information is presented that was not available at the time of the finding of abuse or neglect.

(2) Each application for expungement shall be referred to the expungement review panel. The panel shall consist of the director of children and family services or the director's designee, the chief legal counsel of the department or the counsel's designee, and a representative of the public appointed by the secretary. The director of children and family services or the director's designee shall chair the panel.

(b) Review hearing.

(1) A review hearing shall be convened by the panel, at which time the applicant may present evidence supporting expungement of the applicant's name from the central registry. The applicant shall have the burden of providing the panel with the basis for granting the application. Evidence in support of or in opposition to the application may be presented by the regional office that conducted the original investigation. An application for expungement from a perpetrator shall be accepted no more than once every 12 months.

(2) Recommendations of the review panel shall be determined by majority vote. The following factors shall be considered by the panel in making its recommendation:

(A) The nature and severity of the act of abuse or neglect;

(B) the number of findings of abuse or neglect involving the applicant;

(C) if the applicant was a child at the time of the findings of abuse or neglect for which expungement is requested, the age of the applicant at the time of this occurrence;

(D) circumstances that no longer exist that contributed to the finding of abuse or neglect by the applicant; and

(E) actions taken by the applicant to prevent the reoccurrence of abuse or neglect.

(3) The review hearing shall be set within 30 days from the date the application for expungement is received by the department. A written notice shall be sent to the applicant and the regional office that made the finding by the director of children and family services or the director's designee at least 10 days before the hearing. The notice shall state the day, hour, and place of the hearing. Continuances may be granted only for good cause.

(4) A written recommendation to the secretary shall be rendered by the panel within 60 days from the date of the hearing. The recommendation to the secretary shall be submitted in writing and shall set forth the reasons for the recommendation.

(c) Expungement.

(1) Based upon findings and recommendations of the panel, a record may be expunged or expungement may be denied by the secretary.

(2) Any record may be expunged from the central registry by the secretary or the designee of the secretary when 18 years have passed since the most recent finding of abuse or neglect.

(3) Each record of a perpetrator who was under 18 at the time of abuse or neglect shall be expunged five years after the finding of abuse or neglect is entered in the central registry if the perpetrator has had none of the following after entry in the registry:

(A) A finding of abuse or neglect;

(B) juvenile offender adjudication for any act that, if committed by an adult, would be a class A person misdemeanor or any person felony; or

(C) criminal conviction for a class A person misdemeanor or any person felony.

(4) The decision of the secretary shall be in writing and shall set forth the reasons for the decision. Denial of the application shall be the final agency order. The applicant shall be informed of the right to appeal pursuant to the Kansas judicial review act. (Authorized by K.S.A. 39-708c and 65-516; implementing K.S.A. 65-516; effective Jan. 2, 1989; amended Jan. 1, 1990; amended July 1, 1997; amended July 9, 2004; amended July 6, 2009.)

## Article 63.—DEVELOPMENTAL DISABILITIES—LICENSING PROVIDERS OF COMMUNITY SERVICES

**30-63-10. License required; exceptions.** (a) Each individual, group, association, corporation, local government department, or local quasi-government agency providing services to persons 18 years of age or older in need of services greater than those provided in a boarding care home as defined in K.S.A. 39-923(a) (8), and amendments thereto, shall be licensed in accordance with the provisions of this article, except when those services are provided in or by any of the following:

(1) In a medical care facility, as defined and required to be licensed in K.S.A. 65-425 et seq. and amendments thereto;

(2) in a nursing facility, nursing facility for mental health, intermediate care facility for the mentally retarded, assisted living facility, or residential health care facility, or in a home plus setting, as defined and required to be licensed in K.S.A. 39-923 et seq. and amendments thereto;

(3) by a home health agency, as defined and provided for the licensing of in K.S.A. 65-5101 et seq. and amendments thereto; or

(4) in a manner so that the services constitute in-home services, funded under the federal home- and community-based services/mental retardation waiver or with state funding under terms like those of the federal home- and community-based services/mental retardation waiver, and are provided in compliance with all of the following conditions:

(A) The services are directed and controlled by an adult receiving services, the parent or parents of a minor child receiving services, or the guardian of an adult receiving services.

(B) The person or person's representative directing and controlling the services selects, trains, manages, and dismisses the individual or business entity providing the services and coordinates payment.

(C) The person or person's representative directing and controlling the services owns, rents, or leases the whole or a portion of the home in which services are provided.

(D) If any individual providing services also lives in the home in which services are provided, there is a written agreement specifying that the person receiving services will not be required to move from the home if there is any change in who provides services, and that any individual or business entity chosen to provide services will be allowed full and reasonable access to the home in order to provide services.

(E) The person receiving services does not receive services in a home otherwise requiring a license pursuant to these regulations.

(F) Any individual providing services is at least 16 years of age, or at least 18 years of age if a sibling of the person receiving services, unless an exception to this requirement has been granted by the commission, based upon the needs of the person receiving services.

(G) Any individual or business entity providing services receives at least 15 hours of prescribed training, or the person or person's representative directing and controlling the services has provided written certification to the community developmental disability organization (CDDO) that sufficient training to meet the person's needs has been provided.

(H) The person or person's representative directing and controlling the services has chosen case management from the CDDO or an agency affiliated with the CDDO. That case management may be limited, at the choice of the person or person's representative directing and controlling the services, to reviewing the services on a regular basis to ensure that the person's needs are met, annual reevaluation of continued eligibility for funding, and development of the person's plan of care.

(I) The person or person's representative directing and controlling the services cooperates with the CDDO's quality assurance committee and allows review of the services as deemed necessary by the committee to ensure that the person's needs are met. In addition, the person directing and controlling the services cooperates with the commission and allows monitoring of the person's services to ensure that the case manager and the CDDO's quality assurance committee have adequately reviewed and determined that the person's needs are met.

(J) The person or person's representative directing and controlling the services agrees to both of the following:

(i) If it is determined by the CDDO or the commission that the person receiving services is or could be at risk of imminent harm to the person's health, safety, or welfare, the person or person's representative directing and controlling the services shall correct the situation promptly.

(ii) If the situation is not so corrected, after notice and an opportunity to appeal, funding for the services shall not continue.

(b) Each license issued pursuant to this article shall be valid only for the provider named on the license. Each substantial change of control or ownership of either a corporation or other provider previously licensed pursuant to this article shall void that license and shall require a reapplication for licensure. (Authorized by K.S.A. 39-1810 and K.S.A. 75-3304; implementing K.S.A. 39-1806 and K.S.A. 2008 Supp. 75-3307b; effective July 1, 1996; amended Oct. 1, 1998; amended Jan. 15, 2010.)

**30-63-11. Two types of license; display.** (a) Two types of license may be issued by the secretary pursuant to this article to operate as a pro-

vider. One type shall be a "full license," and the other type shall be a "limited license." Both types of license may be issued on a "temporary" or on a "with requirements" basis as specified in K.A.R. 30-63-12.

(b) Both licenses issued pursuant to this article shall be prepared by the commission.

(c) Each holder of a license shall prominently display the license in the holder's principal place of business.

(d) A full license shall apply to all providers except those providers specified in subsection (e).

(e) A "limited license" shall apply to providers who provide services only to either one or two specified persons to whom the provider is related or with whom the provider has a preexisting relationship. The services shall be provided in the home of the person being served. A provider operating with a limited license shall be afforded greater flexibility in the means by which that provider is required to comply with all of the requirements of this article if the services are provided in a manner that protects the health, safety, and welfare of the specific person being served, as determined by the commission. (Authorized by and K.S.A. 39-1810 and K.S.A. 75-3304; implementing K.S.A. 39-1806 and K.S.A. 2008 Supp. 75-3307b; effective July 1, 1996; amended Jan. 15, 2010.)

**30-63-12. Licensing procedure; requirements; duration of license.** (a) Each provider required to be licensed pursuant to this article shall submit an application for an appropriate license to the commissioner, on a form provided by the commission.

(b) For a full license, each applicant shall provide the following:

(1) Certification that the applicant's chief director of services, regardless of title, is qualified to develop and modify, if appropriate, a program of individualized services to be provided to persons as defined in K.A.R. 30-63-1, as evidenced by that individual's having either of the following:

(A) A bachelor's or higher degree in a field of human services awarded by an accredited college or university; or

(B) work experience in the area of human services at the rate of 1,040 hours of paid work experience substituted for a semester of higher education, which shall mean 15 undergraduate credit hours, with at least eight full-time semester's worth of either satisfactorily passed education or work experience;

(2) certification that the applicant's chief director of services, regardless of title, is qualified to supervise the delivery of a program of services to persons, as evidenced by that individual's having one of the following:

(A) At least one year of experience in a senior management-level position with a licensed provider;

(B) at least two years of experience as either a case manager or a services manager with supervisory authority over at least two other individuals providing direct services to persons; or

(C) at least five years of experience delivering direct care services to persons;

(3) three letters of reference concerning the applicant's chief director of services, regardless of title. Each letter written shall be by an individual knowledgeable both of the applicant and of the delivery of services to persons;

(4) evidence of completion of a background check meeting the requirements of the "SRS/CSS policy regarding background checks," dated September 8, 2009 and hereby adopted by reference, done on the applicant's chief director of services, regardless of title;

(5) a set of written policies and procedures specifying how the applicant intends to comply with the requirements of this article;

(6) a written business plan that shows how the applicant intends to market its services, to accommodate growth or retrenchment in the size of its operations without jeopardizing consumer health or safety issues, to respond to other risk factors as could be foreseeable in the specific case of that applicant, and to keep the operation fiscally solvent during the next three years, unless the application is for a renewal of a succession of licenses that the applicant has had for at least three years. In this case, the viability of the applicant's operation shall be presumed, unless the commissioner determines that there is reason to question the viability of the licensed provider applying for license renewal and requires the submission of a written business plan despite how long the renewal applicant has been previously licensed; and

(7) if required of the applicant by the United States department of labor, a subminimum wage and hour certificate.

(c) For a limited license, each applicant shall provide the following:

(1) A description of the preexisting relationship

with the one or two persons proposed to be provided services;

(2) documentation that the individual who will be chiefly responsible for providing services is qualified to do so, as evidenced by that individual's having either of the following:

(A)(i) At least one year of work experience in providing services to a person; and

(ii) completion of the curriculum of studies designated by the commission and accessed through the commission's web site; or

(B) the qualifications specified in paragraph (b)(1);

(3) evidence of completion of a background check meeting the requirements of the background check policy adopted by reference in paragraph (b)(4), done on the individual who will be chiefly responsible for the operations of the applicant;

(4) a written plan that shows how the applicant intends to comply with the requirements of this article applicable to the specific circumstances of the one or two persons to whom those services are proposed to be provided; and

(5) a written business plan that shows how the applicant intends to keep the applicant's proposed provider operation fiscally solvent during the next three years, except as specified in this paragraph. If the application is for a renewal of a succession of licenses that the applicant has had for at least three years, the viability of the applicant's operation shall be presumed, unless the commissioner determines that there is reason to question the viability of the licensed provider applying for license renewal and requires the submission of a written business plan, regardless how long the applicant has been previously licensed.

(d) Upon receipt of an application, the commission shall determine whether the applicant is in compliance with the requirements of subsection (b) or (c) and with this article.

(e) The applicant shall be notified in writing if the commission finds that the applicant is not in compliance with the requirements of subsection (b) or (c) or with this article.

(f) A temporary license or a temporary license with requirements may be issued by the secretary to allow an applicant to begin the operations of a new provider. A license with requirements may be issued by the secretary to allow a provider seeking renewal of a previously issued license to continue operations. A license with requirements shall be designated as contingent upon the provider's developing, submitting to the commission, and implementing an acceptable plan of corrective action intended to bring the provider into continuing compliance with the requirements of this article.

(1) Findings made by the commission with regard to the implementation of a plan of corrective action shall be given to the provider in writing.

(2) Failure of a provider to be in compliance with the requirements of this article or to implement an acceptable plan of corrective action may be grounds for denial of a license whether or not a temporary license or a license with requirements has been issued.

(g) Based upon findings made by the commission regarding compliance with or the implementation of an acceptable plan of corrective action, the commissioner shall determine whether to recommend issuance or denial of the full or limited license applied for. The applicant shall be notified in writing of any decision to recommend denial of an application for a license. The notice shall clearly state the reasons for a denial. The applicant may appeal this denial to the administrative appeals section pursuant to article seven of these regulations.

(h)(1) A full or limited license issued pursuant to this article shall remain in effect for not more than two years from the date of issuance. The exact date on which the license expires shall be stated upon the license. However, the license shall earlier expire under any of the following circumstances:

(A) The license is revoked for cause.

(B) The license is voided.

(C) For a temporary license or a license with requirements, the license is superseded by the issuance of a full or a limited license as applied for.

(D) The license is voluntarily surrendered by the provider.

(2) Each license term shall be determined by the commissioner based upon the commission's findings regarding the history and strength of the applicant's provider operations, including evidence of the provider's having earned certification from a nationally recognized agency or organization that specializes in certifying providers of services.

(i) Each license with requirements shall specify the length of time for which the license is valid, which shall not exceed one year. Successive licenses with requirements may be issued by the

secretary, but successive licenses with requirements shall not be issued for more than two years.

(j) Each temporary license shall be valid for six months. If, at the expiration of that six months, the licensee has not yet commenced providing services to any person but the licensee wishes to continue efforts to market the licensee's services, a successive temporary license may be issued for another six-month period. No further extensions of a temporary license shall be granted.

(k) A license previously issued shall be voided for any of the following reasons:

(1) Issuance by mistake;

(2) a substantial change of control or ownership, as provided for in K.A.R. 30-63-10(b); or

(3) for a limited license, the licensee's cessation of provision of services to the person or persons for whom the license was specifically sought and obtained.

(l) In order to renew a license, the licensee shall reapply for a license in accordance with this regulation.

(m) If a provider is licensed pursuant to this article on or before the effective date of the amendments to this regulation, the requirements specified in either paragraphs (b)(1) and (b)(2) or paragraph (c)(2) shall not apply to any renewal request of that licensee made during the one-year period following the effective date of these amendments. (Authorized by K.S.A. 39-1810 and K.S.A. 75-3304; implementing K.S.A. 39-1806 and K.S.A. 2008 Supp. 75-3307b; effective July 1, 1996; amended Jan. 15, 2010.)

# Agency 36

# Kansas Department of Transportation

**Editor's Note:**
This agency was formerly entitled "Highway Commission." The Highway Commission was reorganized as the Department of Transportation in 1975, see L. 1975, ch. 426, § 4.

*Articles*

36-39. RAIL SERVICE ASSISTANCE PROGRAM.
36-42. KANSAS INTERMODAL TRANSPORTATION REVOLVING FUND.

## Article 39.—RAIL SERVICE ASSISTANCE PROGRAM

**36-39-2. Definitions.** As used in this article, the following terms shall have the meanings specified in this regulation.

(a) "Applicant" means any qualified entity that submits an application to the secretary for a loan guarantee, a loan, or a grant.

(b "Board" means the surface transportation board.

(c) "Equipment" means any type of new or rebuilt standard gauge locomotive or general service railroad freight car. General service railroad freight cars may include a boxcar, gondola, open-top or covered hopper car, and flatcar.

(d) "Facilities" means the following:

(1) The track, roadbed, and related structures, including rail, ties, ballast, other track materials, grading, tunnels, bridges, trestles, culverts, repair shops, connecting tracks, and public improvements used or usable for rail service operations;

(2) signals and interlockers; and

(3) terminal or yard facilities, including trailer-on-flatcar and container-on-flatcar terminals, railroad terminal and switching facilities, and service to express companies and railroads and their shippers.

(e) "F.R.A." means federal railroad administration of the United States department of transportation.

(f) "Governmental unit" means any town, city, district, county, commission, agency, authority, board, or other instrumentality of the state or of any of its political subdivisions, including any combination thereof, or a port authority established in accordance with Kansas law.

(g) "Lender" means the obligee, holder, or creditor under an obligation, except that when a bank or trust company is acting as agent or trustee for such an obligee, holder, or creditor, pursuant to an agreement to which the obligor is a part, the term shall refer to the bank or trust company.

(h) "Loan guarantee" means a guarantee by the state of Kansas to pay off the remaining principal of a specific loan under the terms of K.A.R. 36-39-3.

(i) "Obligation" means a loan, note, conditional sale agreement, security agreement, or other obligation issued or granted to finance or refinance facilities or equipment acquisition, construction, rehabilitation, or improvement.

(j) "Obligor" means the debtor under an obligation, including the original debtor and any successor or assignee of the debtor who is approved by the secretary.

(k) "Qualified entity" means any of the following:

(1) Any class II railroad or class III railroad, as defined in 49 C.F.R. 1201.1-1(a), holding a certificate of public convenience from the surface transportation board. 49 C.F.R. 1201.1-1(a), as in effect on August 5, 2010, is hereby adopted by reference;

(2) any class I railroad, as defined in 49 C.F.R. 1201.1-1(a), which is adopted by reference in paragraph (k)(1), that holds a certificate of public convenience from the surface transportation board and is engaged in the construction and maintenance of railroads, facilities and equipment in Kansas in conjunction with the development of an intermodal facility, as defined in K.S.A. 75-5082 and amendments thereto; or

(3) any governmental unit or Kansas shipper in coordination with a railroad that seeks to facilitate the financing, acquisition, or rehabilitation of rail-

roads, facilities, equipment, and rolling stock in the state of Kansas.

(l) "Secretary" means the secretary of the Kansas department of transportation or the secretary's designee. (Authorized by K.S.A. 2009 Supp. 75-5046 and K.S.A. 75-5050; implementing K.S.A. 2009 Supp. 75-5046, K.S.A. 75-5047, K.S.A. 2009 Supp. 75-5048, as amended by L. 2010, ch. 156, sec. 30, and K.S.A. 2009 Supp. 75-5049; effective Aug. 30, 1993; amended July 11, 1997; amended, T-36-6-29-10, June 29, 2010; amended Oct. 15, 2010.)

**36-39-4. Forms.** Each applicant for a loan guarantee shall file an application on the forms provided by the Kansas department of transportation labeled and assembled using the following format:

(a) Application summary;

(b) exhibit "A," description of applicant;

(c) exhibit "B," description of project;

(d) exhibit "C," description of the ratio of benefit to cost;

(e) exhibit "D," pro forma cash flow statement;

(f) exhibit "E," rehabilitation, repair, and construction cost estimate;

(g) exhibit "F," historic and current financial statements; and

(h) exhibit "G," identification of officers and directors. (Authorized by and implementing K.S.A. 2009 Supp. 75-5046; effective Aug. 30, 1993; amended, T-36-6-29-10, June 29, 2010; amended Oct. 15, 2010.)

**36-39-6. Rail service financial assistance; loans and grants.** (a) Compliance with the criteria in K.A.R. 36-39-1(a) shall increase the priority standing of an application for a loan or grant to be used to facilitate the financing, acquisition, or rehabilitation of railroads, facilities, equipment, and rolling stock in the state of Kansas.

(b) Monies to be loaned or granted shall originate from the rail service improvement fund.

(c) All funds loaned shall be repaid to the department of transportation within 10 years or less of the notice of acceptance of the project. The repayment shall include an interest rate established in the loan agreement between the secretary and applicant.

(d) Each application shall be submitted in the form prescribed by the Kansas department of transportation. (Authorized by K.S.A. 75-5050; implementing K.S.A. 2009 Supp. 75-5048, as amended by L. 2010, ch. 156, sec. 30, and K.S.A. 2009 Supp. 75-5049; effective Aug. 30, 1993; amended July 11, 1997; amended, T-36-6-29-10, June 29, 2010; amended Oct. 15, 2010.)

## Article 42.—KANSAS INTERMODAL TRANSPORTATION REVOLVING FUND

**36-42-1. Definitions.** For the purposes of this article, the following words and phrases shall be defined as follows: (a) "Act" means K.S.A. 75-5081 et seq., and amendments thereto.

(b) "Applicant" means any governmental unit or private enterprise filing an application with the secretary for financial assistance under the act.

(c) "Approved project" means the scope of work for an intermodal transportation project for which financial assistance is provided.

(d) "Debt service" means the principal, interest, and any premium required to be paid pursuant to a financial assistance agreement.

(e) "Final acceptance" means the point at which the contractor has completed all work on an approved project and the licensed professional engineer responsible for the inspection informs the department in writing that all work specified in all of the approved project contracts has been completed in substantial conformity with the plans, specifications, and any authorized revisions.

(f) "Financial assistance" means any credit enhancement, loan, or refunding or acquisition of bonds previously issued by the applicant, as approved by the secretary pursuant to the act.

(g) "Financial assistance agreement" means a contract between an applicant and the secretary confirming the purpose of the financial assistance, the amount and terms of the financial assistance, the schedule of financial assistance payments and repayments, if any, and any other agreed-upon conditions applicable to that approved project.

(h) "Inspector" means an individual who meets the following requirements:

(1) (A) Is a licensed professional engineer or is supervised by a licensed professional engineer; and

(B) is provided by the applicant to observe the work performed and test the materials used in an approved project according to its plans and contract documents; and

(2) has successfully completed the department's certified inspector training appropriate for the work being inspected.

(i) "Intermodal transportation project" means

the acquisition, construction, improvement, repair, rehabilitation, maintenance, or extension of any bridge, culvert, highway, road, street, underpass, railroad crossing, or combination of these, located within an intermodal transportation area for which an application has been filed for financial assistance from the fund.

(j) "KDFA" means the Kansas development finance authority established by K.S.A. 74-8903 and amendments thereto.

(k) "Licensed professional engineer" means a person licensed as a professional engineer by the state board of technical professions pursuant to K.S.A. 74-7001 et seq. and amendments thereto.

(l) "Maintenance" means a type of intermodal transportation project that extends the design life of a bridge, culvert, highway, road, street, underpass, railroad crossing, or any combination of these, but does not, as the major purpose, enhance the structural integrity.

(m) "Opened to unrestricted travel" means that all travel lanes are open to vehicle traffic and no construction speed restrictions remain in place. (Authorized by and implementing K.S.A. 2009 Supp. 75-5083; effective April 30, 2010.)

**36-42-2. Application and supporting documents.** (a) An application for financial assistance from the fund may be submitted to the secretary at any time.

(b) Each applicant for financial assistance for an intermodal transportation project shall submit, for the secretary's review and consideration for approval, the following application documents:

(1) A completed financial assistance application on a form furnished by the secretary;

(2) a detailed statement that establishes the need for the intermodal transportation project;

(3) a detailed description of the intermodal facility that is used to define the intermodal transportation area where the intermodal transportation project for which the financial assistance is requested would be located;

(4) a detailed description of the cost of the intermodal facility that is used to define the intermodal transportation area where the intermodal transportation project for which the financial assistance is requested would be located;

(5) a detailed description of the intermodal transportation area and documentation that provides sufficient detail to enable the secretary to certify whether the intermodal transportation area is impacted by the intermodal facility used to define the intermodal transportation area;

(6) documentation that provides sufficient detail regarding the intermodal transportation project to enable the secretary to determine its estimated costs, the purpose for the financial assistance, and the time period in which the financial assistance is to be used;

(7) an overall completion schedule for the intermodal transportation project, submitted in a form prescribed by the secretary; and

(8) any information as may be required and deemed relevant by the secretary that establishes to the secretary's satisfaction that the applicant has the financial capability to satisfy its obligations under the financial assistance agreement and addresses at least the following areas:

(A) Projected economic and population growth, including assumptions made to develop the projections within the applicant's jurisdictional boundaries, including a separate projection that indicates the incremental projected economic and population growth as a result of the intermodal transportation project;

(B) existing and forecasted debt obligations and debt service schedules of the governmental unit or private enterprise, or both, submitting the application, during the term of the financial assistance agreement; and

(C) projected total revenues, including identification of revenue sources and all assumptions made to develop the projection of the governmental unit or private enterprise, or both, submitting the application, during the term of the financial assistance agreement, including a separate projection that indicates the incremental projected revenues as a result of the intermodal transportation project. (Authorized by K.S.A. 2009 Supp. 75-5083; implementing K.S.A. 2009 Supp. 75-5086; effective April 30, 2010.)

**36-42-3. Intermodal transportation project; eligibility.** (a) For an intermodal transportation project to be eligible for financial assistance, the following requirements shall be met:

(1) The qualified borrower shall provide the secretary with the applicant's written assurance of the following:

(A) The qualified borrower shall use a licensed professional engineer to design the intermodal transportation project, if approved, in accordance with the then-existing generally recognized and prevailing engineering standards and with the fed-

eral and state laws and regulations applicable at the time of design, which shall include any subsequent design revisions for the approved project.

(B) The intermodal transportation project, if approved, shall be inspected by an inspector, who shall provide reasonable assurance that the approved project is constructed in substantial conformity with its plans, specifications, and any authorized revisions.

(C) The construction of the intermodal transportation project, if approved, shall conform to its plans, specifications, and any authorized revisions.

(D) The plans and specifications for the intermodal transportation project, if approved, shall not be revised or deviated from without the approval of the approved project's designer.

(2) The intermodal transportation project shall be consistent with the existing or planned state highway system, or both, pursuant to K.S.A. 68-406 and amendments thereto.

(b) No portion of an intermodal transportation project's cost shall be eligible for financial assistance under the act if a federal reimbursement has been received for the same portion of the cost. (Authorized by and implementing K.S.A. 2009 Supp. 75-5083; effective April 30, 2010.)

**36-42-4. Fund use.** The fund shall be used to finance or refinance approved projects, with priority given to the following types of financial assistance: (a) Loans for all or part of an approved project;

(b) guarantees, security, or another type of credit enhancement, or any combination of these, as may be approved by the secretary for bonds to be issued by KDFA or an applicant; and

(c) the refunding or acquisition of bonds issued by an applicant. (Authorized by K.S.A. 2009 Supp. 75-5083; implementing K.S.A. 2009 Supp. 75-5084; effective April 30, 2010.)

**36-42-5. Financial assistance agreement; requirements.** Each financial assistance agreement entered into pursuant to the act shall meet the following requirements: (a) The financial assistance shall not exceed the total cost of the approved project.

(b) The term of any financial assistance shall not exceed the shortest of the following periods:

(1) The economic life of the approved project;

(2) the term of any bonds issued to finance the approved project; and

(3) 30 years.

(c) If any debt service is required, the debt service shall be guaranteed by the applicant in a manner consistent with the applicant's approved application.

(d) The financial assistance agreement shall contain the following sentences:

(1) "All work performed and all materials furnished for the approved project shall be in reasonably close conformity with the plans, specifications, and revisions, which have been approved by the designer of the approved project."

(2) "Technical advice or assistance, or both, provided by the secretary to an applicant pursuant to section six of the act, and amendments thereto, shall not be construed as an undertaking by the secretary of the duties of the applicant or the approved project's owner, or both, or the duties of any consultant, licensed professional engineer, or inspector hired by the applicant or the approved project's owner." (Authorized by K.S.A. 2009 Supp. 75-5083; implementing K.S.A. 2009 Supp. 75-5086; effective April 30, 2010.)

**36-42-6. Interest rate and servicing fees.** Financial assistance that is required to be repaid under the terms of the financial assistance agreement shall bear interest in accordance with the applicable financial assistance agreement, at a rate set by the secretary. The financial assistance agreement may also establish fees for servicing the financial assistance. (Authorized by K.S.A. 2009 Supp. 75-5083; implementing K.S.A. 2009 Supp. 75-5084 and 75-5086; effective April 30, 2010.)

**36-42-7. Repayment of financial assistance.** (a) All debt service shall be paid in accordance with the terms and conditions of the financial assistance agreement.

(b) If any financial assistance is prepaid in whole or in part, the prepayment shall be made in accordance with the terms and conditions of the financial assistance agreement.

(c) If a recipient of monies from the fund subsequently receives federal reimbursement for the same costs of an approved project for which financial assistance was received, the recipient shall repay to the secretary those fund monies in an amount equal to the federal reimbursement received, within 30 days after receipt of the federal reimbursement. (Authorized by K.S.A. 2009 Supp. 75-5083; implementing K.S.A. 2009 Supp. 75-5086; effective April 30, 2010.)

**36-42-8. Approved project statements.** (a) Each financial assistance recipient shall pro-

vide the secretary, when the approved project is opened to unrestricted travel, with the written statement of the recipient's licensed professional engineer unqualifiedly indicating that, at the time of design, the plans, specifications, and any authorized revisions for the approved project followed the then-existing generally recognized and prevailing engineering standards and were in compliance with the applicable federal and state laws and regulations.

(b) Each financial assistance recipient shall provide the secretary with the statement of the recipient's inspector indicating that the approved project was constructed in reasonable conformity with its plans, specifications, and any authorized revisions, at each of the following times:

(1) At the time when the approved project is opened to unrestricted travel; and

(2) at the time of the final acceptance. (Authorized by and implementing K.S.A. 2009 Supp. 75-5083; effective April 30, 2010.)

**36-42-9. Approved project costs; accounting requirement.** Each financial assistance recipient shall maintain an accounting system that segregates and accumulates all project costs for the approved project. Any project costs may be reviewed or audited, or both, by the secretary at any time during the construction of the approved project and after completion of the approved project. (Authorized by K.S.A. 2009 Supp. 75-5083; implementing K.S.A. 2009 Supp. 75-5086; effective April 30, 2010.)

# Agency 40
# Insurance Department

*Articles*

40-1. General.
40-2. Life Insurance.
40-3. Fire and Casualty Insurance.
40-4. Accident and Health Insurance.
40-7. Agents.
40-9. Advertising.
40-10. Firefighter's Relief Fund Tax.

## Article 1.—GENERAL

**40-1-22. Insurance policies and certificates; change of name or merger of an insurance company; assumption of risk endorsements.** (a) Each assuming company shall attach to each insurance policy and each certificate of accident and sickness coverage an "assumption of risk" endorsement that displays the name and address of the assuming company when any outstanding insurance policy or certificate of accident and sickness coverage issued to a resident of Kansas is affected by any of the following:

(1) A change in the name of the issuing company;

(2) a merger, consolidation, or similar transaction involving the issuing company;

(3) a change of domicile in which policy liability is assumed by another company; or

(4) an assumption reinsurance agreement.

(b) The "assumption of risk" endorsement shall be approved by the commissioner of insurance before issuance to residents of the state of Kansas.

(c) Each "assumption of risk" endorsement originating from an assumption reinsurance agreement shall meet the following requirements:

(1) Not require the insured to take affirmative action to reject the substitution of one insurer for another; and

(2) not state that failure to reject the substitution or the continued payment of premium will constitute acceptance of the substitution. (Authorized by K.S.A. 40-103; implementing K.S.A. 2010 Supp. 40-221a, K.S.A. 2010 Supp. 40-309, and K.S.A. 40-510; effective Jan. 1, 1967; amended May 1, 1979; amended May 1, 1986; amended March 28, 1994; amended June 24, 2011.)

**40-1-37. Audited financial reports; filing requirements.** The Kansas insurance department's "policy and procedure requiring annual audited financial reports," dated November 22, 2010, is hereby adopted by reference. (Authorized by K.S.A. 40-103 and K.S.A. 40-225; implementing K.S.A. 40-222b and K.S.A. 40-225; effective July 10, 1989; amended Jan. 4, 1993; amended Sept. 14, 2001; amended Sept. 21, 2007; amended July 6, 2009; amended March 18, 2011.)

**40-1-38. Insurance companies; hazardous financial condition; standards; corrective actions.** The Kansas insurance department's "policy and procedure for companies deemed to be in hazardous financial condition," dated August 4, 2009, is hereby adopted by reference. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-222b and K.S.A. 40-222d; effective, T-40-9-26-91, Sept. 26, 1991; effective Jan. 6, 1992; amended Nov. 20, 2009.)

**40-1-48. Risk-based capital instructions for health organizations.** The following document prepared by the national association of insurance commissioners and dated October 28, 2009 is hereby adopted by reference:

"2009 NAIC health risk-based capital report including overview and instructions for companies as of December 31, 2009," including the appendices and excluding the letter dated October 28, 2009 to health risk-based capital subscribers from Eva Yeung; the health risk-based capital newsletter, volume 12.1, dated July 2009; pages i and ii; and the health risk-based capital forecasting

spreadsheet instructions. (Authorized by K.S.A. 40-2d29; implementing K.S.A. 40-2d02(a) and 40-2d03(a); effective Dec. 28, 2001; amended July 5, 2002; amended Oct. 17, 2003; amended April 23, 2004; amended March 17, 2006; amended Dec. 1, 2008; amended Jan. 3, 2011.)

## Article 2.—LIFE INSURANCE

**40-2-28. Preneed insurance contracts; minimum standards for determining reserves.** The Kansas insurance department's "policy and procedure pertaining to preneed life insurance minimum standards for determining reserve liabilities and nonforfeiture values," except section 1, dated November 25, 2008, is hereby adopted by reference. (Authorized by K.S.A. 40-103 and K.S.A. 40-409; implementing K.S.A. 40-409; effective March 27, 2009.)

## Article 3.—FIRE AND CASUALTY INSURANCE

**40-3-30. Fire and casualty insurance; assigned risk plans; forms and procedures.** (a) Each insurance company authorized to transact fire and casualty business in this state shall inform its certified agents of the following:

(1) The Kansas assigned risk plans, their availability, eligibility, and other related procedures; and

(2) the location of forms necessary to place risks in the various Kansas assigned risk plans.

(b) All agents shall be informed of the assigned risk plans upon their initial appointment. All appointed agents shall be informed of the assigned risk plans at least annually.

(c) This regulation shall apply only to agents certified to write insurance for which a Kansas assigned risk plan is available. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-2102 and 40-2109; effective Jan. 1, 1969; amended May 1, 1979; amended May 1, 1986; amended Feb. 13, 2009.)

**40-3-33.** (Authorized by K.S.A. 40-103, 40-2116; implementing K.S.A. 40-2101; effective, E-69-3, Oct. 7, 1968; amended, E-69-5, Jan. 8, 1969; effective Jan. 1, 1970; amended, E-70-41, Sept. 1, 1970; amended Jan. 1, 1970; amended May 1, 1988; amended Nov. 29, 1993; amended July 30, 1999; revoked March 25, 2011.)

**40-3-43. Title insurance; controlled business; definitions; requirements.** (a) For purposes of K.S.A. 40-2404(14)(f) through (i) and amendments thereto, the following terms shall have the meanings specified in this subsection:

(1) "Closed title order" shall mean an order for which a policy or policies of title insurance have actually been issued.

(2) "Controlled business" shall mean any portion of a title insurer's or title agent's business in this state that was referred by any producer of title business if the producer of title business with a financial interest in the title insurer or title agent to which the business is referred initiates the referral.

(3) "Title insurance order" shall mean an order for an owner's title insurance policy or an order for a loan policy of title insurance, or both. Each pair of orders for an owner's title insurance policy and a loan policy of title insurance to be issued simultaneously for the same real estate transaction shall constitute one order. The policies of title insurance issued under this transaction shall constitute one closed title order only if both policies are issued by the same title insurer or title agency.

(b) Each title agent shall keep all records of escrow operations and escrow trust accounts for at least three years. (Authorized by K.S.A. 40-103, K.S.A. 40-1140, and K.S.A. 2009 Supp. 40-2404; implementing K.S.A. 40-1138 and K.S.A. 2009 Supp. 40-2404; effective, T-40-7-27-89, July 27, 1989; effective Sept. 11, 1989; amended March 10, 2006; amended Sept. 24, 2010.)

**40-3-56. Controlled insurance programs.** Each controlled insurance program providing coverage for general liability or workers compensation, or both, shall meet the following requirements:

(a) Establish a method for the quarterly reporting of the participant's respective claims details and loss information to that participant;

(b) provide that cancellation of any or all of the coverage provided to a participant before completion of work on the applicable project shall require the owner or contractor who establishes a controlled insurance program to either replace the insurance or pay the subcontractor's cost to do so;

(c) not charge enrolled participants who are not the sponsoring participants a deductible in excess of $2,500 per occurrence or a per claim assessment by the sponsor;

(d) keep self-insured retentions fully funded or collateralized by the owner or contractor establishing the controlled insurance program, except

that this subsection shall not apply to deductible programs;

(e) disclose specific requirements for safety or equipment before accepting bids from contractors and subcontractors on a construction project; and

(f) allow monetary fines for alleged safety violations to be assessed only by government agencies. (Authorized by K.S.A. 40-103 and 2009 HB 2214, sec. 3; implementing 2009 HB 2214, sec. 3; effective Oct. 30, 2009.)

**40-3-57. Controlled insurance programs including general liability.** Each controlled insurance program including general liability coverage for the participants shall require the following:

(a) Coverage for completed operations liability shall not, after substantial completion of a construction project, be canceled, lapse, or expire before the limitation on actions has expired as established by K.S.A. 60-513(b), and amendments thereto, but in no case more than 10 years. If another carrier takes responsibility for completed operations liability coverage, any and all prior completed operation liability carriers shall be released from completed operations liability unless specified otherwise in subsequent policies.

(b) General liability coverage shall not be required of project participants except for liabilities not arising on the site or sites of the construction project, and any coverage maintained by the participants shall cover liabilities not arising on the site or sites of the construction project.

(c) The general liability coverage provided to participants shall provide for severability of interest, except with respect to limits of liability, so that participants shall be treated as if separately covered under the policy.

(d) Participants shall be given the same shared limits of liability coverage as those that apply to the sponsoring participant under the controlled insurance program.

(e) Participants shall not be required to waive rights of recovery for claims covered by the controlled insurance program against another participant in the controlled insurance program covered by general liability insurance provided by the controlled insurance program. (Authorized by K.S.A. 40-103 and 2009 HB 2214, sec. 3; implementing 2009 HB 2214, sec. 3; effective Oct. 30, 2009.)

**40-3-58. Controlled insurance programs including workers compensation liabilities.** Each controlled insurance program including coverage for workers compensation liabilities of the participants shall require the following:

(a) Workers compensation coverage shall include all workers compensation for which payroll attributable to the contractual agreement has been reported and the premiums collected covering all services performed incidental to, arising out of, or emanating from the construction site or sites and the coming or going to or from the site or sites. Nothing in this regulation shall be construed to expand, reduce, or otherwise modify current statutory law, regulations, or judicial decisions regarding the scope of workers compensation obligations regarding off-site injuries. This regulation shall be limited to requiring that any controlled insurance program provide coverage for the work-related off-site injuries only to the extent that the injuries would otherwise be covered under existing law and regulations. This regulation shall be construed to require that any controlled insurance program provide coverage for work-related off-site injuries to the extent that the injuries would be covered under existing law as interpreted by the courts.

(b) Participants shall not be required to provide employment to a worker who has been injured on the job unless both of the following conditions are met:

(1) The worker's treating health care provider certifies that the worker is fit to perform the participant's work on the job site consistent with the treating physician's limitations.

(2) The employer has the preinjury job or modified work available. (Authorized by K.S.A. 40-103, 2009 HB 2214, sec. 3, and 2009 HB 2214, sec. 4; implementing 2009 HB 2214, sec. 3 and sec. 4; effective Oct. 30, 2009.)

## Article 4.—ACCIDENT AND HEALTH INSURANCE

**40-4-35. Medicare supplement policies; minimum standards; requirements.** (a) The Kansas insurance department's "policy and procedure to implement medicare supplement insurance minimum standards," including the appendices, dated May 28, 2009, is hereby adopted by reference, except for sections 1, 2, 25, and 26.

(b) This regulation shall supersede any other Kansas insurance department regulation to the extent that the other regulation or any provision of

it is inconsistent with or contrary to this regulation.

(c) If any provision of the document adopted in subsection (a) or the application of any provision of this document to any person or circumstance is for any reason deemed invalid, the remainder of this regulation and the application of the provision to other persons or circumstances shall not be affected. (Authorized by K.S.A. 40-103, K.S.A. 40-2221, and K.S.A. 40-2404a; implementing K.S.A. 2008 Supp. 40-2215, K.S.A. 40-2221, and K.S.A. 40-2403; effective May 1, 1982; amended May 1, 1984; amended May 1, 1986; effective, T-40-12-16-88, Dec. 16, 1988; amended, T-40-3-31-89, March 31, 1989; amended June 5, 1989; amended Oct. 15, 1990; amended April 1, 1992; amended May 24, 1996; amended, T-40-3-18-99, April 29, 1999; amended Aug. 20, 1999; amended Jan. 1, 2001; amended Sept. 7, 2001; amended Aug. 26, 2005; amended June 26, 2009.)

**40-4-36. Accident and sickness insurance; conversion policies; reasonable notice of right to convert.** (a) The requirements for reasonable notice by the insurer of the right to convert specified in K.S.A. 40-19c06, K.S.A. 40-2209, and K.S.A. 40-3209, and amendments thereto, shall be fulfilled if, during the 18-month continuation period, a form meeting the following requirements is transmitted to the person eligible for conversion:

(1) Describes the conversion options;

(2) describes the premiums or subscriber's charges for each option;

(3) provides instructions regarding the action required to effect conversion; and

(4) describes the availability of types of coverage through the Kansas health insurance association.

(b) Insurers may include provisions in their group policies, subscription agreements, and certificates of coverage that are necessary to identify or obtain identification of persons and events that would activate the continuation and conversion rights created by K.S.A. 40-19c06, K.S.A. 40-2209, and K.S.A. 40-3209, and amendments thereto. (Authorized by K.S.A. 40-103 and K.S.A. 2007 Supp. 40-2209, as amended by L. 2008, Ch. 164, §5; implementing K.S.A. 2007 Supp. 40-19c06, as amended by L. 2008, Ch. 164, §3, 40-2209, as amended by L. 2008, Ch. 164, §5, and 40-3209, as amended by L. 2008, Ch. 164, §7; effective, T-86-3, Jan. 9, 1985; effective May 1, 1985; amended May 1, 1986; amended May 29, 1998; amended April 25, 2003; amended Sept. 4, 2009.)

**40-4-37v. Long-term care; agent training.** (a) On and after July 1, 2010, each licensed insurance agent who is an individual and who sells, solicits, or negotiates a long-term care partnership program policy shall have four hours of initial training in courses certified by the commissioner of insurance as long-term care partnership program training. For each biennium after obtaining the initial training, each licensed insurance agent who is an individual and who sells, solicits, or negotiates a long-term care partnership program policy shall obtain at least one hour of training in any course certified by the commissioner of insurance as long-term care partnership program training.

(b) The number of hours required by this regulation may be used to meet the requirements of K.S.A. 40-4903, and amendments thereto, if the training is submitted to and approved by the commissioner of insurance for continuing education credit. (Authorized by K.S.A. 2008 Supp. 40-2137; implementing K.S.A. 2008 Supp. 40-2136; effective May 29, 2009.)

**40-4-43. Hospital, medical, and surgical expense insurance policies and certificates; prohibiting certain types of discrimination.** (a) A hospital, medical, or surgical expense policy or certificate issued by an insurance company, nonprofit health service corporation, nonprofit medical and hospital service corporation, or health maintenance organization shall not be delivered or issued for delivery in this state on an individual, group, blanket, franchise, or association basis if the amount of benefits payable or a term, condition, or type of coverage is or could be restricted, modified, excluded, or reduced on the basis of whether both of the following conditions are met:

(1) The insured or prospective insured has been diagnosed with cancer and accepted into a phase I, phase II, phase III, or phase IV clinical trial for cancer.

(2) The treating physician who is providing covered health care services to the insured recommends participation in the clinical trial after determining that participation in the clinical trial has a meaningful potential to benefit the insured.

(b) Each policy or certificate covered by this regulation shall provide coverage for all routine

patient care costs associated with the provision of health care services, including drugs, items, devices, treatments, diagnostics, and services that would otherwise be covered under the insurance policy or certificate if those drugs, items, devices, treatments, diagnostics, and services were not provided in connection with an approved clinical trial program, including health care services typically provided to patients not participating in a clinical trial.

(c) For purposes of this regulation, "routine patient care costs" shall not include the costs associated with the provision of any of the following:

(1) Drugs or devices that have not been approved by the federal food and drug administration and that are associated with the clinical trial;

(2) services other than health care services, including travel, housing, companion expenses, and other nonclinical expenses, that an insured could require as a result of the treatment being provided for purposes of the clinical trial;

(3) any item or service that is provided solely to satisfy data collection and analysis needs and that is not used in the clinical management of the patient;

(4) health care services that, except for the fact that they are being provided in a clinical trial, are otherwise specifically excluded from coverage under the insured's hospital, medical, or surgical expense policy or certificate; or

(5) health care services customarily provided by the research sponsors of a trial free of charge for any insured in the trial.

(d) This regulation shall not apply if the amount of benefits, the terms, the conditions, or the type of coverage varies as a result of the application of permissible rate differentials or as a result of negotiations between the insurer and insured. (Authorized by K.S.A. 40-103 and K.S.A. 40-2404a; implementing K.S.A. 2009 Supp. 40-2404(7); effective June 4, 2010.)

## Article 7.—AGENTS

**40-7-20a. Agents; continuing education; approval of courses; requirements.** (a) Definitions. For the purposes of this regulation, the following definitions shall apply:

(1) "Coordinator" means an individual who is responsible for monitoring continuing education offerings.

(2) "Course" means a series of lectures or lessons that deals with a particular subject following a prearranged agenda or study plan and that may culminate in a written examination.

(3) "Instructor" means an individual lecturing in a continuing education offering.

(4) "Licensee," "licensed agent," and "agent" mean a natural person licensed by this state as an agent.

(5) "Person" means a natural person, firm, institution, partnership, corporation, or association.

(6) "Provider" and "providing organization" mean a person or firm offering or providing insurance education.

(7) "Self-study courses" means courses that are primarily delivered or conducted in other than a classroom setting or with on-site instruction and are designed to be completed independently by the student.

(b) General requirements.

(1) Only courses that impart substantive and procedural knowledge relating to insurance and are beneficial to the insuring public after initial licensing shall be approved for credit. Approved courses shall be classified as life, health, and variable contracts courses; property and casualty courses; general courses; ethics courses; or general management courses. Credit earned from general courses, ethics courses, or general management courses shall be acceptable in meeting the requirements for the property and casualty insurance or the life and health insurance license classifications.

(2) Courses of the following types shall not meet the basic criteria for approvable courses described in paragraph (1) of this subsection:

(A) Courses designed to prepare students for a license examination;

(B) courses in mechanical office skills, including typing, speed reading, and the use of calculators or other machines or equipment; and

(C) courses in sales promotion, including meetings held in conjunction with the general business of the licensee.

(3)(A) Each licensee shall attend a course in its entirety in order to receive full credit.

(B) Upon completion of each approved course, the student shall receive credit for the number of hours approved for the course, which shall be equivalent to one hour of credit for each hour of instruction.

(C) If the number of credit hours for which a course is approved is fewer than the total number of hours of the course presentation, the student

shall attend the entire course in order to receive credit for the number of approved hours.

(D) The number of approved hours shall not include time spent on introductions, breaks, or other activities not directly related to approved educational information or material.

(E) Neither a student nor an instructor shall earn full credit for attending or instructing any subsequent offering of the same course in the current biennial license period after attending or teaching the course.

(4) Course examinations shall not be required for approval of continuing education courses except self-study courses.

(5) Each provider shall submit proposed courses to the commissioner or the commissioner's designee for preapproval at least 30 days before the date on which the course is to be held.

(6) An advertisement shall not state or imply that a course has been approved by the commissioner or the commissioner's designee unless written confirmation of this approval has been received by the provider or the course is advertised as having approval pending.

(7) If approval has been granted for the initial offering of a course, approval for subsequent offerings not disclosed in the initial submission may be obtained by providing written notification to the commissioner or the commissioner's designee at least 30 days before the date the program is to be held, indicating that no change has been made in the course and specifying the additional times and places the course will be presented.

(8) The provider shall submit all fees required for individual course approval with the course submission. If the provider elects to pay the prescribed fee for all courses, the provider shall pay the fee annually and shall submit the fee with the first course submission each year.

(9) Each course of study, except self-study courses, shall be conducted in a classroom or other facility that comfortably accommodates the faculty and the number of students enrolled. The provider may limit the number of students enrolled in a course.

(10)(A) Each successfully completed course leading to a nationally or regionally recognized designation shall receive credit as approved by the commissioner or the commissioner's designee.

(B) Any agent attending at least 80 but less than 100 percent of regularly scheduled classroom sessions for any single course may receive full educational credit if the course is filed as a formal classroom course. This credit may be earned to the extent that adequate records are maintained and appropriate certification of such attendance is provided by the course instructor.

(11)(A) The amount of credit received by an agent for a self-study course shall be based upon successful completion of the course and an independently monitored examination subject to the number of hours assigned by the commissioner or the commissioner's designee.

(B) Examination monitors shall not be affiliated in any way with the providing organization or the licensee and shall be subject to approval by the commissioner or the commissioner's designee. Each examination utilized or to be utilized shall be included in the material submitted for course approval. No examination shall be approved unless the commissioner is satisfied that security procedures protecting the integrity of the examination can be maintained. If security is compromised, no credit shall be granted.

(C) Each provider of self-study courses shall clearly disclose to any agent wishing to receive credit in Kansas the number of hours for which that particular course has been approved by the commissioner or the commissioner's designee.

(D) Each self-study course provided online shall meet the following requirements:

(i) Require the agent to enroll and pay for the course before having access to the course materials;

(ii) prevent access to the course exam before review of the course materials;

(iii) prevent the downloading of any course exam;

(iv) provide review questions at the end of each unit or chapter and prevent access to the following unit or chapter until the review questions after the previous unit or chapter have been correctly answered;

(v) provide exam questions that do not duplicate unit review questions;

(vi) prevent alternately accessing course materials and course exams; and

(vii) prevent the issuance of a monitor affidavit until the course and course examination are successfully completed.

(c) Each licensee or provider found to have falsified a continuing education report to the commissioner shall be subject to suspension or revocation of the licensee's or provider's insurance li-

cense in accordance with K.S.A. 40-4909 and amendments thereto, a penalty as prescribed in K.S.A. 40-254 and amendments thereto, or termination of approval as a provider.

(d) Course requirements.

(1) Each course of study shall have a coordinator who is responsible for supervising the course and ensuring compliance with the statutes and regulations governing the offering of insurance continuing education courses.

(2)(A) Each provider and each providing organization shall maintain accurate records relating to course offerings, instructors, and student attendance. If the coordinator leaves the employ of the provider or otherwise ceases to monitor continuing education offerings, the records shall be transferred to the replacement coordinator or an officer of the provider. If a provider ceases operations, the coordinator shall maintain the records or provide a custodian of the records acceptable to the commissioner. In order to be acceptable, a custodian shall agree to make copies of student records available to students free of charge or at a reasonable fee. The custodian of the records shall not be the commissioner, under any circumstances.

(B) Each provider shall provide students with course completion certificates, in a manner prescribed or approved by the commissioner, within 30 days after completion of the course. A provider may require payment of the course tuition as a condition for receiving the course completion certificate.

(3) Each instructor shall possess at least one of the following qualifications:

(A) Recent experience in the subject area being taught; or

(B) an appropriate professional designation in the area being taught.

(4) Each instructor shall perform the following:

(A) Comply with all laws and regulations pertaining to insurance continuing education;

(B) provide the students with current and accurate information;

(C) maintain an atmosphere conducive to learning in a classroom; and

(D) provide assistance to the students and respond to questions relating to course material.

(5) Each provider, coordinator, and instructor shall notify the commissioner within 10 days after the occurrence of any of the following:

(A) A felony or misdemeanor conviction or disciplinary action taken against a provider or against an insurance or other occupational license held by the coordinator or instructor; and

(B) any change of information contained in an application for course approval.

(e) Licensee reporting requirement.

(1) Each licensee shall report continuing education credit on forms and in a manner prescribed by the commissioner. Each course shall be completed or attended during the reporting period for which the credit hours are to be applied.

(2) Each request for an extension permitted by K.S.A. 40-4903 and amendments thereto shall be submitted in writing not later than the reporting deadline and shall include an explanation and independent verification of the hardship. (Authorized by K.S.A. 40-103 and K.S.A. 2008 Supp. 40-4916; implementing K.S.A. 2008 Supp. 40-4903; effective May 15, 1989; amended, T-40-8-28-90, Aug. 30, 1990; amended Oct. 15, 1990; amended Feb. 8, 1993; amended April 11, 1997; amended Feb. 9, 2007; amended May 22, 2009.)

**40-7-26. Public adjuster; examinations.** (a) The public adjuster licensing examination shall test the applicant's knowledge in the following areas:

(1) The laws of Kansas, including the following:

(A) The pertinent provisions of the statutes of Kansas; and

(B) the regulations of the insurance department;

(2) duties and responsibilities of a public adjuster; and

(3) basic insurance.

(b) Each applicant shall be required to score at least 70 percent on the examination, unless the applicant is exempt.

(c) Each applicant shall be advised of eligibility to take the examination by the commissioner or the commissioner's designee, unless the applicant is exempt. (Authorized by K.S.A. 40-103, K.S.A. 2009 Supp. 40-5506, and K.S.A. 2009 Supp. 40-5518; implementing K.S.A. 2009 Supp. 40-5506 and K.S.A. 2009 Supp. 40-5507; effective Jan. 3, 2011.)

**40-7-27. Public adjuster; reporting requirements.** Each person licensed in this state as a public adjuster shall report the following to the commissioner of insurance:

(a) Each change in the information submitted

on the application within 30 days of the change pursuant to K.S.A. 40-5509 and amendments thereto, including the following:

(1) Each change in the public adjuster's name. If the change of name is effected by court order, a copy of the court order shall be furnished to the commissioner of insurance;

(2) each change in the public adjuster's residential and mailing addresses; and

(3) each judgment or injunction entered against the licensee on the basis of conduct involving fraud, deceit, misrepresentation, or a violation of any insurance law; and

(b) each legal action pursuant to K.S.A. 40-5517 and amendments thereto, including the following:

(1) Each administrative action within 30 days of final disposition, including the following:

(A) Each action taken against the public adjuster's license or licenses by the insurance regulatory agency of any other state or any territory of the United States; and

(B) each action taken against an occupational license held by the licensee, other than a public adjuster's license, by the appropriate regulatory authority of this or any other jurisdiction; and

(2) the details of each criminal prosecution, other than minor traffic violations, within 30 days of the initial pretrial hearing date for any felony offense and the first appearance date for any misdemeanor offense. The details shall include the name of the arresting agency, the location and date of the arrest, the nature of the charge or charges, the court where the case was filed, the judge assigned to the case, and the disposition of the charges. (Authorized by K.S.A. 40-103 and K.S.A. 2009 Supp. 40-5518; implementing K.S.A. 2009 Supp. 40-5509 and K.S.A. 2009 Supp. 40-5517; effective Jan. 3, 2011.)

## Artice 9.—ADVERTISING

**40-9-23. Insurance companies; advertising; senior-specific certifications and professional designations.** The Kansas insurance department's "policy and procedure for use of senior-specific certifications and professional designations in the sale of life insurance annuities," dated August 25, 2010, is hereby adopted by reference. (Authorized by K.S.A. 40-103 and K.S.A. 40-2404a; implementing K.S.A. 2009 Supp. 40-2404; effective Jan. 14, 2011.)

## Article 10.—FIREFIGHTER'S RELIEF FUND TAX

**40-10-16. Firefighters relief act; fund allocation.** (a) The annual redetermination allocation shall be calculated using a formula based on the population and the assessed tangible property valuation of the area served by the association that requests redetermination in relation to the population and the assessed tangible property valuation of the state. The assessed tangible property valuation of the area served by the association and the state to be used in the formula shall be as reported by the Kansas department of revenue's statistical report of property assessment and taxation for the year during which redetermination is requested. The populations of the area served by the association and the state to be used in the formula shall be those population totals certified by the Kansas secretary of state for the year during which redetermination is requested.

(b) The following formula shall be used to calculate a new base allocation percentage for the association that requests redetermination:

(1) The assessed tangible property valuation of the area served by the association shall be divided by the assessed tangible property valuation of the state, and the quotient shall be divided by two to form one-half of the new base allocation percentage.

(2) The population of the area served by the association shall be divided by the population of the state, and the quotient shall be divided by two to form the second half of the new base allocation percentage.

(3) The sum of the amounts calculated in paragraphs (b)(1) and (2) shall be the new base allocation percentage for the association.

(c) The next distribution of firefighters relief funds following a redetermination shall be computed as follows:

(1) The new base allocation percentage for each association that was redetermined shall be added to the new base allocation percentage of any associations eligible for the distribution that were new or merged since the last distribution and the prior year's allocation percentage for all other active associations.

(2) The sum computed in paragraph (c)(1) shall be divided into 100.

(3) The quotient computed in paragraph (c)(2) shall be multiplied by each new base allocation

percentage for associations that were redetermined, new, or merged in the prior year and each prior year's allocation percentage for other associations to receive distributions so that the total of all percentages of associations eligible for the distribution equals 100.

(d) The allocation formula prescribed by this regulation shall also be used when distributions are determined for new or merged associations. Any association that has failed to qualify for funds for two consecutive years may resume participation as a new association by submitting the information required by K.A.R. 40-10-2(d) and K.S.A. 40-1706(a), and amendments thereto. (Authorized by K.S.A. 40-1707(g); implementing K.S.A. 2010 Supp. 40-1706; effective May 27, 2011.)

# Agency 48

# Department of Labor—Employment Security Board of Review

**Editor's Note:**
The Kansas Department of Human Resources was renamed the Kansas Department of Labor by Executive Reorganization Order No. 31. See L. 2004, Ch. 191.

**Editor's Note:**
Formerly referred to as Board of Review—Labor.

*Articles*


48-1. APPELLATE PROCEDURE.
48-2. BOARD: ORGANIZATION AND PROCEDURE.
48-3. APPEALS.
48-4. FILING APPEALS.


## Article 1.—APPELLATE PROCEDURE

**48-1-1. Filing of appeal.** Each party appealing from a decision of an examiner or referee shall file with any representative of the division of employment a written notice of appeal stating the reasons for the appeal. (Authorized by K.S.A. 2008 Supp. 44-709(g); implementing K.S.A. 2008 Supp. 44-709(b) and (c); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; amended Jan. 22, 2010.)

**48-1-2. Notice of hearing.** Upon the scheduling of a hearing on an appeal, notice of hearing on a form approved by the board of review and titled notice of hearing shall be mailed by the office of appeals to the last known address of the claimant, employer, and other interested parties, at least five days before the date of hearing. The notice shall specify the time and place of the hearing, issues to be decided, and an indication of whether the hearing will be by telephone or in person. (Authorized by K.S.A. 2008 Supp. 44-709(g); implementing K.S.A. 2008 Supp. 44-709(c) and (k); effective Jan. 1, 1966; amended Jan. 1, 1971; amended Jan. 22, 2010.)

**48-1-3. Disqualification of referees.** No referee shall participate in the hearing of an appeal in which the referee has an interest. All challenges to the interest of any referee shall be made to the referee on or before the date set for the hearing unless good cause is shown for later challenges. Each challenge to the interest of a referee shall be heard and decided immediately by the referee or, at the referee's discretion, referred to the board of review. If the challenge is not heard immediately or is referred to the board of review, the hearing of the appeal shall be continued until the disposition of the challenge. The referee shall cause all parties to be notified of the new date set for the hearing by mailing a notice to the last known address of all parties to the appeal at least five days before the date set for the hearing. (Authorized by K.S.A. 2008 Supp. 44-709(g); implementing K.S.A. 2008 Supp. 44-709(d); effective Jan. 1, 1966; amended May 1, 1980; amended Jan. 22, 2010.)

**48-1-4. Conduct of hearing.** (a) (1) Each hearing shall be conducted informally and in such a manner as to ascertain all of the facts and the full rights of the parties.

(2) The referee shall receive evidence logically tending to prove or disprove a given fact in issue, including hearsay evidence and irrespective of common law rules of evidence. Hearsay evidence shall be admissible but carries less weight than direct evidence and shall not be persuasive if the other party contests its admissibility. Each party submitting its evidence shall explain its relevance to the issue in question before the referee admits the evidence into the record. The claimant and any other party to an appeal before a referee shall

present pertinent evidence regarding the issues involved.

(3) Uncorroborated hearsay evidence shall not solely support a finding of fact or decision.

(4) If any evidence is unnecessarily cumulative in effect or evidence neither proves nor disproves relevant facts in issue, the referee shall, on objection of appellant, claimant, or interested party or on that individual's own motion, exclude or prohibit any of this evidence from being received.

(b) When a party appears in person or by telephone, the referee shall examine the party and the party's witnesses, if any, to the extent necessary to ascertain all of the facts. During the hearing of any appeal, the referee shall, with or without notice to either of the parties, take any additional evidence deemed necessary to determine the issues identified in the notice of hearing. If during the hearing a party raises an issue not identified in the notice of hearing, the referee shall not determine that issue or consider any evidence in support of that issue unless the other party consents to the referee's deciding that issue.

(c) The parties to an appeal, with the consent of the referee, may stipulate in writing or under oath at the hearing as to the facts involved.

(d) The referee shall record the hearing by use of a recording device or a court reporter. The recording shall constitute the official record. Other recording devices or methods shall not be allowed in the hearing.

(e) (1) Hearings may be conducted in person or by telephone, subject to the following requirements:

(A) The hearing shall be conducted by telephone if none of the parties requests an in-person hearing.

(B) If only one party requests an in-person hearing, the referee shall have the discretion of requiring all parties to appear in person or allow the party not requesting an in-person hearing to appear by telephone.

(C) If all the parties involved request an in-person hearing before the date of a scheduled telephone hearing, the matter shall be continued and set for an in-person hearing.

(D) The party requesting the in-person hearing shall be deemed to have agreed that the hearing will be scheduled at a time and geographic location to be determined by the office of appeals and shall be deemed to have agreed to a delay of the hearing to accommodate scheduling of the hearing.

(E) An in-person hearing shall be held if deemed necessary by the secretary of labor or the secretary's designee for the fair disposition of the appeal.

(2) Each hearing scheduled in person or by telephone shall meet these requirements:

(A) Permit confrontation and cross-examination of the parties and witnesses; and

(B) permit the simultaneous participation of all parties.

(3) An authorized representative or an attorney representing a party may appear by telephone at a geographic location different from that of the party represented.

(4) Documentary evidence shall be submitted no later than 1:00 p.m. on the business day before the hearing by mail or fax to the referee and opposing party. However, the referee shall allow the submission of documentary evidence at the hearing or after the hearing, if to do so is necessary for the fair disposition of the appeal and the party attempting to introduce the evidence shows to the referee's satisfaction there was good cause for not submitting the evidence in advance of the hearing.

(f) If a party appears by telephone, the party shall call as instructed by the notice of hearing no later than 1:00 p.m. on the business day before the scheduled hearing to give the telephone number at which the party and any witness can be contacted by the referee at the time of the hearing. If the hearing is continued, the referee shall contact the parties and any witnesses at the telephone numbers provided for the original hearing. If a party or witness cannot be contacted at the telephone number originally given, the party shall call the office of appeals no later than 1:00 p.m. on the regular business day before the date on which the hearing is to be continued and shall give the telephone number at which the party and any witness can be contacted. Unless good cause is shown to the referee, failure to provide the telephone numbers as required by this subsection shall constitute a nonappearance, and the hearing shall proceed as scheduled without the participation of the party or witness.

(g) The appearance of a party or witness by cellular or mobile telephone shall be permitted. However, the referee shall allow the appearance of a party or witness by cellular or mobile telephone only if the use is under safe conditions. If the referee determines that the party or witness is not using the cellular or mobile telephone under safe conditions, the referee may stop the hearing

and continue the hearing until the party or witness can participate safely. The unsafe use of a cellular or mobile telephone shall include driving a vehicle or operating any sort of mechanical device while participating in the hearing.

If the transmission of the cellular or mobile telephone is disrupted, causing the call to be dropped or making it difficult for the referee to hear the party's or witness's testimony or speak to the party or witness, the hearing shall proceed without the participation of the party or witness. If the hearing proceeds, the inability of the party or witness to participate shall be considered a nonappearance for the purpose of rendering a decision based on the merits of the case.

(h) If the ability of a party or witness to participate in a hearing before a referee or the board of review is impaired because of a disability or difficulty with the English language, the party shall contact the office of appeals for assistance and information about a qualified interpreter. The use of a personal interpreter for the purposes of presenting the party's argument and evidence and examining witnesses shall not be allowed. The only interpreter permitted to give assistance to a party or a witness in the hearing shall be an interpreter approved by the office of appeals.

(i) All parties and witnesses shall testify under oath and be subject to the provisions of K.S.A. 44-719, and amendments thereto.

(j) (1) After making reasonable attempts allowable by the circumstances to secure the presence of a witness or to obtain copies of documents in the possession of the other party or third parties, a party may request the issuance of a subpoena for a witness or documents by submitting a written request to the office of appeals. The request shall contain the correct name and address of each witness to be subpoenaed. If the subpoena is for documents, the documents shall be described to make them reasonably identifiable, and the request shall include the name of the party in possession of those documents.

(2) The referee shall exercise discretion in determining whether the party requesting the subpoena has made reasonable attempts as allowed by the circumstances to secure the presence of a witness or obtain the documents sought without the use of a subpoena. If, in the opinion of the referee, the requesting party has not made reasonable efforts, the request shall be denied and the matter shall be set for a hearing.

(3) The referee shall reschedule a hearing if a subpoena cannot be effectively served in accordance with the service requirements of K.S.A. 44-714(h) and amendments thereto. (Authorized by K.S.A. 2008 Supp. 44-709(g) and K.S.A. 2008 Supp. 44-714(g); implementing K.S.A. 2008 Supp. 44-709(c) and (k), K.S.A. 2008 Supp. 44-714(h), and K.S.A. 2008 Supp. 44-719; effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; amended May 1, 1987; amended May 22, 1998; amended Jan. 22, 2010.)

**48-1-5. Continuance of hearings; withdrawal of appeal.** The referee may continue any hearing upon the referee's own motion or upon written application of any party to the appeal submitted to the referee no later than 1:00 p.m. on the business day before the hearing. If a party believes that the party needs additional time beyond what is scheduled for the hearing, the party shall notify the referee of the need for allocating additional time for the hearing no later than 1:00 p.m. on the business day before the hearing. The referee shall exercise discretion whether to grant a party's request for a longer hearing than originally scheduled. (a) Failure to appear. If the appellant or any other party fails to appear at any hearing, the referee shall make a decision based on the record at hand. If the nonappearing party within 10 days following the mailing of the decision petitions the referee for a hearing and shows good cause for the nonappearance, the referee shall set aside the decision and reschedule the matter for hearing.

(b) Notice of continuance. The referee shall cause notices to be mailed to the last known address of all interested parties to the appeal wherever there is a continuance.

(c) Withdrawal of appeal. An appellant, with the consent of the referee, may withdraw an appeal in writing or under oath at the hearing. (Authorized by K.S.A. 2008 Supp. 44-709(g); implementing K.S.A. 2008 Supp. 44-709(c) and (g); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; amended Jan. 22, 2010.)

**48-1-6. Determination of appeal.** After the hearing of an appeal, the referee shall, within a reasonable time, announce findings of fact and the decision with respect to the appeal. The decision shall be in writing and shall be signed by the referee. The referee shall set forth findings of fact with respect to the matters of appeal, the decision, and the reasons for the decision. (a) Copies of all decisions shall be mailed by the referee to

the last known address of the claimant, employer, and all other interested parties to the appeal.

(b) All decisions shall contain the appeal rights of the parties. (Authorized by K.S.A. 2008 Supp. 44-709(g); implementing K.S.A. 2008 Supp. 44-709(c); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; amended Jan. 22, 2010.)

## Article 2.—BOARD: ORGANIZATION AND PROCEDURE

**48-2-1. Creation and organization.** Election of officers. The board of review shall annually in July elect one of its members chairperson. A vice chairperson and the officers shall serve for one year and until a successor is elected. (Authorized by K.S.A. 2008 Supp. 44-709(g); implementing K.S.A. 2008 Supp. 44-709(f); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; amended Jan. 22, 2010.)

**48-2-2. Filing of appeal to the board of review.** Each party appealing from a decision of a referee shall file with any representative of the division of employment a written notice of appeal within the period the law allows, stating the reasons for the appeal. Copies of the notice of appeal shall be mailed by the division of employment to the last known address of all parties interested in the decision of the referee that is being appealed. (Authorized by K.S.A. 2008 Supp. 44-709(g); implementing K.S.A. 2008 Supp. 44-709(c) and (f); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; amended Jan. 22, 2010.)

**48-2-3. Hearing of appeals.** The board of review shall accept appeals that have an appealable issue from any referee decision that has been timely filed. The board's decision on the merits shall be based upon the evidence and the record made before the referee and any additional evidence that the board directs to be taken. (Authorized by K.S.A. 2008 Supp. 44-709(g); implementing K.S.A. 2008 Supp. 44-709(c) and (f); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; amended Jan. 22, 2010.)

**48-2-4. Additional evidence.** The board of review shall, at its discretion, remand any claim or any issue involved in a claim to a referee or special hearing officer for the taking of any additional evidence that the board of review deems necessary. The evidence shall be taken before the referee or special hearing officer in the manner prescribed for hearings before the referee. (Authorized by K.S.A. 2008 Supp. 44-709(g); implementing K.S.A. 2008 Supp. 44-709(f); effective Jan. 1, 1966; amended May 1, 1980; amended Jan. 22, 2010.)

**48-2-5. Decision of the board of review.** The board of review shall within a reasonable time announce its findings of fact and decision with respect to each appeal. The decision shall be in writing and signed by those members who concur with the decision. If the decision is not unanimous, the decision of the majority shall control. The minority opinion, including any written dissent, shall be made a part of the record. Copies of all decisions of the board of review shall be mailed to the last known address of the parties to the appeal. All decisions shall inform the parties of their appeal rights. (Authorized by K.S.A. 2008 Supp. 44-709(g); implementing K.S.A. 2008 Supp. 44-709(f) and (i); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; amended Jan. 22, 2010.)

## Article 3.—APPEALS

**48-3-1. Witnesses.** Each witness subpoenaed for any hearing before a referee or special hearing officer shall be paid pursuant to K.S.A. 28-125 and K.S.A. 75-3203 and amendments thereto. (Authorized by K.S.A. 2008 Supp. 44-709(g); implementing K.S.A. 2008 Supp. 44-709(h); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; amended Jan. 22, 2010.)

**48-3-2. Representation before referee and board of review.** (a) Appearance in person. The parties may appear in person and by an attorney or by an authorized representative.

(b) Representation by attorney. A party to the proceeding may be represented by an attorney who is regularly admitted to practice before the supreme court of Kansas, or by any attorney from without the state who complies with the provisions of Kansas Supreme Court rule 116. Each attorney representing a party before a referee shall file an entry of appearance with the referee before the hearing begins. Each attorney who did not represent a party before the referee but is representing a party before the board of review shall file an entry of appearance with the board of review.

(c) Representation by an authorized representative.

(1) Any party may be represented by an authorized representative. For the purpose of this article, an authorized representative shall mean any of the following:

(A) A union representative;

(B) an employee of an unemployment compensation cost-control management firm;

(C) an employee of a corporate party; or

(D) a legal intern authorized to represent clients pursuant to the provisions of Kansas Supreme Court rule 719.

(2) A referee or the board of review may limit or disallow participation in a hearing by an authorized representative under either of the following circumstances:

(A) The representative does not effectively aid in the presentation of the represented party's case.

(B) The representative delays the orderly progression of the hearing.

(d) Standards of conduct. A referee or the board of review may exclude a party, witness, or a party's representative from participation in the hearing or may terminate the hearing and issue a decision based upon the available evidence if a party or a party's representative intentionally and repeatedly fails to observe the provisions of the Kansas employment security law, the regulations of the secretary of labor or the board of review, or the instructions of a referee or the board of review.

(e) Fees. No fees shall be charged or received for the representation of an individual claiming unemployment benefits until the fees have been approved in accordance with K.S.A. 44-718(b) and amendments thereto. (Authorized by K.S.A. 2008 Supp. 44-709(g); implementing K.S.A. 2008 Supp. 44-709(c) and (k); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; amended May 1, 1987; amended Jan. 22, 2010.)

**48-3-4. Service of notice.** Notice of all hearings or proceedings required by this article shall, unless otherwise provided, be given by mail to the last known address of the parties and other interested parties. (Authorized by and implementing K.S.A. 2008 Supp. 44-709(g); effective Jan. 1, 1966; amended Jan. 22, 2010.)

**48-3-5. Disqualification of board members.** No member of the board of review shall participate in the consideration of any case in which the member has an interest. (Authorized by and implementing K.S.A. 2008 Supp. 44-709(g); effective Jan. 1, 1966; amended May 1, 1980; amended Jan. 22, 2010.)

## Article 4.—FILING APPEALS

**48-4-1. Notice of appeal; when filed.** Each notice of appeal filed in person shall be considered filed on the date delivered to any employee or representative of the division of employment. Each notice of appeal filed by mail shall be considered filed on the date postmarked. If the postmark on the envelope is illegible or is missing, the appeal filed by mail shall be considered filed on the date received by the agency less a calculated time reasonably expected to elapse enroute between the place of mailing and the place of delivery, but in no case less than three days. (Authorized by K.S.A. 2008 Supp. 44-709(g); implementing K.S.A. 2008 Supp. 44-709(b) and (c); effective Jan. 1, 1967; amended, E-70-32, July 1, 1970; amended Jan. 1, 1971; amended May 1, 1980; amended Jan. 22, 2010.)

**48-4-2. Constructive filing.** A notice of appeal not filed on time as prescribed by K.S.A. 44-709, and amendments thereto, and these regulations may be considered timely filed if the referee or the board of review finds that the party appealing failed to file a timely appeal because of excusable neglect. (Authorized by and implementing K.S.A. 2008 Supp. 44-709(g); effective, E-70-32, July 1, 1970; effective Jan. 1, 1971; amended Jan. 1, 1974; amended May 1, 1980; amended Jan. 22, 2010.)

# Agency 49
# Department of Labor

**Editor's Note:**
The Kansas Department of Human Resources was renamed the Kansas Department of Labor by Executive Reorganization Order No. 31. See L. 2004, Ch. 191.

**Editor's Note:**
This agency was formerly entitled "Labor Department." The Labor Department was reorganized into the Department of Human Resources by Executive Reorganization Order No. 14, see L. 1976, ch. 354.

*Articles*

49-55. AMUSEMENT RIDE REGULATIONS.

## Article 55.—AMUSEMENT RIDE REGULATIONS

**49-55-1. Applicability.** Unless exempted by the act, this article shall apply to all permanent amusement rides and temporary amusement rides within the state. (Authorized by and implementing L. 2009, ch. 71, sec. 3; effective May 28, 2010.)

**49-55-2. Definitions.** (a) "Act" means the Kansas amusement ride act and amendments thereto.

(b) "Amusement ride records" means the following:

(1) The current certification of an inspector's qualifications to inspect amusement rides;

(2) the current certificate of inspection signed by a qualified inspector;

(3) the current maintenance and inspection records;

(4) the current results of nondestructive testing;

(5) each amusement ride manufacturer's operational manual;

(6) each amusement ride manufacturer's nondestructive testing recommendations; and

(7) each amusement ride manufacturer's inspection guidelines.

(c) "Permanent amusement ride" means an amusement ride, as defined in K.S.A. 44-1601 and amendments thereto, that the owner permanently affixed to the real estate where the amusement ride is operated. A permanent amusement ride is not capable of being transported from one location to another without significant physical alteration of the location and the amusement ride.

(d) "Self-inspection," within the act and these regulations, means that the operator or owner of an amusement ride causes the inspection of the amusement ride by a qualified inspector without using the services of a third-party inspector.

(e) "Temporary amusement ride" means an amusement ride, as defined in K.S.A. 44-1601 and amendments thereto, that the owner can move from location to location without significant physical alteration of the location and the amusement ride. A temporary amusement ride has wheels affixed or can be transported on a trailer or other moving apparatus. (Authorized by and implementing L. 2009, ch.71, sec. 3; effective May 28, 2010.)

**49-55-3. Approved inspector certification program.** To be considered a qualified inspector, the person shall hold a current certification at level one, or higher, that is issued by the national association of amusement ride safety officials (NAARSO). (Authorized by K.S.A. 2009 Supp. 44-1614; implementing K.S.A. 2009 Supp. 44-1602; effective May 28, 2010.)

**49-55-4. Inspection certification.** Each individual performing any inspections shall possess a NAARSO level one, or higher, certification. (Authorized by L. 2009, ch. 71, sec. 3; implementing K.S.A. 2008 Supp. 44-1602; effective May 28, 2010.)

**49-55-5. Nondestructive testing of amusement rides.** (a) The owner of each amusement ride, before operating the amusement ride, shall conduct a nondestructive test of the amusement ride in accordance with the following:

(1) The manufacturer's recommendations; and

(2) sections 7.2.1, 7.2.3, and 8 of the "standard

guide for testing performance of amusement rides and devices," F 846-92, as reapproved by the American society for testing and materials (ASTM) international in 2009, which are hereby adopted by reference.

(b) At a minimum, each owner shall conduct a nondestructive test every 30 days on each temporary amusement ride and once a year on each permanent amusement ride. (Authorized by L. 2009, ch. 71, sec. 3 and K.S.A. 2008 Supp. 44-1602; implementing K.S.A. 2008 Supp. 44-1604; effective May 28, 2010.)

**49-55-6. Record retention.** The owner of each amusement ride shall retain all amusement ride records as specified in K.A.R. 49-55-2(b) for a period of one year, which shall be grouped according to ride. The owner shall retain all amusement ride records at the location of the amusement ride's operation. The records shall be accessible upon request by the department and each person who contracts with the owner for the amusement ride's operation. (Authorized by L. 2009, ch. 71, sec. 3; implementing K.S.A. 2008 Supp. 44-1602, K.S.A. 2008 Supp. 44-1603, and K.S.A. 2008 Supp. 44-1605; effective May 28, 2010.)

**49-55-7. Location of evidence of inspection.** The owner of each amusement ride shall affix a copy of the current inspection results under a weatherproof covering in a conspicuous location on the amusement ride so that each patron can see the results before boarding the amusement ride. (Authorized by L. 2009, ch. 71, sec. 3; implementing K.S.A. 2008 Supp. 44-1602; effective May 28, 2010.)

**49-55-8. Procedure for selection of an amusement ride for records audit.** Amusement rides shall be randomly selected each quarter by the department for records audit by location. A permanent amusement ride shall not be subject to more than two records audits during the six-month period from the date of the last records audit. A temporary amusement ride shall not be subject to more than one records audit at the same location. (Authorized by L. 2009, ch. 71, sec. 3; implementing K.S.A. 2008 Supp. 44-1602; effective May 28, 2010.)

**49-55-9. Location of safety instructions.** The owner shall affix the safety instructions for each amusement ride in a conspicuous location under a waterproof covering that allows patrons to read the instructions before boarding the amusement ride. (Authorized by L. 2009, ch. 71, sec. 3; implementing K.S.A. 2008 Supp. 44-1606; effective May 28, 2010.)

**49-55-10. Reporting of amusement ride locations.** (a) Permanent amusement ride. The owner of each permanent amusement ride shall annually report the location of that amusement ride on a form provided by the department. If the owner removes a permanent amusement ride from service or places a new permanent amusement ride in service, the owner shall report the removal or placement to the department within 30 calendar days.

(b) Temporary amusement ride. The owner of each temporary amusement ride shall file with the department an itinerary at least 30 calendar days before the beginning date on the itinerary. The owner shall submit the itinerary on a form provided by the department. If the owner changes the itinerary, the owner shall report the change to the department by the next business day following the day the change occurred. (Authorized by L. 2009, ch. 71, sec. 3; implementing K.S.A. 2008 Supp. 44-1602; effective May 28, 2010.)

**49-55-11. Submitting reports and other documents.** Each report and any other document required by these regulations or the act shall be submitted by mail, facsimile, hand delivery, or electronic mail. (Authorized by and implementing L. 2009, ch. 71, sec. 3; effective May 28, 2010.)

**49-55-12. Violations; reporting violations to the attorney general, county attorney, or district attorney.** (a) For the first violation by an owner of any provision of the act or these regulations, a written warning citation shall be issued by the department to the owner. Each citation shall specify the following:

(1) The nature of the violation;

(2) the facts supporting the determination that a violation took place; and

(3) specification of the action that the owner shall take to comply with the act or these regulations.

(b) If the owner fails to take the corrective action specified in the citation, the owner's violation shall be reported by the department to the applicable authority for criminal prosecution. (Authorized by L. 2009, ch. 71, sec. 3; implementing K.S.A. 2008 Supp. 44-1602; effective May 28, 2010.)

# Agency 50

# Department of Labor—Division of Employment

**Editor's Note:**
The Kansas Department of Human Resources was renamed the Kansas Department of Labor by Executive Reorganization Order No. 31. See L. 2004, Ch. 191.

*Articles*

50-2. UNEMPLOYMENT INSURANCE; CONTRIBUTING, REIMBURSING AND RATED GOVERNMENTAL EMPLOYMENT.

## Article 2.—UNEMPLOYMENT INSURANCE; CONTRIBUTING, REIMBURSING AND RATED GOVERNMENTAL EMPLOYMENT

**50-2-21a. Computation of employer contribution rates for calendar years 2010 and 2011.** (a) For the purpose of computation of employer contribution rates for calendar years 2010 and 2011, the following definitions shall apply:

(1) The term "contribution rate," as used in K.A.R. 50-2-21, shall mean the specific tax rate assigned to a particular tax rate group. The contribution rate is the rate assessed on each of the 51 rate groups determined pursuant to K.S.A. 44-710a(a)(2)(D), and amendments thereto.

(2) The term "the 2010 original tax rate computation table," as used in K.S.A. 44-710 and amendments thereto and in this regulation, shall mean the rates calculated in the initial calculation for calendar year 2010 of active eligible employer accounts pursuant to K.A.R. 50-2-21(e) before any readjustments leading to the readjusted final effective contribution rates are calculated pursuant to K.A.R. 50-2-21.

(b) Despite the planned yield determined pursuant to schedule III and other provisions of K.S.A. 44-710a and amendments thereto, for calendar years 2010 and 2011, the tax rates for eligible employers with positive account balances shall be calculated pursuant to K.S.A. 44-710, and amendments thereto, and these regulations.

(c) Despite K.A.R. 50-2-21(e), for calendar years 2010 and 2011, the contribution rates assigned to groups 1 through 51 of eligible employers as determined pursuant to K.S.A. 44-710a(a)(2)(D), and amendments thereto, shall be the rates listed in the 2010 original tax rate computation table. For the purposes of K.S.A. 44-710a and amendments thereto, for calendar years 2010 and 2011, employers in groups 33 through 51 shall pay a contribution rate of 5.4 percent.

(d) For calendar year 2011, new experience ratings for employers shall be calculated by the secretary, and employers shall be assigned to tax rate groups based upon these experience ratings. However, the tax rates for rate groups 1 through 51 of eligible employers shall not be recalculated for 2011, and the rates for the individual rate groups shall be those set for calendar year 2010 as specified in subsection (c).

(e) This regulation shall expire on January 1, 2012. (Authorized by K.S.A. 2009 Supp. 44-714; implementing K.S.A. 2009 Supp. 44-710, as amended by 2010 HB 2676, sec. 1; effective, T-50-5-12-10, May 12, 2010; effective Aug. 27, 2010.)

# Agency 51

# Department of Labor— Division of Workers Compensation

**Editor's Note:**
The Kansas Department of Human Resources was renamed the Kansas Department of Labor by Executive Reorganization Order No. 31. See L. 2004, Ch. 191.

**Editor's Note:**
This agency was formerly entitled "Workmen's Compensation Director," see Executive Reorganization Order No. 14 (L. 1976, ch. 354).

*Articles*

51-3. TERMINATION OF COMPENSABLE CASES.
51-7. MEASUREMENT OF DISABILITY.
51-9. MEDICAL AND HOSPITAL.

## Article 3.—TERMINATION OF COMPENSABLE CASES

**51-3-8. Pretrial stipulations.** The parties shall be prepared at the first hearing to agree on the claimant's average weekly wage, unless the weekly wage is to be made an issue in the case.

(a) Before the first hearing takes place, the parties shall exchange medical information and confer as to what issues can be stipulated to and what issues are to be in dispute in the case. The following stipulations shall be used by the parties in every case:

QUESTIONS TO CLAIMANT

(1) In what county is it claimed that claimant met with personal injury by accident? If in a different county from that in which the hearing is held, then the parties shall stipulate that they consent to the conduct of the hearing in the county in which it is being held.
(2) Upon what date is it claimed that claimant met with personal injury by accident?
(3) Upon what date is it claimed that claimant met with personal injury by repetitive trauma?

QUESTIONS TO RESPONDENT

(4) Does respondent admit that claimant met with personal injury by accident on the date alleged?
(5) Does respondent admit that claimant met with personal injury by repetitive trauma on the date alleged?
(6) Does respondent admit that claimant's alleged personal injury "arose out of and in the course" of claimant's employment?
(7) Does respondent admit proper notice?
(8) Does respondent admit that the relationship of employer and employee existed?
(9) Does respondent admit that the parties are covered by the Kansas workers compensation act?
(10) Did the respondent have an insurance carrier on the date of the alleged accident? If so, what is the name of the insurance company? Was the respondent self-insured?
(11) Does respondent admit that the accident or repetitive trauma was the prevailing factor causing the injury, the medical condition, and the resulting disability or impairment?

QUESTIONS TO BOTH PARTIES

(12) What was the average weekly wage?
(13) Has any compensation been paid?
(14) Has any medical or hospital treatment been furnished? Is claimant making claim for any future medical treatment?
(15) Has claimant incurred any medical or hospital expense for which reimbursement is claimed?
(16) What was the nature and extent of the dis-

ability suffered as a result of the alleged injury?

(17) What medical and hospital expenses does the claimant have?

(18) What are the additional dates of temporary total disability, if any are claimed?

(19) Is the workers compensation fund to be impleaded as an additional party?

(20) Have the parties agreed upon a functional impairment rating?

The same stipulations shall be used in occupational disease cases, except that questions regarding "personal injury" shall be changed to discover facts concerning "disability from occupational disease" or "disablement."

(b) An informal pretrial conference shall be held in each contested case before testimony is taken in a case. At these conferences the administrative law judge shall determine from the parties what issues have not been agreed upon. If the issues cannot be resolved, the stipulations and issues shall be made a part of the record.

(c) The respondent shall be prepared to admit any and all facts that the respondent cannot justifiably deny and to have payrolls available in proper form to answer any questions that might arise as to the average weekly wage. Evidence shall be confined to the matters actually ascertained to be in dispute. The administrative law judge shall not be bound by rules of civil procedure or evidence. Hearsay evidence may be admissible unless irrelevant or redundant.

(d) All parties shall be given reasonable opportunity to be heard. The testimony taken at the hearing shall be reported and transcribed. That testimony, together with documentary evidence introduced, shall be filed with the division of workers compensation, where the evidence shall become a permanent record. Each award or order made by the administrative law judge shall be set forth in writing, with copies mailed to the parties.

(e) Permission to withdraw admissions or stipulations shall be decided by the administrative law judge, depending on the circumstances in each instance.

(f) Subpoena forms shall be furnished by the director upon request. The party subpoenaing witnesses shall be responsible for the completion, service, and costs in connection with the subpoenas. (Authorized by K.S.A. 44-573; implementing K.S.A. 2010 Supp. 44-523, as amended by L. 2011, ch. 55, sec. 17, and K.S.A. 2010 Supp. 44-551; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; amended Jan. 1, 1974; amended May 1, 1976; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; amended May 22, 1998; amended Dec. 23, 2011.)

## Article 7.—MEASUREMENT OF DISABILITY

**51-7-8. Computation of compensation.** (a)(1) If a worker suffers a loss or the loss of use to a member and, in addition, suffers other injuries contributing to the temporary total disability, compensation for the temporary total disability shall not be deductible from the scheduled amount for those weeks of temporary total disability attributable to the other injuries.

(2) The weekly compensation rate for temporary total compensation shall be computed by multiplying .6667 times the worker's average weekly wage. This figure shall be subject to the statutory maximum set in K.S.A. 44-510c, and amendments thereto.

(b) If a healing period of 10% of the schedule or partial schedule is granted, not exceeding 15 weeks, the healing period shall be added to the weeks on the schedule or partial schedule before the following computations are made.

(1) If a loss of or the loss of use occurs to a scheduled member of the body, compensation shall be computed as follows:

(A) Deduct the number of weeks of temporary total compensation from the schedule;

(B) multiply the difference by the percent of loss or the loss of use to the member; and

(C) multiply the result by the applicable weekly temporary total compensation rate.

(2) If part of a finger, thumb, or toe is amputated, compensation shall be calculated as follows:

(A) Multiply the percent of loss, as governed by K.S.A. 44-510d, and amendments thereto, by the number of weeks on the full schedule for that member;

(B) deduct the temporary total compensation; and

(C) multiply the remainder by the weekly temporary total compensation rate.

(3) If a scheduled member other than a part of a finger, thumb, or toe is amputated, compensation shall be computed by multiplying the number of weeks on the schedule by the worker's weekly temporary total compensation rate. The temporary total compensation previously paid shall be

deducted from the total amount allowed for the member.

(c)(1) Each injury involving the metacarpals shall be considered an injury to the hand. Each injury involving the metatarsals shall be considered an injury to the foot.

(2) If the injury results in loss of use of one or more fingers and also a loss of use of the hand, the compensation payable for the injury shall be on the schedule for the hand. The percentage of permanent partial loss of use of the hand shall be at least sufficient to equal the compensation payable for the injuries to the finger or fingers alone.

(3) Each injury involving the hip joint shall be computed on the basis of a disability to the body as a whole.

(4) Each injury at the joint on a scheduled member shall be considered a loss to the next higher schedule.

(5) If the tip of a finger, thumb, or toe is amputated, the amputation does not go through the bone, and it is determined that a disability exists, the disability rating shall be based on a computation of a partial loss of use of the entire finger. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510d, as amended by 2011 HB 2134, sec. 8; effective Jan. 1, 1966; amended Jan. 1, 1971; amended Jan. 1, 1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; amended, T-88-20, July 1, 1987; amended May 1, 1988; amended May 22, 1998; amended Nov. 28, 2011.)

## Article 9.—MEDICAL AND HOSPITAL

**51-9-7. Fees for medical and hospital services.** Fees for medical, surgical, hospital, dental, and nursing services, medical equipment, medical supplies, prescriptions, medical records, and medical testimony rendered pursuant to the Kansas workers compensation act shall be the lesser of the usual and customary charge of the health care provider, hospital, or other entity providing the health care services or the amount allowed by the "schedule of medical fees" published by the Kansas department of labor, dated January 1, 2012, and approved by the director of workers compensation on May 20, 2011, including the ground rules incorporated in the schedule and the appendices, which is hereby adopted by reference.

This regulation shall be effective on and after January 1, 2012. (Authorized by and implementing K.S.A. 2010 Supp. 44-510i; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; amended May 1, 1976; amended May 1, 1978; amended, T-88-20, July 1, 1987; amended May 1, 1988; amended Nov. 1, 1993; amended April 5, 1996; amended Aug. 29, 1997; amended Oct. 1, 1999; amended Dec. 1, 2001; amended Dec. 1, 2003; amended Dec. 2, 2005; amended Jan. 1, 2008; amended Jan. 1, 2010; amended Jan. 1, 2011; amended Jan. 1, 2012.)

# Agency 60

# Kansas State Board of Nursing

*Articles*


60-2. Requirements for Approved Nursing Programs.
60-9. Continuing Education for Nurses.
60-11. Advanced Registered Nurse Practitioners.
60-13. Fees; Registered Nurse Anesthetist.
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60-16. Intravenous Fluid Therapy for Licensed Practical Nurse.


## Article 2.—REQUIREMENTS FOR APPROVED NURSING PROGRAMS

**60-2-105. Clinical resources.** (a) Written contractual agreements between the nursing education program and each affiliating agency shall be signed and kept on file in the nursing education program office.

(b) Clinical learning experiences and sites shall be selected to provide learning opportunities necessary to achieve the nursing education program objectives or outcomes.

(c) The faculty of each nursing education program shall be responsible for student learning and evaluation in the clinical area.

(d) The nursing education program shall provide verification that each affiliating agency used for clinical instruction has clinical facilities that are adequate for the number of students served in terms of space, equipment, and other necessary resources, including an adequate number of patients or clients necessary to meet the program objectives or outcomes.

(e) A maximum of a 1:10 faculty-to-student ratio, including students at observational sites, shall be maintained during the clinical experience.

(f) Clinical observational experiences.

(1) The objectives or outcomes for each observational experience shall reflect observation rather than participation in nursing interventions.

(2) Affiliating agencies in which observational experiences take place shall not be required to be staffed by registered nurses.

(3) Observational experiences shall constitute no more than 15 percent of the total clinical hours for the course, unless approved by the board.

(g) Clinical experiences with preceptors shall be no more than 20 percent of the total clinical hours of the nursing education program. This prohibition shall not apply to the capstone course.

(h) Each affiliating agency used for clinical instruction shall be staffed independently of student assignments.

(i) The number of affiliating agencies used for clinical experiences shall be adequate for meeting curriculum objectives or outcomes. The nursing education program faculty shall provide the affiliating agency staff with the organizing curriculum framework and either objectives or outcomes for clinical learning experiences used.

(j) A sufficient number and variety of patients representing all age groups shall be utilized to provide learning experiences that meet curriculum objectives or outcomes. If more than one nursing education program uses the same affiliating agency, the nursing education programs shall document the availability of appropriate learning experiences for all students. (Authorized by and implementing K.S.A. 65-1119; effective April 4, 1997; amended Jan. 24, 2003; amended March 6, 2009.)

**60-2-106. Educational facilities.** (a) Classrooms, laboratories, and conference rooms shall be available when needed and shall be adequate in size, number, and type according to the number of students and the educational purposes for which the rooms are to be used.

(b) Each nursing education program shall provide the following:

(1) A physical facility that is safe and is conducive to learning;

(2) offices that are available and adequate in size, number, and type to provide the faculty with privacy in counseling students;

(3) secure space for nursing student records; and

(4) current technological resources.

(c) The library resources, instructional media, and materials shall be of sufficient recency, pertinence, level of content, and quantity as indicated by the curriculum to meet the needs of nursing students and faculty. (Authorized by and implementing K.S.A. 65-1119; effective April 4, 1997; amended Jan. 24, 2003; amended March 6, 2009.)

## Article 9.—CONTINUING EDUCATION FOR NURSES

**60-9-105. Definitions.** (a) "Approval" means the act of determining that a providership application or course offering meets applicable standards based on review of either the total program or the individual offering.

(b) "Approved provider" means a person, organization, or institution that is approved by the board and is responsible for the development, administration, and evaluation of the continuing nursing education (CNE) program or offering.

(c) "Authorship" means a person's development of a manuscript for print or a professional paper for presentation. Each page of text, formatted according to the American psychological association's guidelines, shall equal three contact hours.

(1) Authorship of a manuscript means a person's development of an original manuscript for a journal article or text accepted by a publisher for statewide or national distribution on a subject related to nursing or health care. Proof of acceptance from the editor or the published work shall be deemed verification of this type of credit. Credit shall be awarded only once per topic per renewal period.

(2) Authorship of a professional research paper means a person's completion of a nursing research project as principal investigator, co-investigator, or project director and presentation to other health professionals. A program brochure, course syllabus, or letter from the offering provider identifying the person as a presenter shall be deemed verification of this type of credit. Credit shall be awarded only once.

(d) "Behavioral objectives" means the intended outcome of instruction stated as measurable learner behaviors.

(e) "Certificate" means a document that is proof of completion of an offering consisting of one or more contact hours.

(f) "CE transcript" means a document that is proof of completion of one or more continuing nursing education offerings.

(g) "Clinical hours" means planned learning experiences in a clinical setting. Three clinical hours equal one contact hour.

(h) "College course" means a class taken through a college or university and meeting the definition of CNE in K.S.A. 65-1117 and amendments thereto. One college credit hour equals 15 contact hours.

(i) "Computer-based instruction" means a learning application that provides computer control to solve an instructional problem or to facilitate an instructional opportunity.

(j) "Contact hour" means 50 minutes of participation in a learning experience that meets the definition of CNE in K.S.A. 65-1117, and amendments thereto.

(k) "Distance learning" means the acquisition of knowledge and skills through information and instruction, encompassing a variety of technologies.

(l) "Independent study" means a self-paced learning activity undertaken by the participant in an unstructured setting under the guidance of and monitored by an approved provider. This term may include self-study programs, distance learning, and authorship.

(m) "Individual offering approval (IOA)" means a request for approval of an education offering meeting the definition of CNE but not presented by an approved provider or other acceptable approving body.

(n) "In-service education" and "on-the-job training" mean learning activities in the work setting designed to assist the individual in fulfilling job responsibilities. In-service education and on-the-job-training shall not be eligible for CNE credit.

(o) "Offering" means a single CNE learning experience designed to enhance knowledge, skills, and attitudes related to nursing. Each offering shall consist of at least one contact hour.

(p) "Orientation" means formal or informal instruction designed to acquaint employees with the institution and the position. Orientation shall not be considered CNE.

(q) "Program" means an organized effort to achieve overall CNE goals.

(r) "Refresher course" means a course of study providing review of basic preparation and current developments in nursing practice.

(s) "Total program evaluation" means a systematic process by which an approved provider analyzes outcomes of the overall continuing nursing education program in order to make subsequent decisions. (Authorized by K.S.A. 2007 Supp. 65-1117, K.S.A. 65-1119, and K.S.A. 65-4203; implementing K.S.A. 2007 Supp. 65-1117, K.S.A. 65-1119, and K.S.A. 2007 Supp. 65-4205; effective Sept. 2, 1991; amended March 9, 1992; amended April 26, 1993; amended April 3, 1998; amended April 20, 2001; amended Oct. 25, 2002; amended March 6, 2009.)

**60-9-107. Approval of continuing nursing education.** (a) Offerings of approved providers shall be recognized by the board.

(1) Long-term provider. A completed application for initial approval or five-year renewal for a long-term continuing nursing education (CNE) providership shall be submitted to the board at least 60 days before a scheduled board meeting.

(2) Single offering provider. The application for a single CNE offering shall be submitted to the board at least 30 days before the anticipated date of the first offering.

(b) Each applicant shall include the following information on the application:

(1)(A) The name and address of the organization; and

(B) the name and address of the department or unit within the organization responsible for approving CNE, if different from the name and address of the organization;

(2) the name, education, and experience of the program coordinator responsible for CNE, as specified in subsection (c);

(3) written policies and procedures, including at least the following areas:

(A) Assessing the need and planning for CNE activities;

(B) fee assessment;

(C) advertisements or offering announcements. Published information shall contain the following statement: "(name of provider) is approved as a provider of continuing nursing education by the Kansas State Board of Nursing. This course offering is approved for contact hours applicable for RN, LPN, or LMHT relicensure. Kansas State Board of Nursing provider number: _____";

(D) for long-term providers, the offering approval process as specified in subsection (d);

(E) awarding contact hours, as specified in subsection (e);

(F) verifying participation and successful completion of the offering, as specified in subsections (f) and (g);

(G) recordkeeping and record storage, as specified in subsection (h);

(H) notice of change of coordinator or required policies and procedures. The program coordinator shall notify the board in writing of any change of the individual responsible for the providership or required policies and procedures within 30 days; and

(I) for long-term providers, a copy of the total program evaluation plan; and

(4) the proposed continuing nursing education offering, as specified in subsection (i).

(c) (1) Long-term provider. The individual responsible for CNE shall meet these requirements:

(A) Be a licensed professional nurse;

(B) have three years of clinical experience;

(C) have one year of experience in developing and implementing nursing education; and

(D) have a baccalaureate degree, except those individuals exempted under K.S.A. 65-1119 (e)(6), and amendments thereto.

(2) Single offering provider. If the offering coordinator is not a nurse, the applicant shall also include the name, education, and experience of the nurse consultant. The individual responsible for CNE or the nurse consultant shall meet these requirements:

(A) Be licensed to practice nursing; and

(B) have three years of clinical experience.

(d) For long-term providers, the policies and procedures for the offering approval process shall include the following:

(1) A summary of the planning;

(2) the behavioral objectives;

(3) the content, which shall meet the definition of CNE in K.S.A. 65-1117, and amendments thereto;

(4) the instructor's education and experience, documenting knowledge and expertise in the content area;

(5) a current bibliography that is reflective of the offering content. The bibliography shall include books published within the past 10 years,

periodicals published within the past five years, or both; and

(6) an offering evaluation that includes each participant's assessment of the following:

(A) The achievement of each objective; and

(B) the expertise of each individual presenter.

(e) An approved provider may award any of the following:

(1) Contact hours as documented on an offering agenda for the actual time attended, including partial credit for one or more contact hours;

(2) credit for fractions of hours over one contact hour;

(3) instructor credit, which shall be two contact hours for each hour of first-time preparation and presentation of an approved offering, excluding any standardized, prepared curriculum;

(4) independent study credit that is based on the time required to complete the offering, as documented by the provider's pilot test results; or

(5) clinical hours.

(f) (1) Each provider shall maintain documentation to verify that each participant attended the offering. The provider shall require each participant to sign a daily roster, which shall contain the following information:

(A) The provider's name, address, provider number, and coordinator;

(B) the date and title of the offering, and the presenter or presenters; and

(C) the participant's name and license number, and the number of contact hours awarded.

(2) Each provider shall maintain documentation to verify completion of each independent study offering, if applicable. To verify completion of an independent study offering, the provider shall maintain documentation that includes the following:

(A) The provider's name, address, provider number, and coordinator;

(B) the participant's name and license number, and the number of contact hours awarded;

(C) the title of the offering;

(D) the date on which the offering was completed; and

(E) either the completion of a posttest or a return demonstration.

(g) (1) A certificate of attendance shall be awarded to each participant after completion of an offering, or a CE transcript shall be provided according to the policies and procedures of the long-term provider.

(2) Each certificate and each CE transcript shall be complete before distribution to the participant.

(3) Each certificate and each CE transcript shall contain the following information:

(A) The provider's name, address, and provider number;

(B) the title of the offering;

(C) the date or dates of attendance or completion;

(D) the number of contact hours awarded and, if applicable, the designation of any independent study or instructor contact hours awarded;

(E) the signature of the individual responsible for the providership; and

(F) the name and license number of the participant.

(h)(1) For each offering, the approved provider shall retain the following for two years:

(A) A summary of the planning;

(B) a copy of the offering announcement or brochure;

(C) the title and objectives;

(D) the offering agenda or, for independent study, pilot test results;

(E) a bibliography;

(F) a summary of the participants' evaluations;

(G) each instructor's education and experience; and

(H) documentation to verify completion of the offering, as specified in subsection (f).

(2) The record storage system used shall ensure confidentiality and easy retrieval of records by authorized individuals.

(3) Each approved single offering CNE provider shall submit to the board the original signature roster and a typed, alphabetized roster of individuals who have completed an offering, within 15 working days of course completion.

(i)(1) Long-term provider application. The provider shall submit two proposed offerings, including the following:

(A) A summary of planning;

(B) a copy of the offering announcement or brochure;

(C) the title and behavioral objectives;

(D) the offering agenda or, for independent study, pilot test results;

(E) each instructor's education and experience;

(F) a current bibliography, as specified in paragraph (d)(5); and

(G) the offering evaluation form.

(2) Single offering provider application. The provider shall submit the proposed offering,

which shall include the information specified in paragraphs (i)(1)(A) through (G).

(j) (1) Long-term provider application. Each prospective coordinator who has submitted an application for a long-term CNE providership that has been reviewed once and found deficient, or has approval pending, shall submit all materials required by this regulation at least two weeks before the next board meeting. If the application does not meet all of the requirements or the prospective coordinator does not contact the board for an extension on or before this deadline, the application process shall be considered abandoned. A new application and fee shall be submitted if a providership is still desired.

(2) Single offering approval application. If the application for a single offering has been reviewed and found deficient, or has approval pending, the CNE coordinator shall submit all materials required by this regulation before the date of offering. If the application does not meet requirements before the offering deadline, the application shall be considered abandoned. There shall be no retroactive approval of single offerings.

(k) (l) Each approved long-term provider shall pay a fee for the upcoming year and submit an annual report for the period of July 1 through June 30 of the previous year on or before the deadline designated by the board. The annual report shall contain the following:

(A) An evaluation of all the components of the providership based on the total program evaluation plan;

(B) a statistical summary report; and

(C) for each of the first two years of the providership, a copy of the records for one offering as specified in paragraphs (h)(1)(A) through (H).

(2) If approved for the first time after January 1, a new long-term provider shall submit only the statistical summary report and shall not be required to submit the annual fee or evaluation based on the total program evaluation plan.

(l) (1) If the long-term provider does not renew the providership, the provider shall notify the board in writing of the location at which the offering records will be accessible to the board for two years.

(2) If a provider does not continue to meet the criteria for current approval established by regulation or if there is a material misrepresentation of any fact with the information submitted to the board by an approved provider, approval may be withdrawn or conditions relating to the providership may be applied by the board after giving the approved provider notice and an opportunity to be heard. These proceedings shall be conducted in accordance with provisions of the Kansas administrative procedures act.

(3) Any approved provider that has voluntarily relinquished the providership or has had the providership withdrawn by the board may reapply as a long-term provider. The application shall be submitted on forms supplied by the board and accompanied by the designated, nonrefundable fee as specified in K.A.R. 60-4-103(a)(3). (Authorized by and implementing K.S.A. 2007 Supp. 65-1117 and K.S.A. 65-1119; effective March 9, 1992; amended Sept. 27, 1993; amended April 3, 1998; amended Oct. 25, 2002; amended March 6, 2009.)

## Article 11.—ADVANCED REGISTERED NURSE PRACTITIONERS

**60-11-101. Definition of expanded role; limitations; restrictions.** (a) Each "advanced registered nurse practitioner" (ARNP), as defined by K.S.A. 65-1113 and amendments thereto, shall function in an expanded role to provide primary, secondary, and tertiary health care in the ARNP's category of advanced practice. Each ARNP shall be authorized to make independent decisions about advanced practice nursing needs of families, patients, and clients and medical decisions based on the authorization for collaborative practice with one or more physicians. This regulation shall not be deemed to require the immediate and physical presence of the physician when care is given by an ARNP. Each ARNP shall be directly accountable and responsible to the consumer.

(b) "Authorization for collaborative practice" shall mean that an ARNP is authorized to develop and manage the medical plan of care for patients or clients based upon an agreement developed jointly and signed by the ARNP and one or more physicians. Each ARNP and physician shall jointly review the authorization for collaborative practice annually. Each authorization for collaborative practice shall include a cover page containing the names and telephone numbers of the ARNP and the physician, their signatures, and the date of review by the ARNP and the physician. Each authorization for collaborative practice shall be maintained in either hard copy or electronic format at the ARNP's principal place of practice.

(c) "Physician" shall mean a person licensed to

practice medicine and surgery by the state board of healing arts.

(d) "Prescription" shall have the meaning specified in K.S.A. 65-1626, and amendments thereto.

(e) "Prescription order" shall have the meaning specified in K.S.A. 65-1626, and amendments thereto. (Authorized by and implementing K.S.A. 65-1113 and K.S.A. 65-1130; effective May 1, 1984; amended March 31, 2000; amended Sept. 4, 2009.)

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

(a) Clinical nurse specialist;

(b) nurse anesthetist;

(c) nurse-midwife; and

(d) nurse practitioner. (Authorized by and implementing K.S.A. 65-1113, 65-1130; effective May 1, 1984; amended Sept. 4, 2009.)

**60-11-103. Educational requirements for advanced registered nurse practitioners.** (a) To be issued a certificate of qualification as an advanced registered nurse practitioner in any of the categories of advanced practice, as identified in K.A.R. 60-11-102, each applicant shall meet at least one of the following criteria:

(1) Complete a formal, post-basic nursing education program located or offered in Kansas that has been approved by the board and prepares the nurse to function in the advanced role for which application is made;

(2) complete a formal, post-basic nursing education program that is not located or offered in Kansas but is determined by the board to meet the standards for program approval established by K.A.R. 60-17-101 through 60-17-108;

(3) have completed a formal, post-basic nursing education program that may be no longer in existence but is determined by the board to meet standards at least as stringent as those required for program approval by the board at the time of graduation;

(4) hold a current certificate of authority to practice as an advanced registered nurse practitioner in the category for which application is made and that meets the following criteria:

(A) Was issued by another board of nursing; and

(B) required completion of a program meeting standards equal to or greater than those established by K.A.R. 60-17-101 through 60-17-108; or

(5) complete a formal educational program of post-basic study and clinical experience that can be demonstrated by the applicant to have sufficiently prepared the applicant for practice in the category of advanced practice for which application is made. The applicant shall show that the curriculum of the program is consistent with public health and safety policy and that it prepared individuals to perform acts generally recognized by the nursing profession as capable of being performed by persons with post-basic education in nursing.

(b) Each applicant for a certificate of qualification as an advanced registered nurse practitioner in a category other than anesthesia or midwifery shall meet one of the following requirements:

(1) Have met one of the requirements of subsection (a) before July 1, 1994;

(2) if none of the requirements in subsection (a) have been met before July 1, 1994, meet one of the requirements of subsection (a) and hold a baccalaureate or higher degree in nursing; or

(3) if none of the requirements in subsection (a) have been met before July 1, 2002, meet one of the requirements of subsection (a) and hold a master's or higher degree in a clinical area of nursing.

(c) Each applicant for a certificate of qualification as an advanced registered nurse practitioner in the category of anesthesia shall meet one of the following requirements:

(1) Have met one of the requirements of subsection (a) before July 1, 2002; or

(2) if none of the requirements in subsection (a) have been met before July 1, 2002, meet one of the requirements of subsection (a) and hold a master's degree or a higher degree in nurse anesthesia or a related field.

(d) Each applicant for a certificate of qualification as an advanced registered nurse practitioner in the category of midwifery shall meet one of the following requirements:

(1) Have met one of the requirements of subsection (a) before July 1, 2000;

(2) if none of the requirements in subsection (a) have been met before July 1, 2000, meet one of the requirements of subsection (a) and hold a baccalaureate degree in nursing; or

(3) if none of the requirements in subsection (a) are met before January 1, 2010, meet one of the requirements of subsection (a) and hold a master's degree or a higher degree in nursing, midwifery, or a related field.

(e) A certificate of qualification may be granted if an individual has been certified by a national nursing organization whose certification standards have been approved by the board as equal to or greater than the corresponding standards established by the board for obtaining a certificate of qualification to practice as an advanced registered nurse practitioner. National nursing organizations with certification standards that meet this standard shall be identified by the board, and a current list of national nursing organizations with certification standards approved by the board shall be maintained by the board. Any licensee may request that a certification program be considered by the board for approval and, if approved, included by the board on its list of national nursing organizations with approved certification standards.

(f) Each applicant who completes an advanced registered nurse practitioner program after January 1, 1997 shall have completed three college hours in advanced pharmacology or the equivalent.

(g) Each applicant who completes an advanced registered nurse practitioner program after January 1, 2001 in a category other than anesthesia or midwifery shall have completed three college hours in advanced pathophysiology or its equivalent and three college hours in advanced health assessment or its equivalent.

(h) Each applicant who completes an advanced registered nurse practitioner program after July 1, 2009 shall have completed three college hours in advanced pathophysiology or its equivalent and three college hours in advanced health assessment or its equivalent.

(i) Notwithstanding the provisions of subsections (a) through (h), each applicant for a certificate of qualification as an advanced registered nurse practitioner who has not gained 1,000 hours of advanced nursing practice during the five years preceding the date of application shall be required to successfully complete a refresher course as defined by the board. (Authorized by and implementing K.S.A. 65-1130; effective May 1, 1984; amended, T-85-16, June 5, 1984; amended May 1, 1985; amended, T-60-11-14-90, Nov. 14, 1990; amended, T-60-3-14-91, March 14, 1991; amended Sept. 2, 1991; amended March 9, 1992; amended Sept. 14, 1992; amended April 26, 1993; amended Sept. 6, 1994; amended Jan. 3, 1997; amended March 31, 2000; amended Sept. 4, 2009.)

**60-11-104. Functions of the advanced registered nurse practitioner in the category of nurse practitioner.** Each advanced registered nurse practitioner in the category of nurse practitioner shall function in an expanded role at a specialized level, through the application of advance knowledge and skills and shall be authorized to perform the following: (a) Provide health promotion and maintenance, disease prevention, and independent nursing diagnosis, as defined in K.S.A. 65-1113(b) and amendments thereto, and treatment, as defined in K.S.A. 65-1113(c) and amendments thereto, of acute and chronic diseases;

(b) develop and manage the medical plan of care for patients or clients, based on the authorization for collaborative practice;

(c) provide health care services for which the nurse practitioner is educationally prepared and for which competency has been established and maintained. Educational preparation may include academic coursework, workshops, institutes, and seminars if theory or clinical experience, or both, are included;

(d) provide health care for individuals by managing health problems encountered by patients and clients; and

(e) provide innovation in evidence-based nursing practice based upon advanced clinical expertise, decision making, and leadership skills and serve as a consultant, researcher, and patient advocate for individuals, families, groups, and communities to achieve quality, cost-effective patient outcomes and solutions. (Authorized by and implementing K.S.A. 65-1113, 65-1130; effective May 1, 1984; amended, T-85-16, June 5, 1984; amended May 1, 1985; amended Sept. 4, 2009.)

**60-11-105. Functions of the advanced registered nurse practitioner in the category of nurse-midwife.** Each advanced registered nurse practitioner in the category of nurse-midwife shall function in an expanded role through the application of advanced skills and knowledge of women's health care through the life span and shall be authorized to perform the following: (a) Provide independent nursing diagnosis, as defined in K.S.A. 65-1113(b) and amendments thereto, and treatment, as defined in K.S.A. 65-1113(c) and amendments thereto;

(b) develop and manage the medical plan of care for patients or clients, based on the authorization for collaborative practice;

(c) provide health care services for which the nurse-midwife is educationally prepared and for which competency has been established and maintained. Educational preparation may include academic coursework, workshops, institutes, and seminars if theory or clinical experience, or both, are included;

(d) in a manner consistent with subsection (c), provide health care for women, focusing on gynecological needs, pregnancy, childbirth, the postpartum period, care of the newborn, and family planning, including indicated partner evaluation, treatment, and referral for infertility and sexually transmitted diseases; and

(e) provide innovation in evidence-based nursing practice based upon advanced clinical expertise, decision making, and leadership skills and serve as a consultant, researcher, and patient advocate for individuals, families, groups, and communities to achieve quality, cost-effective patient outcomes and solutions. (Authorized by and implementing K.S.A. 65-1113, 65-1130; effective May 1, 1984; amended, T-85-16, June 5, 1984; amended May 1, 1985; amended Sept. 4, 2009.)

**60-11-107. Functions of the advanced registered nurse practitioner in the category of clinical nurse specialist.** Each advanced registered nurse practitioner in the category of clinical nurse specialist shall function in an expanded role to provide evidence-based nursing practice within a specialty area focused on specific patients or clients, populations, settings, and types of care. Each clinical nurse specialist shall be authorized to perform the following: (a) Provide independent nursing diagnosis, as defined in K.S.A. 65-1113(b) and amendments thereto, and treatment, as defined in K.S.A. 65-1113(c) and amendments thereto;

(b) develop and manage the medical plan of care for patients or clients, based on the authorization for collaborative practice;

(c) provide health care services for which the clinical nurse specialist is educationally prepared and for which competency has been established and maintained. Educational preparation may include academic coursework, workshops, institutes, and seminars if theory or clinical experience, or both, are included;

(d) provide care for specific patients or clients or specific populations, or both, utilizing a broad base of advanced scientific knowledge, nursing theory, and skills in assessing, planning, implementing, and evaluating health and nursing care; and

(e) provide innovation in evidence-based nursing practice based upon advanced clinical expertise, decision making, and leadership skills and serve as a consultant, researcher, and patient advocate for individuals, families, groups, and communities to achieve quality, cost-effective patient outcomes and solutions. (Authorized by and implementing K.S.A. 65-1113, 65-1130; effective May 1, 1984; amended, T-85-16, June 5, 1984; amended May 1, 1985; amended Sept. 4, 2009.)

## Article 13.—FEES; REGISTERED NURSE ANESTHETIST

**60-13-103. School approval requirements.** (a) In order for a school of nurse anesthesia to be approved by the board of nursing, consideration shall be given as to whether the school meets the requirements in standards I, II, III, IV, and V and the appendix in the "standards for accreditation of nurse anesthesia educational programs," as revised by the council on accreditation of nurse anesthesia educational programs in January 2006 and effective March 1, 2006. These portions are hereby adopted by reference.

(b) An up-to-date list of approved programs shall be prepared and kept by the board.

(c) A program shall not be approved without the formal action of the board.

(d) (1) A program review shall be conducted by the board at least once every five years, or in conjunction with the council on accreditation review cycles.

(2) The school shall submit to the board of nursing for review a copy of a self-study report documenting compliance with the established standards.

(3) Additional information may be requested by the board of nursing to assess the school's compliance with standards.

(4) An on-site visit to the school of nurse anesthesia may be conducted by the board of nursing if there is reason to believe that the program is in violation of the established standards or if the program is placed on public probation by the council on accreditation. (Authorized by K.S.A. 65-1164; implementing K.S.A. 65-1152; effective, T-88-48, Dec. 16, 1987; effective May 1, 1988; amended March 22, 2002; amended March 6, 2009.)

**60-13-104. Exam approval.** The content

outline of the examination administered by the council on certification of nurse anesthetists shall be reviewed and approved annually by the board of nursing. (Authorized by K.S.A. 65-1164; implementing K.S.A. 65-1152; effective, T-88-48, Dec. 16, 1987; effective May 1, 1988; amended March 6, 2009.)

## Article 15.—PERFORMANCE OF SELECTED NURSING PROCEDURES IN SCHOOL SETTINGS

**60-15-101. Definitions and functions.** (a) Each registered professional nurse in a school setting shall be responsible for the nature and quality of all nursing care that a student is given under the direction of the nurse in the school setting. Assessment of the nursing needs, the plan of nursing action, implementation of the plan, and evaluation of the plan shall be considered essential components of professional nursing practice and shall be the responsibility of the registered professional nurse.

(b) In fulfilling nursing care responsibilities, any nurse may perform the following:

(1) Serve as a health advocate for students receiving nursing care;

(2) counsel and teach students, staff, families, and groups about health and illness;

(3) promote health maintenance;

(4) serve as health consultant and a resource to teachers, administrators, and other school staff who are providing students with health services during school attendance hours or extended program hours; and

(5) utilize nursing theories, communication skills, and the teaching-learning process to function as part of the interdisciplinary evaluation team.

(c) The services of a registered professional nurse may be supplemented by the assignment of tasks to a licensed practical nurse or by the delegation of selected nursing tasks or procedures to unlicensed personnel under supervision by the registered professional nurse or licensed practical nurse.

(d) "Unlicensed person" means anyone not licensed as a registered professional nurse or licensed practical nurse.

(e) "Delegation" means authorization for an unlicensed person to perform selected nursing tasks or procedures in the school setting under the direction of a registered professional nurse.

(f) "Activities of daily living" means basic caretaking or specialized caretaking.

(g) "Basic caretaking" means the following tasks:

(1) Bathing;

(2) dressing;

(3) grooming;

(4) routine dental, hair, and skin care;

(5) preparation of food for oral feeding;

(6) exercise, excluding occupational therapy and physical therapy procedures;

(7) toileting, including diapering and toilet training;

(8) handwashing;

(9) transferring; and

(10) ambulation.

(h) "Specialized caretaking" means the following procedures:

(1) Catheterization;

(2) ostomy care;

(3) preparation and administration of gastrostomy tube feedings;

(4) care of skin with damaged integrity or potential for this damage;

(5) medication administration;

(6) taking vital signs;

(7) blood glucose monitoring, which shall include taking glucometer readings and carbohydrate counting; and

(8) performance of other nursing procedures as selected by the registered professional nurse.

(i) "Anticipated health crisis" means that a student has a previously diagnosed condition that, under predictable circumstances, could lead to an imminent risk to the student's health.

(j) "Investigational drug" means a drug under study by the United States food and drug administration to determine safety and efficacy in humans for a particular indication.

(k) "Nursing judgment" means the exercise of knowledge and discretion derived from the biological, physical, and behavioral sciences that requires special education or curriculum.

(l) "Extended program hours" means any program that occurs before or after school attendance hours and is hosted or controlled by the school.

(m) "School attendance hours" means those hours of attendance as defined by the local educational agency or governing board.

(n) "School setting" means any public or nonpublic school environment.

(o) "Supervision" means the provision of guidance by a nurse as necessary to accomplish a nurs-

ing task or procedure, including initial direction of the task or procedure and periodic inspection of the actual act of accomplishing the task or procedure.

(p) "Medication" means any drug required by the federal or state food, drug, and cosmetic acts to bear on its label the legend "Caution: Federal law prohibits dispensing without prescription," and any drugs labeled as investigational drugs or prescribed for investigational purposes.

(q) "Task" means an assigned step of a nursing procedure.

(r) "Procedure" means a series of steps followed in a regular, specific order that is part of a defined nursing practice. (Authorized by K.S.A. 2007 Supp. 65-1124 and K.S.A. 65-1129; implementing K.S.A. 2007 Supp. 65-1124 and K.S.A. 65-1165; effective, T-89-23, May 27, 1988; amended, T-60-9-12-88, Sept. 12, 1988; amended Feb. 13, 1989; amended Sept. 2, 1991; amended Sept. 11, 1998; amended July 29, 2005; amended March 6, 2009.)

**60-15-102. Delegation procedures.** Each registered professional nurse shall maintain the primary responsibility for delegating tasks to unlicensed persons. The registered professional nurse, after evaluating a licensed practical nurse's competence and skill, may decide whether the licensed practical nurse under the direction of the registered professional nurse may delegate tasks to unlicensed persons in the school setting. Each nurse who delegates nursing tasks or procedures to a designated unlicensed person in the school setting shall meet the requirements specified in this regulation.

(a) Each registered professional nurse shall perform the following:

(1) Assess each student's nursing care needs;

(2) formulate a plan of care before delegating any nursing task or procedure to an unlicensed person; and

(3) formulate a plan of nursing care for each student who has one or more long-term or chronic health conditions requiring nursing interventions.

(b) The selected nursing task or procedure to be delegated shall be one that a reasonable and prudent nurse would determine to be within the scope of sound nursing judgment and that can be performed properly and safely by an unlicensed person.

(c) Any designated unlicensed person may perform basic caretaking tasks or procedures as defined in K.A.R. 60-15-101 (g) without delegation. After assessment, a nurse may delegate specialized caretaking tasks or procedures as defined in K.A.R. 60-15-101 (h) to a designated unlicensed person.

(d) The selected nursing task or procedure shall be one that does not require the designated unlicensed person to exercise nursing judgment or intervention.

(e) If an anticipated health crisis that is identified in a nursing care plan occurs, the unlicensed person may provide immediate care for which instruction has been provided.

(f) The designated unlicensed person to whom the nursing task or procedure is delegated shall be adequately identified by name in writing for each delegated task or procedure.

(g) Each registered professional nurse shall orient and instruct unlicensed persons in the performance of the nursing task or procedure. The registered professional nurse shall document in writing the unlicensed person's demonstration of the competency necessary to perform the delegated task or procedure. The designated unlicensed person shall co-sign the documentation indicating the person's concurrence with this competency evaluation.

(h) Each registered professional nurse shall meet these requirements:

(1) Be accountable and responsible for the delegated nursing task or procedure;

(2) at least twice during the academic year, participate in joint evaluations of the services rendered;

(3) record the services performed; and

(4) adequately supervise the performance of the delegated nursing task or procedure in accordance with the requirements of K.A.R. 60-15-103. (Authorized by K.S.A. 2007 Supp. 65-1124 and K.S.A. 65-1129; implementing K.S.A. 2007 Supp. 65-1124 and K.S.A. 65-1165; effective, T-89-23, May 27, 1988; amended, T-60-9-12-88, Sept. 12, 1988; amended Feb. 13, 1989; amended Sept. 2, 1991; amended Sept. 11, 1998; amended March 6, 2009.)

**60-15-104. Medication administration in a school setting.** Any registered professional nurse may delegate the procedure of medication administration in a school setting only in accordance with this article.

(a) Any registered professional nurse may delegate the procedure of medication administration

in a school setting to unlicensed persons if both of the following conditions are met:

(1) The administration of the medication does not require dosage calculation. Measuring a prescribed amount of liquid medication, breaking a scored tablet for administration, or counting carbohydrates for the purpose of determining dosage for insulin administration shall not be considered calculation of the medication dosage.

(2) The nursing care plan requires administration by accepted methods of administration other than those listed in subsection (b).

(b) A registered professional nurse shall not delegate the procedure of medication administration in a school setting to unlicensed persons when administered by any of these means:

(1) By intravenous route;

(2) by intramuscular route, except when administered in an anticipated health crisis;

(3) through intermittent positive-pressure breathing machines; or

(4) through an established feeding tube that is not inserted directly into the abdomen. (Authorized by K.S.A. 2007 Supp. 65-1124 and K.S.A. 65-1129; implementing K.S.A. 2007 Supp. 65-1124 and K.S.A. 65-1165; effective, T-89-23, May 27, 1988; amended, T-60-9-12-88, Sept. 12, 1988; amended Feb. 13, 1989; amended Sept. 2, 1991; amended Sept. 11, 1998; amended July 29, 2005; amended March 6, 2009.)

## Article 16.—INTRAVENOUS FLUID THERAPY FOR LICENSED PRACTICAL NURSE

**60-16-105.** (Authorized by and implementing L. 1994, Chap. 218, §1; effective Nov. 21, 1994; revoked July 30, 2010.)

# Agency 63

# Kansas State Board of Mortuary Arts

*Articles*

63-1. EMBALMING; CONTINUING EDUCATION OF EMBALMERS AND FUNERAL DIRECTORS.
63-4. FEES.
63-6. CONTINUING EDUCATION.
63-7. CREMATORIES.

## Article 1.—EMBALMING; CONTINUING EDUCATION OF EMBALMERS AND FUNERAL DIRECTORS

**63-1-6. General requirements relating to the practice of embalming, cremation, and funeral directing.** (a) Following the loss or destruction of the license of any embalmer, funeral director, assistant funeral director, crematory operator, or establishment or branch establishment, a duplicate license shall be issued by the board upon the licensee's written request and payment of the duplicate license fee specified in K.A.R. 63-4-1.

(b) Each licensee shall promptly notify the board of all changes in the licensee's address.

(c) Each licensee shall promptly and fully cooperate at all times with the state department of health and environment and with the board in all matters pertaining to the general practice of embalming and cremation.

(d) Any licensee's name may be used in the form of an endorsement of a preneed funeral plan if the recommendation is genuine and representative of the current opinion of the licensee. The endorsement shall apply to the preneed funeral plan advertised. The licensee making the recommendation shall disclose to the public any financial interest in the preneed funeral plan or a related entity, or any direct or indirect benefit as a stockholder, officer, or employee.

(e) A licensee shall not be connected in any way with an insurance company if either of the following conditions is met:

(1) Policies are payable in merchandise or require the service of a designated funeral director or a member of a designated group of funeral directors.

(2) The certificate or policy of that company provides for a reduction on the value of merchandise or services furnished or the price to be paid for them. (Authorized by K.S.A. 65-1730, K.S.A. 2010 Supp. 74-1704, K.S.A. 74-1707, and K.S.A. 2010 Supp. 65-1774; implementing K.S.A. 65-1701, K.S.A. 65-1730, K.S.A. 74-1707; effective Jan. 1, 1966; modified, L. 1979, ch. 345, May 1, 1979; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1987; amended May 1, 1988; amended June 26, 1989; amended Jan. 12, 2001; amended Sept. 16, 2011.)

## Article 4.—FEES

**63-4-1. Payment of fees.** The following shall be charged by the Kansas state board of mortuary arts:

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|---|---|
| Embalmer's reciprocity application fee | $350.00 |
| Embalmer's reciprocity application and funeral director's reciprocity application fee, if submitted simultaneously | $350.00 |
| Embalmer's endorsement application fee | $350.00 |
| Embalmer's biennial license and renewal fee | $168.00 |
| Apprentice embalmer's registration fee | $100.00 |
| Funeral director's examination fee | $200.00 |
| Funeral director's reciprocity application fee | $350.00 |
| Funeral director's biennial license and renewal fee | $228.00 |
| Assistant funeral director's examination fee | $50.00 |
| Assistant funeral director's application fee | $150.00 |
| Assistant funeral director's biennial license and renewal fee | $180.00 |

| | |
|---|---|
| Crematory operator's biennial license and renewal fee | $50.00 |
| Funeral establishment and branch establishment biennial license and renewal fee | $650.00 |
| Funeral establishment and branch establishment license and crematory license fee, if submitted simultaneously | $950.00 |
| Funeral establishment and branch establishment license renewal and crematory license renewal fee, if submitted simultaneously | $950.00 |
| Crematory license and renewal fee | $650.00 |
| Duplicate license | $15.00 |
| Rule book | $5.00 |

(Authorized by and implementing K.S.A. 2010 Supp. 65-1727, as amended by L. 2010, ch. 131, sec. 7; effective May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended, T-88-43, Jan. 1, 1988; amended May 1, 1988; amended Jan. 6, 1992; amended June 7, 1993; amended Jan. 1, 1994; amended Jan. 1, 1996; amended Jan. 1, 2000; amended May 17, 2002; amended Nov. 4, 2005; amended Feb. 8, 2008; amended Sept. 16, 2011.)

## Article 6.—CONTINUING EDUCATION

**63-6-2. Standards for approval.** (a) A continuing education course or workshop shall be qualified for approval if the board determines that the course or workshop meets the following conditions:

(1) Constitutes an organized program of learning, including a symposium, that contributes directly to the professional competency of the licensee;

(2) is related to the profession of mortuary science, funeral directing, cremation, or embalming with content intended to enhance the licensee's knowledge, skill, values, ethics, or ability to practice as an embalmer, crematory operator, or funeral director;

(3) is conducted by individuals considered experts in the subject matter of the program by reason of education, training, or experience; and

(4) is accompanied by a paper, a manual, or written outline that substantially describes the subject matter and the length of the program.

(b) Continuing education credit not exceeding three credit hours of the annual total required hours for embalmers and funeral directors and one credit hour for crematory operators may be approved by the board for any of the following:

(1) Correspondence work;

(2) video, sound-recorded, or television programs;

(3) information transmitted by other similar means as authorized by the board; or

(4) community service programs that are related to the profession of mortuary science, funeral directing, or embalming.

(c) Continuing education credit for service as a lecturer, presenter, or discussion leader may be approved by the board if this activity contributes to the professional competence of the applicant. Repetitions of an initial presentation shall not be counted. Not more than 50 percent of the total required hours for embalmers and funeral directors may be satisfied in this manner.

(d) The maximum number of credit hours that shall be granted for any single continuing education course or workshop single topic is six.

(e) Lists of approved continuing education programs shall be available on the board's web site.

(f) A person, licensed embalmer, licensed funeral director, crematory operator, or organization requesting approval for a continuing education course or a workshop shall make application at least 30 days before the date of each proposed course or workshop. Applications filed but not meeting this deadline shall be reviewed by the board or the continuing education committee at its next regularly scheduled meeting. (Authorized by and implementing K.S.A. 65-1702, K.S.A. 65-1716, and K.S.A. 2010 Supp. 65-1772; effective May 1, 1988; amended April 3, 1995; amended Jan. 12, 2001; amended Sept. 16, 2011.)

**63-6-3. Post approval and review.** (a) Each licensed embalmer, crematory operator, or funeral director and each organization seeking continuing education credit for prior attendance or participation in a program or activity that has not already been approved shall submit, on forms provided by the board, the following information to the board:

(1) The dates;

(2) the subject matter;

(3) the names of the instructors and their qualifications, if applicable;

(4) a description of the program or activity; and

(5) the number of credit hours requested.

A complete written outline describing the subject matter or activity and the time of the program

shall accompany all requests. Within 90 days after receipt of the application, the licensee seeking credit shall be advised by the board, in writing and by mail, whether the activity is approved and the number of credit hours allowed. Any licensee may be denied credit if the licensee fails to comply with the requirements of this subsection.

(b) Any continuing education program already approved by the board may be monitored or reviewed by the board. Upon evidence of variation in the program presented from the program approved, all or any part of the program may be disapproved. (Authorized by and implementing K.S.A. 65-1702, K.S.A. 65-1716, and K.S.A. 2010 Supp. 65-1772; effective May 1, 1988; amended June 26, 1989; amended April 3, 1995; amended Jan. 12, 2001; amended Sept. 16, 2011.)

## Article 7.—CREMATORIES

**63-7-1. Definitions.** (a) "Board" means the Kansas state board of mortuary arts.

(b) "Change of ownership" means the transfer of more than 25 percent of the stock or assets of a licensed crematory.

(c) "Closed container" means any container in which cremated remains can be placed and closed in a manner that prevents both the leakage or spillage of remains and the entrance of foreign material.

(d) "Coroner's permit to cremate" means the document that is required to be issued by a Kansas coroner before the act of cremation.

(e) "Cremation container" means the container in which human remains are transported to the crematory and placed in the cremation chamber for a cremation. A cremation container shall meet all of the following requirements:

(1) Be composed of readily combustible or consumable materials suitable for cremation;

(2) be able to be closed in order to provide a complete covering for the human remains;

(3) be resistant to leakage or spillage;

(4) be rigid enough for handling with ease; and

(5) be able to provide protection for the health, safety, and personal integrity of crematory personnel.

(f) "Cremation interment container" and "urn vault" mean a rigid outer container that meets both of the following requirements, subject to each cemetery's policies:

(1) Is composed of concrete, steel, fiberglass, or a similar material in which an urn is placed before being interred in the ground; and

(2) is designed to withstand prolonged exposure to the elements and to support the earth above the urn.

(g) "Crematory act" means K.S.A. 65-1760 through K.S.A. 65-1774, and amendments thereto.

(h) "Final disposition" means the burial or other disposition on a permanent basis of a dead human body, cremated remains, or parts of a dead human body.

(i) "Niche" means a compartment or cubicle for the memorialization or permanent placement of an urn containing cremated remains.

(j) "Person" means an individual, partnership, association, or corporation.

(k) "Processing" means the reduction of identifiable bone fragments after the completion of the cremation process to unidentifiable bone fragments by manual or mechanical means.

(l) "Pulverization" means the reduction of identifiable bone fragments after the completion of the cremation and processing to granulated particles by manual or mechanical means.

(m) "Scattering area" means a designated area for the scattering of cremated remains usually in a cemetery and on dedicated cemetery property where cremated remains that have been removed from their container can be mixed with, or placed on top of, the soil or ground cover or can be buried in an underground receptacle on a commingled basis. (Authorized by and implementing K.S.A. 65-1766, as amended by L. 2010, ch. 131, sec. 13, and K.S.A. 2010 Supp. 65-1774; effective May 17, 2002; amended Sept. 16, 2011.)

**63-7-2. Crematory operator in charge; crematory operator; recordkeeping.** (a) The crematory operator in charge or crematory operator shall furnish to each person who delivers human remains to the crematory a receipt showing the date and time of the delivery, the name of the person from whom the human remains were received, the name of the person who received the human remains on behalf of the crematory, and the name of the decedent. The crematory operator or crematory operator in charge shall retain a copy of this receipt in its permanent records.

(b) Upon the release of cremated remains, the crematory operator or crematory operator in charge shall furnish to the person who receives the cremated remains from the crematory a re-

ceipt signed by the person who receives the cremated remains and showing the date of the release, the identification number of the deceased, and the name of the decedent. The crematory operator in charge shall retain a copy of this receipt in its permanent records.

(c) Each crematory operator in charge or crematory operator shall create and maintain on the premises an accurate record of every cremation provided. The records shall include all of the following information for each cremation:

(1) The name of the person, funeral establishment, or branch establishment delivering the body for cremation;

(2) the name of the deceased and the identification number assigned to the body;

(3) the time and date of acceptance of delivery;

(4) the date that the body was placed in the cremation chamber;

(5) the date and the name of the individual receiving the cremated remains;

(6) the name and address of the person who signed the authorization to cremate; and

(7) all supporting documentation, including the coroner's permit to cremate and the authorizing agent's authorization to cremate.

(d) The records required under subsection (c) shall be maintained for five calendar years after the release of the cremated remains. Following this period, the crematory operator in charge or crematory operator may then place the records in storage or reduce them to microfilm, microfiche, laser disc, or any other method that can produce an accurate reproduction of the original record, for retention for seven calendar years from the date of the release of the cremated remains. At the end of this period, the crematory operator in charge may destroy the records by shredding, incineration, or any other manner that protects the privacy of the individuals identified.

(e) The crematory operator in charge or crematory operator shall maintain a permanent record of the name of the deceased and the date the deceased's body was cremated.

(f) The crematory operator in charge or crematory operator shall maintain a permanent record of all cremated remains disposed of by the crematory. (Authorized by and implementing K.S.A. 65-1723, K.S.A. 2010 Supp. 65-1762, as amended by L. 2010, ch. 131, sec. 9; effective May 17, 2002; amended Sept. 16, 2011.)

**63-7-6. Licensure applications for crematories.** (a) Each crematory operator in charge shall submit a completed application for a crematory license for each crematory that the individual currently supervises. The application shall be submitted in writing on forms provided by the board and shall contain the following information:

(1) The name, address, and location of the crematory;

(2) a roster of all crematory operators employed at the crematory;

(3) the name and form of ownership of the business;

(4) the names and titles of all individual owners or, if a corporation, all officers;

(5) evidence confirming the date the crematory desires to be licensed;

(6) a description of the type of structure, equipment, and process being used in the operation of the crematory;

(7) verification of compliance with all applicable local and state building codes, zoning laws, ordinances, and environmental standards, including those guidelines adopted by the centers for disease control and prevention regarding biosafety; and

(8) any further information that the board may require regarding compliance with the crematory act.

(b) A crematory operator in charge may be in charge of not more than one licensed crematory. (Authorized by K.S.A. 2010 Supp. 65-1774; implementing K.S.A. 2010 Supp. 65-1771; effective May 17, 2002; amended Sept. 16, 2011.)

**63-7-7. Inspection of crematories.** (a) Each crematory shall be subject to routine inspections at least once a year by the board or its designee, to determine compliance with the crematory act and the board's regulations adopted under this act.

(b) A crematory may be subject to additional inspections if any of the following conditions exists:

(1) The crematory incurred a violation in a previous inspection.

(2) A change occurred in ownership or in the crematory operator in charge.

(3) The crematory operator in charge did not timely renew the crematory license.

(4) The board has information that violations could exist or could have occurred.

(c) Inspections shall be made between the hours of 8:00 a.m. and 6:00 p.m. or at any time

business is being conducted, unless otherwise agreed by both parties.

(d) Inspections shall be made by the board or its designee.

(e) Inspections of crematories may be authorized by the board or its executive secretary.

(f) Any authorized inspection may be conducted without notice to the crematory operator in charge. (Authorized by and implementing K.S.A. 65-1723; effective May 17, 2002; amended Sept. 16, 2011.)

**63-7-9. Crematory operator's license; application requirements.** (a) Each person seeking licensure as a crematory operator shall meet the requirements of K.S.A. 65-1771, and amendments thereto, and shall pay the fee specified in K.A.R. 63-4-1. For purposes of the training, the following requirements shall apply:

(1) Fifty minutes of training shall constitute one hour.

(2) Proof of completion of training shall be provided to the board by the provider of the program on a form approved by the board.

(3) A list of approved programs shall be listed on the board's web site.

(b) All licenses issued shall be signed by the president and the secretary of the board and attested by its seal. Each crematory operator shall at all times prominently display the crematory operator's license in the crematory operator's place of employment. (Authorized by K.S.A. 2010 Supp. 65-1774; implementing K.S.A. 2010 Supp. 65-1771; effective Sept. 16, 2011.)

**63-7-10. Crematory operator's initial license; biennial renewal.** (a) The initial licensure fee for crematory operators shall be charged on a pro rata basis in order to place new licensees according to the expiration dates specified in subsection (c).

(b) Each crematory operator license renewal fee shall be paid on a biennial basis. Each renewal fee shall be initially prorated to the nearest whole month, to establish the biennial renewal process.

(c) Each expiration date shall be assigned alphabetically according to the first letter of the applicant's or licensee's surname, as follows:

(1) A and M shall expire on January 31.

(2) B and N shall expire on February 28.

(3) C and O shall expire on March 31.

(4) D and P shall expire on April 30.

(5) E and Q shall expire on May 31.

(6) F and R shall expire on June 30.

(7) G and S shall expire on July 31.

(8) H and T shall expire on August 31.

(9) I and U shall expire on September 30.

(10) J and V shall expire on October 31.

(11) K and W shall expire on November 30.

(12) L, X, Y, and Z shall expire on December 31.

Each licensee whose surname begins with a letter from A through L shall renew in even-numbered years. Each licensee whose surname begins with a letter from M through Z shall renew in odd-numbered years.

(d) Each licensee shall make up all past continuing education hours accrued during the expiration period within one year of reinstatement.

(e) Each licensee changing the licensee's surname shall notify the board of the change, and the expiration date shall be adjusted to the month designated in subsection (c). (Authorized by K.S.A. 2010 Supp. 65-1772 and K.S.A. 2010 Supp. 65-1774; implementing K.S.A. 2010 Supp. 65-1772; effective Sept. 16, 2011.)

**63-7-11. Continuing education.** (a) Each crematory operator shall submit with the license renewal application satisfactory proof of completion of at least two board-approved clock-hours of continuing education related to cremation per biennial licensure period. Each crematory operator shall file proof of completion of continuing education credit with the board on forms approved by the board.

(b) Any licensee may obtain continuing education credit by attending and participating in continuing education courses or workshops that meet the requirements of K.A.R. 63-6-2.

(c) The continuing education requirements for each individual newly licensed shall be waived for the first-time renewal of that individual's license.

(d) Compliance with this regulation shall be a requirement for each crematory operator that is separate from the continuing education requirements for embalmers and funeral directors. (Authorized by K.S.A. 2010 Supp. 65-1774; implementing K.S.A. 2010 Supp. 65-1772; effective Sept. 16, 2011.)

## Agency 65

# State Board of Examiners in Optometry

*Articles*

65-4. General Provisions.

### Article 4.—GENERAL PROVISIONS

**65-4-3. Fees.** The following fees shall be collected by the board:

(a) Initial license examination ..... $150.00
(b) First retaking of license examination..... $ 75.00
(c) The second and each subsequent retaking of license examination ..... $ 45.00
(d) License issued by examination ..... $ 30.00
(e) Reciprocal license..... $150.00
(f) (1) Biennial renewal of license..... $450.00
(2) Additional fee to obtain license renewal upon the failure to renew license before expiration date ..... $500.00
(g) Conversion of license status from inactive to active ..... $100.00

(Authorized by K.S.A. 74-1504; implementing K.S.A. 2009 Supp. 65-1505 and K.S.A. 2009 Supp. 65-1509; effective May 18, 1992; amended June 7, 1993; amended Sept. 4, 1998; amended Feb. 22, 2002; amended June 25, 2004; amended July 2, 2010.)

# Agency 66
# State Board of Technical Professions

*Articles*


66-6. Professional Practice.
66-7. Applications.
66-8. Examinations.
66-9. Education.
66-10. Experience.
66-11. Intern Certification and Admission to the Fundamentals Examination.
66-12. Minimum Standards for the Practice of Land Surveying.
66-14. Continuing Education Requirements.


## Article 6.—PROFESSIONAL PRACTICE

**66-6-6. Renewal of licenses and certificates of authorization.** (a) Each licensee whose last name begins with one of the letters A through L shall renew the license in even-numbered years. Each licensee whose last name begins with one of the letters M through Z shall renew the license in odd-numbered years. A notice shall be issued by the board to each licensee during the appropriate renewal year, and not later than 30 days before the following expiration dates:

| | |
|---|---|
| (1) Architects | June 30; |
| (2) engineers | April 30; |
| (3) land surveyors | March 31; |
| (4) landscape architects | December 31; and |
| (5) geologists | June 30. |

(b) Each business entity whose name begins with one of the letters A through L shall renew its certificate of authorization in even-numbered years. Each business entity whose name begins with one of the letters M through Z shall renew its certificate of authorization in odd-numbered years. A notice shall be issued by the board to each business entity during the appropriate renewal year, and not later than 30 days before the December 31 expiration date. (Authorized by K.S.A. 74-7013, as amended by L. 2009, Ch. 94, §3; implementing K.S.A. 74-7025, as amended by L. 2009, Ch. 94, §8, and K.S.A. 74-7036, as amended by L. 2009, Ch. 94, §13; effective May 1, 1984; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 14, 1994; amended March 1, 1996; amended Feb. 4, 2000; amended Nov. 6, 2009.)

**66-6-8.** (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7025; effective May 1, 1984; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 14, 1994; amended Feb. 13, 1995; revoked Nov. 6, 2009.)

**66-6-9.** (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7025; effective May 1, 1984; amended May 1, 1985; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 14, 1994; amended Feb. 13, 1995; revoked Nov. 6, 2009.)

## Article 7.—APPLICATIONS

**66-7-1. Applications.** (a) In addition to the appropriate, completed application form and fee, each applicant shall also submit the following:

(1) An official transcript to verify any educational credit; and

(2) verification of any practical experience for which credit is claimed on reference forms approved by the board and forwarded directly to the board office by the individual providing the reference.

(b) Each applicant for a license by reciprocity shall also submit the following:

(1) Verification of any exams previously taken; and

(2) verification of a current active license. (Authorized by K.S.A. 2010 Supp. 74-7013; implementing K.S.A. 2010 Supp. 74-7018; effective

May 1, 1984; amended May 4, 1992; amended Jan. 6, 2012.)

**66-7-2. Application for certificate of authorization.** (a) A separate application shall be submitted for each technical profession for which a business entity wishes to become authorized.

(b) Each application submitted by a foreign business entity shall be accompanied by the following:

(1) A copy of the formation documents from the home state; and

(2) a copy of the certificate of authority to do business in the state of Kansas from the Kansas secretary of state if qualified pursuant to K.S.A. 17-7301 et seq., and amendments thereto, or if exempt pursuant to K.S.A. 17-7303, 17-76,121a, or 56a-1104 et seq., and amendments thereto.

(c) Each application submitted by a domestic business entity shall be accompanied by a copy of the formation documents and a certificate of good standing from the Kansas secretary of state. (Authorized by K.S.A. 74-7013, as amended by L. 2009, Ch. 94, §3; implementing K.S.A. 74-7036, as amended by L. 2009, Ch. 94, §13; effective May 1, 1984; amended May 4, 1992; amended Feb. 5, 1999; amended Feb. 4, 2000; amended Nov. 6, 2009.)

## Article 8.—EXAMINATIONS

**66-8-1.** (Authorized by K.S.A. 74-7013, as amended by L. 1995, ch. 104, sec. 1; implementing K.S.A. 74-7017; effective May 1, 1984; amended May 4, 1992; amended March 1, 1996; revoked Nov. 6, 2009.)

**66-8-3. Engineering examinations.** (a) The examination required of each applicant for engineering licensure shall be the national council of examiners for engineering and surveying (NCEES) examination consisting of an engineering fundamentals section and a professional practice section.

(b) The examination shall be graded by the NCEES, subject to approval by the board.

(c) Each applicant for a professional license shall be required to pass the section on engineering fundamentals and meet the professional engineering experience requirements under K.S.A. 74-7021 and amendments thereto before submitting an application to take the section on professional practice. (Authorized by K.S.A. 74-7013, as amended by L. 2009, Ch. 94, §3; implementing K.S.A. 74-7017, K.S.A. 74-7021, as amended by L. 2009, Ch. 94, §5 and K.S.A. 74-7023, as amended by L. 2009, Ch. 94, §7; effective May 1, 1984; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 14, 1994; amended Nov. 6, 2009.)

**66-8-4. Land surveyor examinations.** (a) The examinations required of each applicant for land surveying licensure shall be the following:

(1) The national council of examiners for engineering and surveying (NCEES) examinations covering the following:

(A) The fundamentals of surveying; and

(B) the principles and practices of surveying; and

(2) an examination covering Kansas surveying laws and practices.

(b) The fundamentals and the principles and practices of surveying examinations shall be graded by the NCEES, subject to approval by the board.

(c) Each applicant who has passed one or more sections of previous registration examinations may be granted transfer credits if approved by the board.

(d) Each applicant for a professional license as a land surveyor shall be required to pass the section on the fundamentals of surveying and shall meet the professional land surveying experience requirements under K.S.A. 74-7022, and amendments thereto, before submitting an application to take the section on professional practice. (Authorized by K.S.A. 74-7013, as amended by L. 2009, Ch. 94, §3; implementing K.S.A. 74-7017, K.S.A. 74-7022, as amended by L. 2009, Ch. 94, §6, and K.S.A. 74-7023, as amended by L. 2009, Ch. 94, §7; effective May 1, 1984; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 14, 1994; amended Feb. 13, 1995; amended Nov. 1, 2002; amended Feb. 3, 2006; amended Nov. 6, 2009.)

**66-8-6. Reexamination.** (a) Any applicant for a license to practice engineering, land surveying, or geology who fails an examination on the first attempt may take the examination two additional times, except as specified in subsections (b) and (c).

(b) Except as specified in subsection (c), the fourth and any subsequent attempts by an applicant to retake an examination may be allowed by the board if the applicant establishes that the areas of deficiency identified in the examination failure

report provided by the testing administrator have been addressed through either of the following:

(1) Additional coursework; or

(2) experience under the supervision of a person licensed in the technical profession for which the applicant is applying for licensure.

(c) Any applicant's examination results may be rejected by the board and permission to retake an examination may be withheld by the board upon a report by the testing administrator that the applicant has violated the provisions of the candidate testing agreement regarding examination irregularities.

(d) Each applicant shall be required to submit the appropriate fee for each examination. (Authorized by K.S.A. 2009 Supp. 74-7013; implementing K.S.A. 2009 Supp. 74-7009 and 74-7023; effective May 1, 1984; amended May 4, 1992; amended June 18, 2010.)

**66-8-7. Geology examinations.** (a) The examination required of each applicant for geology licensure shall be the national association of state boards of geology (ASBOG®) examination, consisting of a geology fundamentals section and a geologic practice section.

(b) The examination shall be graded by the ASBOG®, subject to approval by the board.

(c) Each applicant for a professional license shall be required to pass the section on geology fundamentals and shall meet the professional geology experience requirements under K.S.A. 74-7041, and amendments thereto, before submitting an application to take the section on geologic practice. (Authorized by K.S.A. 74-7013, as amended by L. 2009, Ch. 94, §3; implementing K.S.A. 74-7017, K.S.A. 74-7023, as amended by L. 2009, Ch. 94, §7, and K.S.A. 74-7041, as amended by L. 2009, Ch. 94, §14; effective Feb. 4, 2000; amended Nov. 6, 2009.)

## Article 9.—EDUCATION

**66-9-4. Engineering curriculum approved by the board.** "A college or university program that is adequate in its preparation of students for the practice of engineering" shall mean any of the following:

(a) A baccalaureate engineering curriculum accredited by the engineering accreditation commission of the accreditation board for engineering and technology (EAC/ABET);

(b) a curriculum for a master's degree or doctorate in engineering, if all college coursework is reviewed and approved by the board and found to be of a standard equivalent to that of an ABET-accredited baccalaureate engineering curriculum; or

(c) a baccalaureate engineering curriculum outside the United States that has not been accredited by ABET but meets the following requirements:

(1) Is evaluated by an organization approved by the board and found to be of a standard equivalent to that of ABET; and

(2) is reviewed and approved by the board. (Authorized by K.S.A. 74-7013, as amended by L. 2009, Ch. 94, §3; implementing K.S.A. 74-7021, as amended by L. 2009, Ch. 94, §5; effective May 1, 1984; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 14, 1994; amended Feb. 4, 2000; amended Feb. 3, 2006; amended Nov. 6, 2009.)

**66-9-7. Educational standard acceptable to the board for reciprocity applicants.** For purposes of K.S.A. 74-7024 and amendments thereto, the following shall apply:

(a) Each applicant for a license to practice engineering, surveying, landscape architecture, or geology by reciprocity shall be deemed to have met the educational standard acceptable to the board if the applicant's educational qualifications when the original license was issued would have met the Kansas requirements in effect on that date.

(b) Each applicant for a license to practice architecture by reciprocity shall provide proof of certification by the national council of architectural registration boards (NCARB). The requirements for this certification shall be those specified in chapters one, two, and three of the "handbook for interns and architects," published by the national council of architectural registration boards and revised July 2011. These three chapters are hereby adopted by reference. (Authorized by K.S.A. 2010 Supp. 74-7013; implementing K.S.A. 74-7024; effective Feb. 4, 2005; amended Jan. 6, 2012.)

## Article 10.—EXPERIENCE

**66-10-1. Architectural experience of a character satisfactory to the board.** Each applicant shall complete the intern development program (IDP) as specified in the "intern development program guidelines," including the appendices and excluding the section titled "the next

steps," dated July 2011, published by the national council of architectural registration boards (NCARB), and hereby adopted by reference. Each applicant shall provide a completed record of architectural experience prepared by the NCARB. (Authorized by K.S.A. 2010 Supp. 74-7013 and K.S.A. 74-7019; implementing K.S.A. 74-7019; effective May 1, 1984; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 14, 1994; amended Feb. 13, 1995; amended March 1, 1996; amended Feb. 6, 1998; amended Feb. 9, 2001; amended Nov. 1, 2002; amended Feb. 3, 2006; amended March 28, 2008; amended Nov. 6, 2009; amended June 18, 2010; amended Jan. 6, 2012.)

**66-10-3. Architectural experience required of a reciprocity applicant.** Each applicant for a license to practice architecture by reciprocity shall provide proof of certification by the national council of architectural registration boards (NCARB), for approval by the board. The requirements for this certification shall be those specified in the portions of the "handbook for interns and architects" adopted by reference in K.A.R. 66-9-7. (Authorized by K.S.A. 2010 Supp. 74-7013; implementing K.S.A. 74-7019; effective May 1, 1984; amended May 1, 1985; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 14, 1994; amended Feb. 13, 1995; amended Jan. 6, 2012.)

**66-10-9. Engineering experience of a character that is satisfactory to the board.** (a) The work experience required of each applicant shall expose the applicant to all phases of work integral to the discipline of engineering in which the applicant claims qualification to practice and shall be verified as specified in paragraph (b)(2).

(b) Engineering work experience shall meet the following requirements:

(1) Fall within the definition of "the practice of engineering" pursuant to K.S.A. 74-7003, and amendments thereto; and

(2) be directly supervised and verified by a licensed professional engineer, except that direct supervision of a licensed professional engineer shall not be required of the employees of any person, firm, or corporation not offering services in the technical professions to the public, although verification by the applicant's supervisor shall still be required.

(c) The following requirements and provisions shall be used to assign credit for work experience.

(1) The applicant shall demonstrate four years of acceptable work experience.

(2) One year of credit toward the experience requirement may be given for a master's or doctoral degree in engineering, unless that degree is used to satisfy the educational requirement described in K.A.R. 66-9-4(b).

(3) Teaching engineering at a college or university that offers an approved engineering curriculum of four years or more may be considered engineering experience.

(4) Work experience credit shall not be allowed for work performed before graduation.

(d) Each applicant shall supply at least three references from licensed professional engineers who are familiar with the applicant's engineering experience. (Authorized by K.S.A. 74-7013, as amended by L. 2009, Ch. 94, §3, and 74-7021, as amended by L. 2009, Ch. 94, §5; implementing K.S.A. 74-7021, as amended by L. 2009, Ch. 94, §5; effective May 1, 1984; amended April 9, 1990; amended May 4, 1992; amended Feb. 14, 1994; amended Feb. 13, 1995; amended Nov. 1, 2002; amended Feb. 3, 2006; amended Jan. 5, 2007; amended Nov. 6, 2009.)

**66-10-14. Professional engineering, land surveying, and geology experience standards acceptable to the board for reciprocity applicants.** (a) Each applicant for an engineering license by reciprocity shall meet the following requirements:

(1) Provide verification from the employer of at least four years of engineering experience, as defined in K.S.A. 74-7003 and amendments thereto. One year of credit toward the experience requirement may be given for a master's or doctoral degree in engineering; and

(2) supply at least three references from licensed professional engineers who are familiar with the applicant's engineering experience.

(b) Each applicant for a land surveying license by reciprocity shall meet the following requirements:

(1) Provide verification from the employer of at least eight years of land surveying experience or education, or a combination of these, pursuant to K.S.A. 74-7022 and amendments thereto; and

(2) supply at least three references from licensed land surveyors or licensed professional engineers who are familiar with the applicant's land surveying experience. At least one reference shall be from a licensed land surveyor.

(c) Each applicant for a geology license by reciprocity shall meet the following requirements:

(1) Provide verification from the employer of at least four years of geology experience, as defined in K.S.A. 74-7003 and amendments thereto. One year of credit toward the experience requirement may be given for a master's degree in geology or in a closely related specialty area acceptable to the board; and

(2) supply at least three references from individuals who are familiar with the applicant's geology experience. At least two of these references shall be from licensed geologists. One of the three references may be from a professional engineer. (Authorized by K.S.A. 74-7013, as amended by L. 2009, Ch. 94, §3, K.S.A. 74-7021, as amended by L. 2009, Ch. 94, §5, K.S.A. 74-7022, as amended by L. 2009, Ch. 94, §6, and K.S.A. 74-7041, as amended by L. 2009, Ch. 94, §14; implementing K.S.A. 74-7018, as amended by L. 2009, Ch. 94, §4, K.S.A. 74-7021, as amended by L. 2009, Ch. 94, §5, K.S.A. 74-7022, as amended by L. 2009, Ch. 94, §6, K.S.A. 74-7024, and K.S.A. 74-7041, as amended by L. 2009, Ch. 94, §14; effective Feb. 4, 2005; amended Feb. 3, 2006; amended Nov. 6, 2009.)

## Article 11.—INTERN CERTIFICATION AND ADMISSION TO THE FUNDAMENTALS EXAMINATION

**66-11-1. Intern engineer certificate.** An intern engineer certificate shall be issued to each individual who meets both of the following requirements:

(a) Passes the examination in the fundamentals of engineering as administered by the national council of examiners for engineering and surveying (NCEES); and

(b) submits proof of completion of a baccalaureate engineering curriculum described in K.A.R. 66-9-4. (Authorized by K.S.A. 74-7013, as amended by L. 2009, Ch. 94, §3; implementing K.S.A. 74-7021, as amended by L. 2009, Ch. 94, §5; effective May 1, 1984; amended May 4, 1992; amended Feb. 14, 1994; amended Nov. 6, 2009.)

**66-11-1a. Intern geologist certificate.** An intern geologist certificate shall be issued to each individual who meets both of the following requirements:

(a) Passes the examination in the fundamentals of geology as administered by the national association of state boards of geology (ASBOG®); and

(b) submits proof of completion of a baccalaureate or master's degree in geology pursuant to K.A.R. 66-9-6. (Authorized by K.S.A. 74-7013, as amended by L. 2009, Ch. 94, §3; implementing K.S.A. 74-7041, as amended by L. 2009, Ch. 94, §14; effective Nov. 1, 2002; amended Nov. 6, 2009.)

**66-11-1b. Intern land surveyor certificate.** An intern land surveyor certificate shall be issued to each individual who meets both of the following requirements:

(a) Passes the examination in the fundamentals of surveying as administered by the national council of examiners for engineering and surveying (NCEES); and

(b) submits proof of completion of the surveying curriculum described in K.A.R. 66-9-5. (Authorized by K.S.A. 74-7013, as amended by L. 2009, Ch. 94, §3; implementing K.S.A. 74-7022, as amended by L. 2009, Ch. 94, §6; effective Nov. 1, 2002; amended Nov. 6, 2009.)

**66-11-4. Admission requirements for fundamentals of geology examination.** (a) Each application shall be reviewed by the board to determine whether the requirements for examination have been met. Once the board establishes that the requirements have been met, the applicant shall be allowed to sit for the examination.

(b) The requirements for admission shall be either of the following:

(1) Senior status in a geology curriculum described in K.A.R. 66-9-6; or

(2) completion of a geology curriculum described in K.A.R. 66-9-6. (Authorized by K.S.A. 74-7013, as amended by L. 2009, Ch. 94, §3; implementing K.S.A. 74-7023, as amended by L. 2009, Ch. 94, §7 and K.S.A. 74-7041, as amended by L. 2009, Ch. 94, §14; effective Feb. 4, 2000; amended Nov. 6, 2009.)

## Article 12.—MINIMUM STANDARDS FOR THE PRACTICE OF LAND SURVEYING

**66-12-1. Minimum standards for the practice of land surveying.** The board hereby adopts by reference the following:

(a) The "minimum standard detail requirements for ALTA/ACSM land title surveys (effective February 23, 2011)"; and

(b) the "Kansas minimum standards for boundary surveys and mortgagee title inspections standards of practice" adopted by the Kansas society

of land surveyors and last amended December 2009, except that the preface and scope sections shall be deleted. (Authorized by K.S.A. 2010 Supp. 74-7013; implementing K.S.A. 74-7037; effective May 4, 1992; amended Feb. 14, 1994; amended Feb. 13, 1995; amended March 1, 1996; amended Feb. 4, 2000; amended Jan. 23, 2009; amended June 18, 2010; amended Jan. 6, 2012.)

## Article 14.—CONTINUING EDUCATION REQUIREMENTS

**66-14-10. Licensure in another jurisdiction.** (a) Except as specified in subsections (b) and (c), the board's continuing education requirements may be satisfied if a licensee meets all of the following conditions:

(1) The licensee is licensed to practice one of the technical professions in another jurisdiction.

(2) The licensee resides in the jurisdiction specified in paragraph (a)(1).

(3) The licensee meets the continuing education requirements of the jurisdiction in which the licensee resides.

(b) If a licensee resides in a jurisdiction that requires no continuing education, the licensee shall meet the continuing education requirements of this article.

(c) Each land surveyor shall comply with K.A.R. 66-14-1(b). (Authorized by K.S.A. 2009 Supp. 74-7013; implementing K.S.A. 2009 Supp. 74-7025; effective March 1, 1996; amended Feb. 9, 2001; amended June 18, 2010.)

## Agency 67

# Kansas Board of Examiners in Fitting and Dispensing of Hearing Instruments

**Editor's Note:**
The name of the board relating to licensing, fitting and dispensing of hearing aids which was set forth in K.S.A. 74-5801 as the Kansas Board of Examiners in Fitting and Dispensing of Hearing Aids, and often referred to as the Board of Hearing Aid Examiners, was changed in the 2006 legislative session to the Kansas Board of Examiners in Fitting and Dispensing of Hearing Instruments. See L. 2006, ch. 115, § 1.

*Articles*

67-3. Duties of Sponsors of Temporary Licensees.

### Article 3.—DUTIES OF SPONSORS OF TEMPORARY LICENSEES

**67-3-5. Supervising sponsor.** (a) "Supervising sponsor" shall mean the person who supervises a temporary licensee pursuant to K.S.A. 74-5812(d) and amendments thereto.

(b) In addition to the requirement pursuant to K.S.A. 74-5812(d) and amendments thereto that a temporary licensee be under the supervision of a person who holds a valid license, the supervising sponsor shall meet the following requirements:

(1) Have a license that is in good standing with the board, which shall mean that the license is not suspended or subject to any condition or limitation ordered by the board, whether by a consent agreement or a final order of the board; and

(2) have been licensed to engage in the practice of fitting and dispensing hearing instruments for at least five years immediately preceding the date on which supervision begins. (Authorized by and implementing K.S.A. 2008 Supp. 74-5812; effective, T-67-2-8-07, Feb. 8, 2007; effective Aug. 21, 2009.)

## Agency 68

# Kansas State Board of Pharmacy

*Articles*


68-1. Registration and Examination of Pharmacists.
68-2. Drugstores.
68-7. Miscellaneous Provisions.
68-16. Cancer Drug Repository Program.
68-19. Continuous Quality Assurance Programs.
68-20. Controlled Substances.
68-21. Prescription Monitoring Program.
68-22. Electronic Supervision of Medical Care Facility's Pharmacy Personnel.


### Article 1.—REGISTRATION AND EXAMINATION OF PHARMACISTS

**68-1-1b. Continuing educational unit.** (a) Ten clock-hours of continuing education approved by the board shall constitute one continuing educational unit (C.E.U.). "Continuing education" shall mean an organized and systematic education experience beyond basic preparation that is designed to achieve the following:

(1)(A) Increase knowledge, improve skills, or enhance the practice of pharmacy; or

(B) improve protection of the public health and welfare; and

(2) ensure continued competence.

(b) Three C.E.U.s shall be required for renewal during each licensure period. Continuing education hours may be prorated for licensure periods that are less than biennial at a rate of .125 C.E.U.s per month.

(c)(1) Each continuing education program administered by a provider approved by the accreditation council for pharmacy education (ACPE) shall be approved by the board.

(2) Each continuing education program shall be a program of continuing education that has been approved by the board. Each provider not approved by the ACPE shall submit the continuing education program to the board at least 120 days in advance for consideration for approval. Except for continuing education programs provided by an ACPE-approved provider, continuing education programs shall not include in-service programs, on-the-job training, orientation for a job, an education program open to the general public, a cardiopulmonary resuscitation (CPR) course, a basic cardiac life support (BCLS) course, emergency or disaster training or direct experience at a healthcare facility under a code blue, testing out of a course, medical school courses, and continuing medical education (CME) category 1 programs.

(3) The criteria for continuing education specified in paragraphs (a)(1) and (2) shall be considered by the board when deciding whether to approve a continuing education program submitted by a provider not approved by the ACPE.

(d) Attendance at a scheduled board meeting shall be accepted by the board for C.E.U. credit according to this schedule:

(1) 0.1 C.E.U. for each two hours of attendance at a scheduled board meeting; and

(2) a maximum of 0.8 C.E.U. for a biennial licensing period.

(e) In each biennial licensing period, the total number of combined C.E.U. credits from attendance at programs of a provider not approved by the ACPE and from attendance at a scheduled board meeting shall not exceed 0.8 C.E.U., for purposes of meeting the continuing education requirement for license renewal.

(f) A licensee shall not be allowed to carry forward excess hours earned in one licensure period into the next licensure period. (Authorized by and implementing K.S.A. 65-1632; effective, E-76-31, Aug. 11, 1975; effective May 1, 1976; amended May 1, 1978; amended May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended July 1, 1990; amended July 31, 1998; amended Oct. 20, 2006; amended April 23, 2010.)

**68-1-1h. Foreign pharmacy graduate equivalency examination.** In addition to meet-

ing the requirements of K.A.R. 68-1-1f, each foreign applicant shall meet the following requirements for licensure under the pharmacy act of the state of Kansas:

(a) Pass the foreign pharmacy graduate equivalency examination (FPGEE) with a score of at least 75;

(b) obtain foreign pharmacy graduate examination committee (FPGEC) certification from the national association of boards of pharmacy (NABP); and

(c) submit a copy of the FPGEC certificate to the board. (Authorized by and implementing K.S.A. 65-1631; effective Oct. 23, 2009.)

**68-1-3a. Qualifying pharmaceutical experience.** (a) Pharmaceutical experience that qualifies as one year of experience shall consist of 1,500 clock-hours as a pharmacy student or registered intern while being supervised by a preceptor. A preceptor may supervise at any time no more than two individuals who are pharmacy students or interns. All hours worked when the pharmacy student or intern is in regular attendance at an approved school of pharmacy and during vacation times and other times when the pharmacy student or intern is enrolled but not in regular attendance at an approved school of pharmacy may be counted as qualified hours. However, not more than 60 hours of work shall be acquired in any one week.

(b) No time may accrue to a pharmacy student before acceptance in an approved school of pharmacy or before being registered as an intern with the board. However, any foreign pharmacy graduate who has passed equivalent examinations as specified in K.A.R. 68-1-1f and K.A.R. 68-1-1h may apply for registration as an intern.

(c) Once registered as an intern, the intern shall complete all required hours within six years.

(d) Reciprocity shall not be denied to any applicant who is otherwise qualified and who meets either of the following conditions:

(1) Has met the internship requirements of the state from which the applicant is reciprocating; or

(2) has at least one year of experience as a registered pharmacist. (Authorized by K.S.A. 65-1630; implementing K.S.A. 65-1631; effective, E-76-31, Aug. 11, 1975; effective May 1, 1976; amended May 1, 1983; amended May 1, 1985; amended May 31, 2002; amended Jan. 14, 2005; amended Oct. 23, 2009.)

## Article 2.—DRUGSTORES

**68-2-20. Pharmacist's function in filling a prescription.** (a) As used in this regulation, the following terms shall have the meanings specified in this subsection:

(1) "Authorized prescriber" shall mean a "practitioner" as defined by K.S.A. 65-1626(gg) and amendments thereto, a "mid-level practitioner" as defined by K.S.A. 65-1626(ss) and amendments thereto, or a person authorized to issue a prescription by the laws of another state.

(2) "Legitimate medical purpose," when used in regard to the dispensing of a prescription drug, shall mean that the prescription for the drug was issued with a valid preexisting patient-prescriber relationship rather than with a relationship established through an internet-based questionnaire, an internet-based consultation, or a telephonic consultation.

(b) Those judgmental functions that constitute the filling or refilling of a prescription shall be performed only by a licensed pharmacist or by a pharmacy student or intern under the direct supervision of a licensed pharmacist and shall consist of the following steps:

(1) Read and interpret the prescription of the prescriber;

(2) limit any filling or refilling of a prescription to one year from the date of origin, except as provided by K.S.A. 65-1637 and amendments thereto;

(3) verify the compounding, counting, and measuring of ingredients and document the accuracy of the prescription;

(4) identify, in the pharmacy record, the pharmacist who verifies the accuracy of the completed prescription;

(5) personally offer to counsel each patient or the patient's agent with each new prescription dispensed, once yearly on maintenance medications, and, if the pharmacist deems appropriate, with prescription refills in accordance with subsection (c);

(6) ensure the proper selection of the prescription medications, devices, or suppliers as authorized by law;

(7) when supervising a pharmacy technician, delegate only nonjudgmental duties associated with the preparation of medications and conduct in-process and final checks;

(8) prohibit all other pharmacy personnel from

performing those judgmental functions restricted to the pharmacist; and

(9) interpret and verify patient medication records and perform drug regimen reviews.

(c) In order to comply with paragraph (b)(5), the pharmacist or the pharmacy student or intern under the pharmacist's supervision shall perform the following:

(1) Personally offer to counsel each patient or the patient's agent with each new prescription dispensed, once yearly on maintenance medications, and, if the pharmacist deems appropriate, with prescription refills;

(2) provide the verbal counseling required by this regulation in person, whenever practical, or by the utilization of a telephone service available to the patient or patient's agent. Any pharmacist may authorize an exception to the verbal counseling requirement on a case-by-case basis for refills, maintenance medications, or continuous medications for the same patient;

(3) when appropriate, provide alternative forms of patient information to supplement verbal patient counseling. These supplemental forms of patient information may include written information, leaflets, pictogram labels, video programs, and auxiliary labels on the prescription vials. However, the supplemental forms of patient information shall not be used as a substitute for the verbal counseling required by this regulation;

(4) encourage proper patient drug utilization and medication administration. The pharmacist shall counsel the patient or patient's agent on those elements that, in the pharmacist's professional judgment, are significant for the patient. These elements may include the following:

(A) The name and a description of the prescribed medication or device;

(B) the dosage form, dosage, route of administration, and duration of therapy;

(C) special directions and precautions for preparation, administration, and use by the patient;

(D) common side effects, adverse effects or interactions, or therapeutic contraindications that could be encountered; the action required if these effects, interactions, or contraindications occur; and any activities or substances to be avoided while using the medication;

(E) techniques for self-monitoring drug therapy;

(F) proper storage requirements; and

(G) action to be taken in the event of a missed dose; and

(5) expressly notify the patient or the patient's agent if a brand exchange has been exercised.

(d) Nothing in this regulation shall be construed to require a pharmacist to provide the required patient counseling if either of the following occurs:

(1) The patient or the patient's agent refuses counseling.

(2) The pharmacist, based upon professional judgment, determines that the counseling may be detrimental to the patient's care or to the relationship between the patient and the patient's prescriber.

(e) Each pharmacist shall make a reasonable effort to ensure that any prescription, regardless of the means of transmission, has been issued for a legitimate medical purpose by an authorized prescriber. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2008 Supp. 65-1626, K.S.A. 2008 Supp. 65-1637, and K.S.A. 2008 Supp. 65-1642; effective, E-77-39, July 22, 1976; effective Feb. 15, 1977; amended May 1, 1978; amended May 1, 1988; amended Nov. 30, 1992; amended March 20, 1995; amended Aug. 14, 1998; amended Dec. 27, 1999; amended Feb. 7, 2003; amended Jan. 8, 2010.)

**68-2-22. Electronic transmission of a prescription.** (a) Each prescription drug order transmitted electronically shall be issued for a legitimate medical purpose by a prescriber acting within the course of legitimate professional practice.

(b) Each prescription drug order communicated by way of electronic transmission shall meet these requirements:

(1) Be transmitted to a pharmacist in a licensed pharmacy of the patient's choice, exactly as transmitted by the prescriber;

(2) identify the transmitter's phone number for verbal confirmation, the time and date of transmission, and the identity of the pharmacy intended to receive the transmission, as well as any other information required by federal and state laws and regulations;

(3) be transmitted by an authorized prescriber or the prescriber's designated agent; and

(4) be deemed the original prescription drug order, if the order meets the requirements of this regulation.

(c) Any prescriber may authorize an agent to communicate a prescription drug order orally or electronically to a pharmacist in a licensed phar-

macy if the identity of the transmitting agent is included in the order.

(d) Each pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the prescription drug order communicated by way of electronic transmission, consistent with existing federal and state laws and regulations.

(e) All electronic equipment for receipt of prescription drug orders communicated by way of electronic transmission shall be maintained so as to ensure against unauthorized access.

(f) Persons other than those bound by a confidentiality agreement shall not have access to pharmacy records containing confidential information or personally identifiable information concerning the pharmacy's patients.

(g) If communicated by electronic transmission, the prescription drug order shall be maintained in hard copy or as an electronic document for the time required by existing federal or state laws and regulations, whichever is longer.

(h) Any prescription drug order, including that for any controlled substance listed in schedules III, IV, and V and, in certain situations, that for any controlled substance listed in schedule II, may be communicated by way of electronic transmission, if all requirements of K.A.R. 68-20-10a are met.

(i) After the pharmacist views the prescription drug order, this order shall be immediately reduced to a hard copy or an electronic document and shall contain all information required by federal and state laws and regulations.

(j) Each electronic prescription drug order created and transmitted in conformance with 21 CFR part 1311 shall be considered an original, written, signed prescription drug order even if the order is transmitted electronically. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2009 Supp. 65-1642; effective Feb. 5, 1999; amended Dec. 27, 1999; amended June 2, 2006; amended Oct. 23, 2009; amended May 20, 2011.)

## Article 7.—MISCELLANEOUS PROVISIONS

**68-7-11. Medical care facility pharmacy.** The scope of pharmaceutical services within a medical care facility pharmacy shall conform to the following requirements:

(a) The pharmacist-in-charge shall be responsible for developing programs and supervising all personnel in the distribution and control of drugs and all pharmaceutical services in the medical care facility.

(b) The pharmacist-in-charge shall develop a policy and procedure manual governing the storage, control, and distribution of drugs within the medical care facility. The pharmacist-in-charge shall submit the policy and procedure manual for approval to the pharmacy and therapeutics committee or an equivalent committee governing the security, control, and distribution of drugs within the facility.

(c) The pharmacist-in-charge shall be responsible for the maintenance of all emergency medication kits.

(d) The pharmacist-in-charge shall be responsible for developing procedures for the distribution and control of drugs within the medical care facility when a pharmacist is not on the premises. These procedures shall be consistent with the following requirements:

(1) Inpatient service. Drugs may be obtained upon a prescriber's medication order for administration to the inpatient by a designated registered professional nurse or nurses with approval and supervision of the pharmacist-in-charge. Adequate records of these withdrawals shall be maintained.

(2) Emergency outpatient service.

(A) An interim supply of prepackaged drugs shall be supplied to an outpatient only by a designated registered professional nurse or nurses pursuant to a prescriber's medication order when a pharmacist is not on the premises and a prescription cannot be filled. The interim supply shall be labeled with the following information:

(i) The name, address, and telephone number of the medical care facility;

(ii) the name of the prescriber. The label shall include the name of the practitioner and, if involved, the name of either the physician's assistant (PA) or the advanced registered nurse practitioner (ARNP);

(iii) the full name of the patient;

(iv) the identification number assigned to the interim supply of the drug or device by the medical care facility pharmacy;

(v) the date the interim supply was supplied;

(vi) adequate directions for use of the drug or device;

(vii) the beyond-use date of the drug or device issued;

(viii) the brand name or corresponding generic name of the drug or device;

(ix) the name of the manufacturer or distributor of the drug or device, or an easily identified abbreviation of the manufacturer's or distributor's name;

(x) the strength of the drug;

(xi) the contents in terms of weight, measure, or numerical count; and

(xii) necessary auxiliary labels and storage instruction, if needed.

(B) The interim supply shall be limited in quantity to an amount sufficient to supply the outpatient's needs until a prescription can be filled. Adequate records of the distribution of the interim supply shall be maintained and shall include the following information:

(i) The original or a copy of the prescriber's order, or if an oral order, a written record prepared by a designated registered professional nurse or nurses that reduces the oral order to writing. The written record shall be signed by the designated registered professional nurse or nurses and the prescriber; and

(ii) the name of the patient; the date supplied; the drug or device, strength, and quantity distributed; directions for use; the prescriber's name; and, if appropriate, the DEA number.

(3) The designated registered professional nurse or nurses may enter the medical care facility pharmacy and remove properly labeled pharmacy stock containers, commercially labeled packages, or properly labeled prepackaged units of drugs. The registered professional nurse shall not transfer a drug from one container to another for future use, but may transfer a single dose from a stock container for immediate administration to the ultimate user.

(e) The pharmacist-in-charge of the medical care facility pharmacy shall maintain documentation of at least quarterly checks of drug records and conditions of drug storage, in all locations within the facility, including nursing stations, emergency rooms, outpatient departments, and operating suites.

(f) The pharmacist-in-charge shall participate with the pharmacy and therapeutics committee or an equivalent committee in formulating broad professional policies regarding the evaluation, appraisal, selection, procurement, storage, distribution, use, and safety procedures for drugs within the medical care facility.

(g) The pharmacist-in-charge shall be responsible for establishing a drug recall procedure that can be effectively implemented.

(h)(1) The pharmacist-in-charge shall be responsible for developing written procedures for maintaining records of drug distribution, prepackaging, and bulk compounding. Prepackaged drugs shall include the following information:

(A) The brand name or corresponding generic name of the drug;

(B) the name of the manufacturer or distributor of the drug, or an easily identified abbreviation of the manufacturer's or distributor's name;

(C) the strength of the drug;

(D) the contents in terms of weight, measure, or numerical count;

(E) the lot number; and

(F) the beyond-use date.

(2) Prepackaged drugs shall be packaged in suitable containers and shall be subject to all other provisions of the Kansas state board of pharmacy regulations under the uniform controlled substances act of the state of Kansas and under the pharmacy act of the state of Kansas. Before releasing any drugs or devices from the pharmacy, the pharmacist shall verify the accuracy of all prepackaging and the compounding of topical and oral drugs.

(i) The pharmacist-in-charge shall ensure that the medical care facility maintains adequate drug information references commensurate with services offered and a current copy of the Kansas pharmacy act, the Kansas uniform controlled substances act, and current regulations under both acts.

(j) The pharmacist-in-charge shall be responsible for pharmacist supervision of all pharmacy technicians and for confining their activities to those functions permitted by the pharmacy practice act. Records shall be maintained describing the following:

(1) The training and related education for nondiscretionary tasks performed by pharmacy technicians; and

(2) written procedures designating the person or persons functioning as pharmacy technicians, describing the functions of the pharmacy technicians, and documenting the procedural steps taken by the pharmacist-in-charge to limit the functions of pharmacy technicians to nondiscretionary tasks.

(k) The pharmacist-in-charge shall be responsible for establishing policies and procedures for the mixing or preparation of parenteral admix-

tures. Whenever drugs are added to intravenous solutions, distinctive supplemental labels shall be affixed that indicate the name and amount of the drug added, the date and the time of addition, the beyond-use date, storage instructions, and the name or initials of the person who prepared the admixture. The pharmacist-in-charge shall comply with all requirements of K.A.R. 68-13-1. Before the parenteral admixture is released from the pharmacy, the pharmacist shall verify the accuracy of all parenteral admixtures prepared by pharmacy technicians.

(l) The pharmacist shall interpret the prescriber's original order, or a direct copy of it, before the drug is distributed and shall verify that the medication order is filled in strict conformity with the direction of the prescriber. This requirement shall not preclude orders transmitted by the prescriber through electronic transmission. Variations in this procedure with "after-the-fact" review of the prescriber's original order shall be consistent with medical care facility procedures established by the pharmacist-in-charge. Each medication order shall be reviewed by a pharmacist within seven days of the date it was written.

(m) Pharmacy services to outpatients during pharmacy hours shall be in accordance with the board's regulations, K.S.A. 65-1625 et seq., and K.S.A. 65-4101 et seq., and amendments thereto, governing community pharmacy practice.

(n) The pharmacist-in-charge shall be responsible for the security of the pharmacy, including the drug distribution systems and personnel.

(1) When a pharmacist is on the premises but not in the pharmacy, a pharmacy technician may be in the pharmacy. A pharmacy technician shall not distribute any drug or device out of the pharmacy when a pharmacist is not physically in the pharmacy unless authorized by the pharmacist.

(2) When a pharmacist is not on the premises, no one shall be permitted in the pharmacy except the designated registered professional nurse or nurses.

(o) Each pharmacist-in-charge who will no longer be performing the functions of the pharmacist-in-charge position shall inventory all controlled substances in the pharmacy before leaving the pharmacist-in-charge position. A record of the inventory shall be maintained for at least five years.

(p) Within 72 hours after beginning to function as a pharmacist-in-charge, the pharmacist-in-charge shall inventory all controlled substances in the pharmacy. A record of the inventory shall be maintained for at least five years.

(q) Except with regard to drugs that have not been checked for accuracy by a pharmacist after having been repackaged, prepackaged, or compounded in a medical care facility pharmacy, a pharmacy technician in a medical care facility may check the work of another pharmacy technician in filled floor stock, a crash cart tray, a unit-dose cart, or an automated dispensing machine if the checking pharmacy technician meets each of the following criteria:

(1) Has a current certification issued by the pharmacy technician certification board or a current certification issued by any other pharmacy technician certification organization approved by the board. Any pharmacy technician certification organization may be approved by the board if the board determines that the organization has a standard for pharmacy technician certification and recertification not below that of the pharmacy technician certification board;

(2) has either of the following experience levels:

(A) One year of experience working as a pharmacy technician plus at least six months experience working as a pharmacy technician in the medical care facility at which the checking will be performed; or

(B) one year of experience working as a pharmacy technician in the medical care facility at which the checking will be performed; and

(3) has successfully completed a written training program and related examination designed by the pharmacist-in-charge of the medical care facility pharmacy to demonstrate competency in accurately checking whether floor stock, a crash cart tray, and an automated dispensing machine have been properly filled. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2008 Supp. 65-1626, K.S.A. 2008 Supp. 65-1642, and K.S.A. 65-1648; effective, E-77-39, July 22, 1976; effective Feb. 15, 1977; amended May 1, 1978; amended May 1, 1988; amended May 1, 1989; amended Dec. 27, 1999; amended April 28, 2000; amended July 20, 2007; amended July 16, 2010.)

**68-7-14. Prescription labels.** (a) The label of each drug or device shall be typed or machine-printed and shall include the following information:

(1) The name, address, and telephone number of the pharmacy dispensing the prescription;

(2) the name of the prescriber;

(3) the full name of the patient;

(4) the identification number assigned to the prescription by the dispensing pharmacy;

(5) the date the prescription was filled or refilled;

(6) adequate directions for use of the drug or device;

(7) the beyond-use date of the drug or device dispensed;

(8) the brand name or corresponding generic name of the drug or device;

(9) the name of the manufacturer or distributor of the drug or device, or an easily identified abbreviation of the manufacturer's or distributor's name;

(10) the strength of the drug;

(11) the contents in terms of weight, measure, or numerical count; and

(12) necessary auxiliary labels and storage instructions, if needed.

(b) A pharmacy shall be permitted to label or relabel only those drugs or devices originally dispensed from the providing pharmacy. (Authorized by K.S.A. 65-1630; implementing K.S.A. 65-1626a; effective, E-77-39, July 22, 1976; effective Feb. 15, 1977; amended May 1, 1978; amended May 1, 1980; amended May 1, 1988; amended June 6, 1994; amended March 20, 1995; amended April 28, 2000; amended Oct. 23, 2009.)

**68-7-21. Institutional drug rooms.** (a) All prescription-only drugs dispensed or administered from an institutional drug room shall be in prepackaged units, the original manufacturer's bulk packaging, or patient-specific pharmacy labeled packaging. All prepackaging shall meet the requirements of K.A.R. 68-7-15.

(b) Each pharmacist or practitioner, as that term is defined in K.S.A. 65-1637a and amendments thereto, who is responsible for supervising an institutional drug room shall perform the following:

(1) Develop or approve programs for the training and supervision of all personnel in the providing and control of drugs;

(2) develop or approve a written manual of policies and procedures governing the storage, control, and provision of drugs when a pharmacist or practitioner is not on duty;

(3) maintain documentation of at least quarterly reviews of drug records, drug storage conditions, and the drugs stored in all locations within the institutional drug room;

(4) develop or approve written procedures for maintaining records of the provision and prepackaging of drugs; and

(5) develop or approve written procedures for documenting all reportable incidents, as defined in K.A.R. 68-7-12b, and documenting the steps taken to avoid a repeat of each reportable incident.

(c) The policies and procedures governing the storage, control, and provision of drugs in an institutional drug room when a pharmacist or practitioner is not on duty shall include the following requirements:

(1) A record of all drugs provided to each patient from the institutional drug room shall be maintained in the patient's file and shall include the practitioner's order or written protocol.

(2) If the practitioner's order was given orally, electronically, or by telephone, the order shall be recorded, either manually or electronically. The recorded copy of the order shall include the name of the person who created the recorded copy and shall be maintained as part of the permanent patient file.

(3) The records maintained in each patient's file shall include the following information:

(A) The full name of the patient;

(B) the date on which the drug was provided;

(C) the name of the drug, the quantity provided, and strength of the drug provided;

(D) the directions for use of the drug; and

(E) the prescriber's name and, if the prescriber is a physician's assistant or advanced registered nurse practitioner, the name of that person's supervising practitioner.

(d) All drugs dispensed from an institutional drug room for use outside the institution shall be in a container or package that contains a label bearing the following information:

(1) The patient's name;

(2) the identification number assigned to the drug provided;

(3) the brand name or corresponding generic name of the drug, the strength of the drug, and either the name of the manufacturer or an easily identified abbreviation of the manufacturer's name;

(4) any necessary auxiliary labels and storage instructions;

(5) the beyond-use date of the drug provided;

(6) the instructions for use; and

(7) the name of the institutional drug room.

(e) Each label for any prepackaged or repack-

aged drug shall meet the requirements of K.A.R. 68-7-16. (Authorized by K.S.A. 65-1630 and K.S.A. 65-1637a; implementing K.S.A. 2008 Supp. 65-1626, K.S.A. 2008 Supp. 65-1626d, and K.S.A. 65-1637a; effective April 23, 2010.)

## Article 16.—CANCER DRUG REPOSITORY PROGRAM

**68-16-3. Donation of cancer drugs.** (a) Only a cancer drug that meets the following conditions may be accepted:

(1) The drug has not been compounded.

(2) The drug has not been previously dispensed from a cancer drug repository.

(3) The drug's packaging includes the drug's lot number and expiration date. If the drug is repackaged, the expiration date shall not be past the beyond-use date. Single-unit-dose drugs may be accepted if the single-unit-dose packaging is unopened.

(b) Any cancer drug may be accepted only if the donor simultaneously provides the cancer drug repository with a completed cancer drug repository donor form signed by the person making the donation.

(c) A cancer drug repository shall not accept the donation of any controlled substance or any drug that can be dispensed only to a patient registered with the drug manufacturer.

(d) Each cancer drug repository shall receive donated drugs only at the premises of that cancer drug repository and only by an individual authorized by the repository to receive donated cancer drugs. A drop box shall not be used to deliver or accept donations.

(e) Each cancer drug donated under the cancer drug repository program shall be stored in a secure storage area under environmental conditions appropriate for the drugs being stored. All donated drugs shall be stored separately from and not commingled with drugs that are not donated. (Authorized by and implementing K.S.A. 2007 Supp. 65-1667; effective Dec. 1, 2006; amended April 10, 2009.)

## Article 19.—CONTINUOUS QUALITY ASSURANCE PROGRAMS

**68-19-1. Minimum program requirements.** Each pharmacy's continuous quality improvement program shall meet the following minimum requirements:

(a) Meet at least once each quarter of each calendar year;

(b) have the pharmacy's pharmacist in charge in attendance at each meeting; and

(c) perform the following during each meeting:

(1) Review all incident reports generated for each reportable event associated with that pharmacy since the last quarterly meeting;

(2) for each incident report reviewed, establish the steps taken or to be taken to prevent a recurrence of the incident; and

(3) create a report of the meeting, including at least the following information:

(A) A list of the persons in attendance;

(B) a list of the incident reports reviewed; and

(C) a description of the steps taken or to be taken to prevent a recurrence of each incident reviewed. (Authorized by and implementing L. 2008, ch. 104, §16; effective April 10, 2009.)

## Article 20.—CONTROLLED SUBSTANCES

**68-20-10a. Electronic transmission of a controlled substance prescription.** (a) Each prescription drug order transmitted electronically shall be issued for a legitimate medical purpose by a prescriber acting within the course of legitimate professional practice.

(b) Each prescription drug order communicated by way of electronic transmission shall fulfill all the requirements of K.A.R. 68-2-22.

(c) If communicated by electronic transmission, the prescription drug order shall be maintained in hard copy for the time required by existing federal and state laws and regulations.

(d) A prescription drug order, including that for any controlled substance listed in schedules III, IV, and V and, in certain situations, that for any controlled substance listed in schedule II, may be communicated by electronic transmission.

(e) The electronic transmission of a prescription drug order for any schedule II controlled substance shall meet these requirements:

(1) A prescription drug order for any schedule II controlled substance may be communicated by the prescriber or that prescriber's designated agent by way of electronic transmission if the original, written, signed prescription drug order is presented to the pharmacist for review before the actual dispensing of the controlled substance, except as noted in this subsection.

(2) A prescription drug order for any schedule II narcotic substance to be compounded for the

direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion may be communicated by the prescriber or that prescriber's designated agent to the pharmacy by way of electronic transmission. The hard copy of this electronic transmission shall serve as the original, written prescription drug order for purposes of this subsection, and the hard copy shall be maintained as such.

(3) A prescription drug order for any schedule II controlled substance for a resident of a nursing facility, a nursing facility for mental health, or an assisted living facility may be communicated by the prescriber or that prescriber's designated agent by way of electronic transmission. The hard copy of this electronic transmission shall serve as the original, written prescription drug order for purposes of this subsection, and the hard copy shall be maintained as such.

(4) A prescription drug order for any schedule II controlled substance for a patient released by a registered institution to a home hospice setting that continues to provide daily skilled nursing care to the home hospice setting may be transmitted by the prescriber or that prescriber's designated agent by way of electronic transmission to the dispensing pharmacy. The hard copy of this electronic transmission shall serve as the original, written prescription drug order for purposes of this subsection, and the hard copy shall be maintained as such.

(5) In the case of an emergency situation, a prescription drug order for any schedule II controlled substance may be communicated by the prescriber by way of electronic transmission if the following requirements are met:

(A) The quantity prescribed and dispensed shall be limited to the amount adequate to treat the patient during the emergency period. Dispensing beyond the emergency period shall be pursuant to a written prescription drug order signed by the prescriber.

(B) After the pharmacist views the prescription drug order, this order shall be immediately reduced to a hard copy and shall contain all information required by federal and state laws and regulations.

(C) The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the prescription drug order communicated by way of electronic transmission, consistent with existing federal and state laws and regulations.

(D) (i) Within seven days after authorizing an emergency prescription drug order, the prescriber shall cause a written prescription drug order for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to all other federal and state laws and regulations, the prescription drug order shall have written on its face "authorization for emergency dispensing" and the date of the transmitted prescription drug order.

(ii) The written prescription drug order shall be delivered to the pharmacist in person within seven days of authorization, or if delivered by mail, the order shall be postmarked within the seven-day period.

(iii) Upon receipt, the dispensing pharmacist shall attach this written prescription drug order to the hard copy of the electronically transmitted prescription drug order. The pharmacist shall notify the nearest office of the U.S. drug enforcement administration (DEA) if the prescriber fails to deliver a written prescription drug order.

(f) Each electronic prescription drug order created and transmitted in conformance with 21 CFR part 1311 shall be considered an original, written, signed prescription drug order even if the order is transmitted electronically. (Authorized by and implementing K.S.A. 65-1630, K.S.A. 2009 Supp. 65-1642, K.S.A. 2009 Supp. 65-4102, and K.S.A. 65-4123; effective Feb. 5, 1999; amended Dec. 27, 1999; amended April 23, 2010; amended May 20, 2011.)

**68-20-16. Records and inventories of registrants.** (a) Except as provided in this regulation, each registrant shall keep records and maintain inventories in conformance with the recordkeeping and inventory requirements of 21 CFR 1304.04(g) and (h), including 21 CFR 1304.04(f) as referred to by 21 CFR 1304.04(g), and 21 CFR 1304.11, as in effect on April 1, 2008, which are hereby adopted by reference. The registrant shall keep the records on file for at least five years.

(b) After the initial inventory is taken, the registrant shall take a subsequent inventory of all controlled substances on hand at least every year. The annual inventory shall be taken at least eight months after the previous inventory.

(c) Each required inventory of schedule II controlled substances and all products containing hydrocodone shall be taken by exact count.

(d) All registrants handling schedule V prepa-

rations shall be subjected to the same inventory and recordkeeping requirements specified in subsections (a) and (b). In addition, an inventory of schedule V items shall be taken in conjunction with the required inventory requirements relating to schedules II, III, and IV. (Authorized by K.S.A. 65-4102, as amended by L. 2009, ch. 32, sec. 54, and K.S.A. 65-4121; implementing K.S.A. 65-4121; effective, E-72-24, Aug. 25, 1972; effective Jan. 1, 1973; amended May 1, 1989; amended July 31, 1998; amended Dec. 27, 1999; amended Nov. 13, 2009.)

**68-20-23. N-Benzylpiperazine included in schedule I.** N-Benzylpiperazine (BZP), including its salts, isomers, and salts of isomers, shall be classified as a schedule I controlled substance. (Authorized by and implementing K.S.A. 65-4102; effective, T-68-11-6-08, Nov. 6, 2008, effective March 6, 2009.)

## Article 21.—PRESCRIPTION MONITORING PROGRAM

**68-21-1. Definitions.** As used in these regulations, the following terms shall have the meanings specified in this regulation:

(a) "Authentication" means the provision of information, an electronic device, or a certificate by the board or its designee to a dispenser or prescriber that allows the dispenser or prescriber to electronically access prescription monitoring information. The authentication may include the provision of a user name, a password, or an electronic identification device or certificate.

(b) "Board" means the state board of pharmacy.

(c) "Dispenser identification number" means the drug enforcement administration (DEA) number if available or, if not available, the national provider identifier (NPI).

(d) "Drug enforcement administration number" means a unique registration number issued to an authorized prescriber of controlled substances by the drug enforcement administration, United States department of justice.

(e) "National provider identifier" and "NPI" mean a unique 10-digit number issued by the national provider identifier registry and used to identify each health care provider whose services are authorized by medicaid or medicare.

(f) "Patient identification number" means a unique number that a dispenser uses to identify a particular person.

(g) "Prescriber identification number" means the DEA number if available or, if not available, the NPI.

(h) "Program" means the Kansas prescription monitoring program.

(i) "Report" means a compilation of data concerning a dispenser, patient, drug of concern, or schedule II through IV drugs.

(j) "Stakeholder" means a person, group, or organization that could be affected by the program's actions, objectives, and policies.

(k) "Valid photographic identification" means any of the following:

(1) An unexpired permanent or temporary driver's license or instruction permit issued by any U.S. state or Canadian province;

(2) an unexpired state identification card issued by any U.S. state or Canadian province;

(3) an unexpired official passport issued by any nation;

(4) an unexpired United States armed forces identification card issued to any active duty, reserve, or retired member and the member's dependents;

(5) an unexpired merchant marine identification card issued by the United States coast guard;

(6) an unexpired state liquor control identification card issued by the liquor control authority of any U.S. state or Canadian province; or

(7) an unexpired enrollment card issued by the governing authority of a federally recognized Indian tribe located in Kansas, if the enrollment card incorporates security features comparable to those used by the Kansas department of revenue for drivers' licenses. (Authorized by and implementing K.S.A. 2009 Supp. 65-1692; effective Oct. 15, 2010.)

**68-21-2. Electronic reports.** (a) Each dispenser shall file a report with the board for schedule II through IV drugs and any drugs of concern dispensed in this state or to an address in this state. On and after January 1, 2013, this report shall be submitted within 24 hours of the time that the substance is dispensed, unless the board grants an extension as specified in subsection (d). Before January 1, 2013, each dispenser shall submit the report within seven days of dispensing the substance. Each dispenser that does not dispense schedule II through IV drugs or any drugs of concern in this state or to an address in this state during the reporting periods specified in this subsection shall file a zero report with the board.

(b) In addition to the requirements of K.S.A.

65-1683 and amendments thereto, each dispenser shall submit the prescriber's name, the patient's telephone number, and the number of refills for the dispensed drug on the report to the board. As an alternative to reporting the dispenser identification number, any dispenser may report the pharmacy DEA number.

(c) Except as specified in K.A.R. 68-21-3, the report shall be submitted by secure file transfer protocol in the electronic format established by the American society for automation in pharmacy, dated no earlier than 2007, version 4, release 1.

(d) An extension may be granted by the board to a dispenser for the submission of a report if both of the following conditions are met:

(1)(A) The dispenser suffers a mechanical or electronic failure; or

(B) the dispenser cannot meet the deadline established by subsection (a) because of circumstances beyond the dispenser's control.

(2) The dispenser files a written application for extension on a form provided by the board within 24 hours of discovery of the circumstances necessitating the extension request or on the next day the board's administrative office is open for business.

(e) An extension for the filing of a report shall be granted to a dispenser if the board is unable to receive electronic reports submitted by the dispenser.

(f) Each dispenser that is registered or licensed to dispense schedule II through IV drugs or any drugs of concern in this state or to an address in this state but does not dispense any of these drugs shall notify the board in writing that the dispenser will not be reporting to the board. If the dispenser begins dispensing schedule II through IV drugs or any drugs of concern in this state or to an address in this state, the dispenser shall notify the board of this fact and shall begin submitting reports to the board pursuant to this regulation. (Authorized by K.S.A. 2009 Supp. 65-1683 and 65-1692; implementing K.S.A. 2009 Supp. 65-1683; effective Oct. 15, 2010; amended April 15, 2011.)

**68-21-3. Waivers for electronic reports.** (a) A waiver may be granted by the board to a dispenser who does not have an automated recordkeeping system capable of producing an electronic report as specified in K.A.R. 68-21-2(c) if the following conditions are met:

(1) The dispenser files a written application for a waiver on a form provided by the board.

(2) The dispenser agrees in writing to immediately begin filing a paper report on a form provided by the board for each drug of concern and each schedule II through IV drug dispensed in this state or dispensed to an address in this state.

(b) A waiver may be granted by the board to a dispenser who has an automated recordkeeping system capable of producing an electronic report as specified in K.A.R. 68-21-2(c) if both of the following conditions are met:

(1) The dispenser files a written application for a waiver on a form provided by the board.

(2)(A) A substantial hardship is created by natural disaster or other emergency beyond the dispenser's control; or

(B) the dispenser is dispensing in a controlled research project approved by a regionally accredited institution of higher education.

(c) If a medical care facility dispenses an interim supply of a drug of concern or a schedule II through IV drug to an outpatient on an emergency basis when a prescription cannot be filled as authorized by K.A.R. 68-7-11, that facility shall be exempt from the reporting requirements. The interim quantity shall not exceed a 48-hour supply and, as described in K.A.R. 68-7-11(d)(2)(B), shall be limited to an amount sufficient to supply the outpatient's needs until a prescription can be filled. (Authorized by K.S.A. 2009 Supp. 65-1692; implementing K.S.A. 2009 Supp. 65-1683; effective Oct. 15, 2010.)

**68-21-4. Notice of requests for information.** Each dispenser who may access information maintained by the board on each drug of concern and schedule II through IV drug dispensed to one of the dispenser's patients for the purpose of providing medical or pharmaceutical care shall notify the patient of this access to prescription monitoring information by performing either of the following:

(a) Posting an easily viewable sign at the place where prescription orders are issued or accepted for dispensing; or

(b) providing written material about the dispenser's access to prescription monitoring information. (Authorized by K.S.A. 2009 Supp. 65-1692; implementing K.S.A. 2009 Supp. 65-1685; effective Oct. 15, 2010.)

**68-21-5. Access to information.** All requests for, uses of, and disclosures of prescription monitoring information by authorized persons

shall meet the requirements of K.S.A. 65-1685, and amendments thereto, and this article.

(a) By patients or patient's personal representative.

(1) Any patient or that patient's personal representative may obtain a report listing all program information that pertains to the patient, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto.

(2) Each patient or the patient's personal representative seeking access to the information described in paragraph (a)(1) shall submit a written request for information in person to the board. The written request shall be in a format established by the board and shall include the following elements:

(A) The patient's name and, if applicable, the full name of the patient's personal representative;

(B) the patient's residential address and, if applicable, the complete residential address of the patient's personal representative;

(C) the patient's telephone number, if any, and, if applicable, the telephone number of the personal representative; and

(D) the time period for which information is being requested.

(3) The patient or the patient's personal representative shall produce two forms of valid photographic identification before obtaining access to the patient's information obtained by the program. The patient or the patient's personal representative shall allow photocopying of the identification.

(4) Before access to the patient's information obtained by the program is given, one of the following shall be produced if the requester is not the patient:

(A) For a personal representative, an official attested copy of the judicial order granting authority to gain access to the health care records of the patient;

(B) for a parent of a minor child, a certified copy of the birth certificate of the minor child or other official documents establishing legal guardianship; or

(C) for a person holding power of attorney, the original document establishing the power of attorney.

(5) The patient's personal representative shall allow the photocopying of the documents described in this subsection.

(6) The patient authorization may be verified by the board by any reasonable means before providing the information to the personal representative.

(b) By dispensers.

(1) Any dispenser may obtain any program information relating to a patient of the dispenser for the purpose of providing pharmaceutical care to that patient, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto. The information shall be provided in a format established by the board, which may include delivery by electronic means, facsimile transmission, or telephone.

(2) Each dispenser who seeks access to the information described in paragraph (b)(1) shall submit a written request to the board by mail, hand delivery, or electronic means in a manner established by the board, using authentication. If the authentication is lost or missing or the security of the authentication is compromised, the dispenser shall cause the board to be notified by telephone and in writing as soon as reasonably possible. Information regarding more than one patient may be submitted in a single request.

Each request shall be submitted in a format established by the board and shall include the following elements for each patient:

(A) The patient's name and birth date;

(B) if known to the dispenser, the patient's address and telephone number;

(C) the time period for which information is being requested;

(D) the dispenser's name;

(E) if applicable, the name and address of the dispenser's pharmacy;

(F) the dispenser identification number; and

(G) the dispenser's signature.

(3) The authentication and identity of the dispenser shall be verified by the board before allowing access to any prescription monitoring information.

(c) By prescribers.

(1) Any prescriber or health care practitioner authorized by a prescriber may obtain any program information relating to a patient under the prescriber's care, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto. The information shall be provided in a format established by the board, which may include delivery by electronic means, facsimile, or telephone.

(2) Each prescriber or health care practitioner authorized by a prescriber who seeks access to program information shall submit a written request to the board by mail, hand delivery, or elec-

tronic means in a manner established by the board, using authentication. If the authentication is lost or missing or the security of the authentication is compromised, the prescriber shall cause the board to be notified by telephone and in writing as soon as reasonably possible. Information regarding more than one patient may be submitted in a single request.

Each request shall be submitted in a format established by the board and shall include the following elements for each patient:

(A) The patient's name and birth date;

(B) if known to the prescriber, the patient's address and telephone number;

(C) the time period for which information is being requested;

(D) the prescriber's name;

(E) the name and address of the prescriber's medical practice;

(F) the prescriber identification number; and

(G) the prescriber's signature.

(3) The authentication and identity of the dispenser shall be verified before allowing access to any program information.

(d) By director or board investigator of a health professional licensing, certification, or regulatory agency or entity.

(1) Any director or board investigator of a health professional licensing, certification, or regulatory agency or entity may obtain any program information needed in carrying out that individual's business, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto. The information shall be provided in a format established by the board, which may include delivery by electronic means, facsimile, or telephone.

(2) Each director or board investigator of a licensing board with jurisdiction over a dispenser or prescriber who seeks access to program information shall submit a written request by mail, facsimile, or electronic means to a location specified by the board. The written request shall contain a statement of facts from which the board can make a determination of reasonable cause for the request.

(e) By local, state, and federal law enforcement or prosecutorial officials.

(1) Any local, state, or federal law enforcement officer or prosecutorial official may obtain any program information as required for an ongoing case, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto. The information shall be provided in a format established by the board, which may include delivery by electronic means, facsimile, or telephone.

(2) Each local, state, or federal law enforcement officer or prosecutorial official who seeks access to program information shall register with the board. Once registration is approved, the requester may submit a written request by mail, facsimile, or electronic means to the board. All requests for, uses of, and disclosures of prescription monitoring information by authorized persons under this subsection shall meet the requirements of K.S.A. 65-1685 (c)(4), and amendments thereto.

(f) By the Kansas health policy authority for purposes of the Kansas medicaid and state children's health insurance program (SCHIP).

(1) An authorized representative of the Kansas health policy authority may obtain any program information regarding medicaid or SCHIP program recipients, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto. The information shall be provided in a format established by the board.

(2) Each authorized representative of the Kansas health policy authority seeking program information regarding medicaid or SCHIP program recipients who seeks access to program information shall submit a request to the board.

(g) By any other state's prescription monitoring program.

(1) Any authorized representative from any other state's prescription monitoring program may obtain any program information for requests from within that state that do not violate the authentication and security provisions of the prescription monitoring program act, in accordance with this regulation and K.S.A. 65-1685 and amendments thereto. The information shall be provided in a format established by the board, which may include delivery by electronic means, facsimile, or telephone.

(2) Any authorized representative from another state's prescription monitoring program seeking access to program information shall first establish a data-sharing agreement with the board in which the states agree to share prescription monitoring information with one another. The agreement shall specify what information will be made available and to whom, how requests will be made, how quickly requests will be processed, and in which format the information will be provided.

(h) By public or private entities for statistical, research, or educational purposes.

(1) Any public or private entity may obtain program information, in accordance with this regulation and K.S.A. 65-1685(d) and amendments thereto. The information shall be provided in a format established by the board.

(2) Each public or private entity who seeks access to program information shall submit a written request by mail, facsimile, or electronic means to the board. The written request shall contain a statement of facts from which the board can make a determination of reasonable cause for the request. (Authorized by K.S.A. 2009 Supp. 65-1692; implementing K.S.A. 2009 Supp. 65-1685; effective Oct. 15, 2010.)

**68-21-6. Reciprocal agreements with other states to share information.** (a) Reciprocal agreements with one or more states in the United States may be entered into by the board to share program information if the other state's prescription monitoring program is compatible with the program. If the board elects to evaluate the prescription monitoring program of another state, priority shall be given to a state that is contiguous to Kansas.

(b) In determining the compatibility of the other state's prescription monitoring program, the following may be considered by the board:

(1) The safeguards for privacy of patient records and the other state's success in protecting patient privacy;

(2) the persons authorized in the other state to view the data collected by the program;

(3) the schedules of controlled substances monitored in the other state;

(4) the data required by the other state to be submitted on each prescription; and

(5) the costs and benefits to the board of mutually sharing information with the other state.

(c) Each reciprocal agreement shall be reviewed annually by the board to determine its continued compatibility with the program. (Authorized by K.S.A. 2009 Supp. 65-1692; implementing K.S.A. 2009 Supp. 65-1685; effective Oct. 15, 2010.)

**68-21-7. Drugs of concern.** (a) Each of the following shall be classified as a drug of concern:

(1) Any product containing all three of these drugs: butalbital, acetaminophen, and caffeine;

(2) carisoprodol; and

(3) tramadol.

(b) The stakeholders of the program shall be notified by the board if a drug is to be considered by the board for classification as a drug of concern.

(c) Any individual who wants to have a drug added to the program for monitoring may submit a written request to the board. (Authorized by K.S.A. 2009 Supp. 65-1682 and 65-1692; implementing K.S.A. 2009 Supp. 65-1682; effective Oct. 15, 2010.)

## Article 22.—ELECTRONIC SUPERVISION OF MEDICAL CARE FACILITY'S PHARMACY PERSONNEL

**68-22-1. Definitions.** (a) "Medical care facility" shall have the meaning provided in K.S.A. 65-1626(w), and amendments thereto.

(b) "Pharmacy student" shall have the meaning provided in K.S.A. 65-1626(ee), and amendments thereto, and shall include a pharmacy intern registered with the board.

(c) "Pharmacy technician" shall have the meaning provided in K.S.A. 65-1626(ff), and amendments thereto.

(d) "Real-time," when used to describe the transmission of information through data, video, and audio links, shall mean that the transmission is sufficiently rapid that the information is available simultaneously to the electronically supervising pharmacist and the pharmacy student or pharmacy technician being electronically supervised in the medical care facility's pharmacy.

(e) "Electronic supervision" shall mean the oversight provided by a pharmacist licensed in Kansas and supervising, by means of real-time communication equipment that meets the operating requirements listed in K.A.R. 68-22-5, a registered pharmacy student or pharmacy technician who is working in a Kansas medical care facility's pharmacy. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2009 Supp. 65-1626, K.S.A. 2009 Supp. 65-1642, K.S.A. 65-1648, and K.S.A. 2009 Supp. 65-1663; effective Nov. 18, 2011.)

**68-22-2. Application for approval to utilize electronic supervision.** The pharmacist in charge of any medical care facility's pharmacy located in Kansas and registered by the board who wants to seek approval for electronic supervision of a pharmacy student or pharmacy technician in that medical care facility pharmacy shall submit an application to the board. Each application shall be submitted on a form provided by the board and shall include the following:

(a) Identifying information concerning the applying medical care facility's pharmacy;

(b) the type and operational capabilities of the computer, video, and communication systems to be used for the electronic supervision; and

(c) a copy of the electronic supervision procedures manual and training manual approved by the pharmacist in charge of the medical care facility's pharmacy. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2009 Supp. 65-1626, K.S.A. 2009 Supp. 65-1642, K.S.A. 65-1648, and K.S.A. 2009 Supp. 65-1663; effective Nov. 18, 2011.)

**68-22-3. Prior approval and training required.** (a) The pharmacist in charge of a medical care facility's pharmacy shall not permit a pharmacy student or pharmacy technician to be in the pharmacy working under electronic supervision unless the pharmacy has a current approval for electronic supervision from the board.

(b) The pharmacist in charge of a medical care facility's pharmacy shall not permit a pharmacy student or pharmacy technician to be in the pharmacy working under electronic supervision before completing the pharmacy's electronic supervision training course. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2009 Supp. 65-1626, K.S.A. 2009 Supp. 65-1642, K.S.A. 65-1648, and K.S.A. 2009 Supp. 65-1663; effective Nov. 18, 2011.)

**68-22-4. Electronic supervision.** (a) Only a pharmacist licensed by the board may electronically supervise a pharmacy student or pharmacy technician working in a medical care facility's pharmacy.

(b) A pharmacist licensed by the board may be electronically connected to multiple medical care facility pharmacies at one time for the purpose of electronically supervising.

(c) A pharmacist licensed by the board may electronically supervise no more than one pharmacy technician working in any medical care facility's pharmacy at one time.

(d) No more than one pharmacy student or pharmacy technician that is being electronically supervised may work in a medical care facility's pharmacy at one time.

(e) Electronic supervision conducted in conformance with these regulations shall constitute direct supervision. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2009 Supp. 65-1626, K.S.A. 2009 Supp. 65-1642, K.S.A. 65-1648, and K.S.A. 2009 Supp. 65-1663; effective Nov. 18, 2011.)

**68-22-5. Minimum operating requirements.** (a) A pharmacy student or pharmacy technician may enter the pharmacy without a pharmacist present for purposes of turning on the data, video, or audio links and determining if a pharmacist is available for electronic supervision.

(b) Electronic supervision shall not be permitted if an interruption occurs in any of the data, video, or audio links. Whenever an interruption in any of the data, video, or audio links occurs, no medication order shall be filled or dispensed using electronic supervision.

(c) Data entry may be performed by the electronically supervising pharmacist or the pharmacy student or pharmacy technician being electronically supervised. Each entry performed by an electronically supervised pharmacy student or pharmacy technician shall be verified by the electronically supervising pharmacist before the drug leaves the pharmacy.

(d) All medication orders processed by a pharmacy student or a pharmacy technician being electronically supervised shall be capable of being displayed on a computer terminal at both the location of the electronically supervising pharmacist and the medical care facility's pharmacy. The quality of the image viewed by the pharmacist shall be sufficient for the pharmacist to be able to determine the accuracy of the work of the pharmacy student or pharmacy technician.

(e) All patient demographic information shall be viewable in real time at both the location of the electronically supervising pharmacist and the medical care facility's pharmacy.

(f) Before a drug leaves the medical care facility's pharmacy, all of the following requirements shall be met:

(1) The electronically supervising pharmacist shall utilize the data, audio, and video links and review the patient profile, the original scanned medication order, and the drug to be dispensed to ensure accuracy.

(2) The supervising pharmacist, pharmacy student, or pharmacy technician shall cause an electronic or paper image of the medication order and the drug, as seen by the electronically supervising pharmacist, to be captured and retained in the electronic or paper records of the medical care facility's pharmacy for the same time period as that required for the written medication order.

(3) The supervising pharmacist, pharmacy student, or pharmacy technician shall cause a paper or electronic record that includes the patient's

name, the medication order number, the name of the pharmacy student or pharmacy technician, and the name of the electronically supervising pharmacist to be made.

(4) The pharmacist in charge of the medical care facility's pharmacy shall ensure that controls exist to protect the privacy and security of confidential records.

(5) The supervising pharmacist, pharmacy student, or pharmacy technician shall cause a permanent digital record of all duties electronically supervised and all data transmissions associated with the electronic supervision to be made. Each record shall be maintained for at least five years. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2009 Supp. 65-1626, K.S.A. 2009 Supp. 65-1642, K.S.A. 65-1648, and K.S.A. 2009 Supp. 65-1663; effective Nov. 18, 2011.)

## Agency 69

# Kansas Board of Cosmetology

**Editor's Note:**
Effective July 1, 2002, rules and regulations which establish sanitation standards are under the Kansas department of health and environment. See. L. 2002, ch. 187, sec. 18.

*Articles*

69-11. FEES.

### Article 11.—FEES

**69-11-1. Fees.** The following fees shall be charged:

| | |
|---|---|
| Cosmetologist examination fee | $50.00 |
| Cosmetologist license application fee | 45.00 |
| Cosmetologist license renewal fee | 45.00 |
| Delinquent cosmetologist renewal fee | 25.00 |
| Cosmetology technician license renewal fee | 45.00 |
| Delinquent cosmetology technician renewal fee | 25.00 |
| Electrologist examination fee | 50.00 |
| Electrologist license application fee | 45.00 |
| Electrologist license renewal fee | 45.00 |
| Delinquent electrologist renewal fee | 25.00 |
| Manicurist examination fee | 50.00 |
| Manicurist license application fee | 45.00 |
| Manicurist license renewal fee | 45.00 |
| Delinquent manicurist renewal fee | 25.00 |
| Esthetician examination fee | 50.00 |
| Esthetician license application fee | 45.00 |
| Esthetician license renewal fee | 45.00 |
| Delinquent esthetician renewal fee | 25.00 |
| Instructor examination fee | 75.00 |
| Instructor license application fee | 75.00 |
| Instructor license renewal fee | 50.00 |
| Delinquent instructor renewal fee | 75.00 |
| Any apprentice license application fee | 15.00 |
| New school license application fee | 150.00 |
| School license renewal fee | 75.00 |
| Delinquent school license fee | 50.00 |
| New salon or clinic application fee | 50.00 |
| Salon or clinic renewal fee | 50.00 |
| Delinquent salon or clinic renewal fee | 30.00 |
| Reciprocity application fee | 50.00 |
| Verification of licensure fee | 20.00 |
| Fee for a duplicate of any license | 25.00 |
| Temporary permit fee | 15.00 |
| Statutes and regulations book | 5.00 |

(Authorized by and implementing K.S.A. 65-1904; effective, E-76-44, Sept. 5, 1975; effective Feb. 15, 1977; amended May 1, 1978; amended May 1, 1981; amended May 1, 1982; amended, T-83-21, July 21, 1982; amended May 1, 1983; amended May 1, 1984; amended, T-88-60, Dec. 28, 1987; amended May 1, 1988; amended Jan. 1, 1993; amended Dec. 13, 1993; amended March 22, 1996; amended Nov. 6, 1998; amended April 3, 2009.)

## Agency 70

# Kansas Board of Veterinary Medical Examiners

*Articles*

70-7. STANDARDS OF VETERINARY PRACTICE.

### Article 7.—STANDARDS OF VETERINARY PRACTICE

**70-7-1. The practice of veterinary medicine.** Each veterinarian shall meet the following minimum standards in the practice of veterinary medicine.

(a) Storage compartments. Each veterinarian shall maintain clean, orderly, and protective storage compartments for drugs, supplies, and equipment. Refrigeration shall be available for drugs that require it.

(b) Field sterilization. Each veterinarian shall provide a means of sterilizing instruments when practicing veterinary medicine away from a veterinary premises.

(c) Conflict of interest. When representing conflicting interests, including representation of both the buyer and seller of an animal to be inspected for soundness, the veterinarian shall make full disclosure of the dual relationship and shall obtain express consent from all parties to the transaction.

(d) Health certificates. A veterinarian shall not issue a certificate of health unless the veterinarian has personal knowledge, obtained through actual inspection and appropriate tests of the animal, that the animal meets the requirements of the certificate.

(e) Patient acceptance. Each veterinarian shall decide which medical cases will be accepted in the veterinarian's professional capacity and what course of treatment will be followed once a patient has been accepted. The veterinarian shall be responsible for advising the client as to the treatment to be provided.

(f) Control of services. A veterinarian shall not allow any professional services to be controlled or exploited by any lay entity, personal or corporate, that intervenes between the client and the veterinarian. A veterinarian shall not allow a nonlicensed person or entity to interfere with or intervene in the veterinarian's practice of veterinary medicine. Each veterinarian shall be responsible for the veterinarian's own actions and shall be directly responsible to the client for the care and treatment of the patient.

(g) Anesthesia and anesthetic equipment. Each veterinarian shall provide anesthesia services as needed. Each anesthetic agent shall be administered only by a veterinarian or a person trained in its administration under the direct supervision of a licensed veterinarian. Each veterinarian shall use disinfectants capable of eliminating harmful viruses and bacteria for cleaning anesthetic equipment.

(h) Patient records.

(1) Length of maintenance. Each veterinarian shall maintain a patient record for three years from the date of the last visit.

(2) Necessary elements. Each veterinarian shall ensure that all patient records are legible and made contemporaneously with treatment or services rendered. All records shall include the following elements:

(A) Patient identification. Patient identification shall include the patient's name, species, breed, age or date of birth, sex, color, and markings;

(B) client identification. Client identification shall include the owner's name, home address, and telephone number;

(C) a vaccination record; and

(D) a complete record of the physical examination findings and treatment or services rendered.

(3) Manner of maintenance. Each veterinarian shall maintain records in a manner that will permit any authorized veterinarian to proceed with the care and treatment of the animal, if required, by reading the medical record of that particular patient.

(i) Medication records. The veterinarian shall ensure that each dose of a medication administered is properly recorded on the patient's medi-

cal record. All drugs shall be administered and dispensed only upon the order of a licensed veterinarian.

(j) Controlled drugs. The veterinarian shall ensure that a separate written ledger is maintained when a controlled drug is administered or dispensed.

(k) Locked area. If controlled drugs are used, the veterinarian shall ensure that a locked area for the storage of controlled substances is provided.

(l) Dispensation of medications for companion animals.

(1) All prescription drugs to be dispensed for use by a companion animal may be dispensed only on the order of a licensed veterinarian who has an existing veterinary-client-patient relationship as defined by the Kansas veterinary practice act. The veterinarian shall ensure that labels will be affixed to any unlabeled container containing any medication dispensed and to each factory-labeled container that contains prescription drugs or controlled substances dispensed for companion animals. The label shall be affixed to the immediate container and shall include the following information:

(A) The name and address of the veterinarian and, if the drug is a controlled substance, the veterinarian's telephone number;

(B) the date of delivery or dispensing;

(C) the name of the patient, the client's name, and, if the drug is a controlled substance, the client's address;

(D) the species of the animal;

(E) the name, active ingredient, strength, and quantity of the drug dispensed;

(F) directions for use specified by the practitioner including dosage, frequency, route of administration, and duration of therapy; and

(G) any cautionary statements required by law, including statements indicating that the drug is not for human consumption, is poisonous, or has withdrawal periods associated with the drug. If the size of the immediate container is insufficient to be labeled, the container shall be enclosed within another container large enough to be labeled.

(2) The term "companion animal" shall have the meaning specified in K.S.A. 47-816 and amendments thereto.

(m) Dispensation of medications for food or commercial animals. All prescription drugs to be dispensed for food used by a food animal or used by a commercial animal may be dispensed only on a written order of a licensed veterinarian with an existing veterinary-client-patient relationship as defined by the Kansas veterinary practice act. That veterinarian shall maintain the original written order on file in the veterinarian's office. A copy of the written order shall be on file with the distributor, and a second copy shall be maintained on the premises of the patient-client. The written order shall include the following information:

(1) The name and address of the veterinarian and, if the drug is a controlled substance, the veterinarian's telephone number;

(2) the date of delivery or dispensing;

(3) the name of the patient, the client's name, and, if the drug is a controlled substance, the client's address;

(4) the species or breed, or both, of the animal;

(5) (A) The established name or active ingredient of each drug or, if formulated from more than one ingredient, the established name of each ingredient; and

(B) the strength and quantity of each drug dispensed; and

(6) directions for use specified by the practitioner, including the following:

(A) The class or species of the animal or animals receiving the drug or some other identification of the animals; and

(B) the dosage, the frequency and route of administration, and duration of therapy; and

(C) any cautionary statements required by law, including statements indicating whether the drug is not for human consumption or is poisonous or whether there are withdrawal periods associated with the drug.

(n) Supervision.

(1) Each veterinarian shall provide direct supervision of any employee or associate of the veterinarian who participates in the practice of veterinary medicine, except that a veterinarian may provide indirect supervision to any person who meets either of the following conditions:

(A) Is following the written instructions for treatment of the animal patient on the veterinary premises; or

(B) has completed three or more years of study in a school of veterinary medicine.

(2) A veterinarian may delegate to an employee or associate of the veterinarian only those activities within the practice of veterinary medicine that are consistent with that person's training, experience, and professional competence. A veterinarian shall not delegate any of the following:

(A) The activities of diagnosis;

(B) performance of any surgical procedure; or

(C) prescription of any drug, medicine, biologic, apparatus, application, anesthesia, or other therapeutic or diagnostic substance or technique.

(o) Pain management. Each veterinarian shall use appropriate and humane methods of anesthesia, analgesia, and sedation to minimize pain and distress during any procedures on companion animals. (Authorized by and implementing K.S.A. 47-821; effective Feb. 21, 1997; amended Jan. 20, 2012.)

# Agency 71

# Kansas Dental Board

*Articles*

71-4. Continuing Education Requirements.
71-5. Sedative and General Anaesthesia.
71-11. Miscellaneous Provisions.

## Article 4.—CONTINUING EDUCATION REQUIREMENTS

**71-4-1. Continuing education credit hours and basic cardiac life support certificate required for renewal of license of dentist and dental hygienist.** (a) Each licensee shall submit to the board, with the license renewal application, a current "basic cardiac life support for the health care provider" certificate from the American heart association or a current certificate deemed equivalent by the board from a provider approved by the board. The continuing education hours for either certificate may be applied to the continuing education requirement specified in subsection (b). Any dentist licensee who holds a specialist certificate may consider these continuing education hours as pertaining to that licensee's specialty hour requirement.

(b) Each dentist licensee shall submit to the board, with the license renewal application, evidence of satisfactory completion of at least 60 hours of continuing education courses that qualify for credit. Each dentist licensee who holds a specialist certificate shall provide evidence satisfactory to the board that at least 40 of the required 60 hours of continuing education are in courses in the specialty for which the licensee holds a specialist certificate. Each required course hour shall be completed in the 24-month period immediately preceding the date of expiration of the license. The term "courses" as used in this article shall include courses, institutes, seminars, programs, and meetings.

(c) Each dental hygienist licensee shall submit, with the license renewal application, evidence of satisfactory completion of at least 30 hours of continuing dental education courses that qualify for credit. Each course shall have been completed in the 24-month period immediately preceding the date of expiration of the dental hygienist license.

(d) An extension of time to complete a continuing education requirement may be granted by the board if it finds that good cause has been shown. (Authorized by K.S.A. 2010 Supp. 65-1431 and K.S.A. 74-1406; implementing K.S.A. 2010 Supp. 65-1431; effective May 1, 1978; amended May 1, 1986; amended March 27, 1989; amended Dec. 27, 1996; amended Feb. 20, 2004; amended Jan. 6, 2012.)

## Article 5.—SEDATIVE AND GENERAL ANAESTHESIA

**71-5-1.** (Authorized by K.S.A. 74-1406 and implementing K.S.A. 1994 Supp. 65-144; effective Nov. 27, 1995; revoked Nov. 19, 2010.)

**71-5-2.** (Authorized by K.S.A. 1994 Supp. 74-1406 and implementing K.S.A. 1994 Supp. 65-1444; effective Nov. 27, 1995; revoked Nov. 19, 2010.)

**71-5-3.** (Authorized by K.S.A. 74-1406 and implementing K.S.A. 1996 Supp. 65-1444; effective Nov. 27, 1995; amended Nov. 7, 1997; revoked Nov. 19, 2010.)

**71-5-4.** (Authorized by K.S.A. 74-1406 and implementing K.S.A. 1996 Supp. 65-1444; effective Nov. 27, 1995; amended Nov. 7, 1997; revoked Nov. 19, 2010.)

**71-5-5.** (Authorized by K.S.A. 74-1406 and implementing K.S.A. 1994 Supp. 65-1444; effective Nov. 27, 1995; revoked Nov. 19, 2010.)

**71-5-6.** (Authorized by K.S.A. 74-1406 and implementing K.S.A. 1994 Supp. 65-1449; effective Nov. 27, 1995; revoked Nov. 19, 2010.)

**71-5-7. Definitions.** As used in these reg-

ulations, the following terms shall have the meanings specified in this regulation:

(a) "Administer" means to deliver a pharmacological agent to the patient by an enteral or a parenteral route at the direction of a dentist while in a dental office.

(b) "Adult patient" means a patient who is more than 12 years of age.

(c) "Anxiolysis" means the diminution or elimination of anxiety through the means of a single drug or combination of agents prescribed or administered by a dentist and used so as not to induce conscious sedation when used alone or in combination with nitrous oxide.

(d) "Conscious sedation" and "conscious sedative state" mean a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal commands and that is produced by any pharmacological or nonpharmacological agent or a combination of these agents.

(e) "Deep sedation" means an induced state of depressed consciousness accompanied by a partial loss of protective reflexes or the ability to continuously and independently maintain an airway and to respond purposefully to physical stimulation or verbal commands. Deep sedation is produced by a pharmacological or nonpharmacological agent or a combination of these agents.

(f) "Dentist" means any person licensed by the board to practice dentistry and any person licensed to practice medicine and surgery that practices dentistry as a specialty.

(g) "End-tidal carbon dioxide monitoring" means a process to determine the percent of carbon dioxide in a patient's breath through the use of a carbon dioxide monitor.

(h) "Enteral conscious sedation" and "combination inhalation-enteral conscious sedation" mean the use of one or more sedative agents that are absorbed through the gastrointestinal tract or oral mucosa, including by oral, rectal, and sublingual administration, either by themselves or in combination with nitrous oxide and oxygen to render a patient in a conscious sedative state.

(i) "General anesthesia" means an induced state of unconsciousness accompanied by a partial or complete loss of protective reflexes, including the inability to continuously and independently maintain an airway and to respond purposefully to physical stimulation or verbal commands. General anesthesia is produced by a pharmacological or nonpharmacological agent or a combination of these agents.

(j) "Medical care facility" has the meaning specified in K.S.A. 65-425 and amendments thereto.

(k) "Parenteral conscious sedation" means the use of one or more sedative agents that bypass the gastrointestinal tract, including by intramuscular, intravenous, intranasal, submucosal, subcutaneous, and intraocular administration, to render a patient in a conscious sedative state.

(l) "Treating dentist" means a dentist with a level I, II, or III permit who treats a patient while the patient is under conscious sedation, deep sedation, or general anesthesia.

(m) "Vital signs" means blood pressure, heart rate, and respiratory rate. (Authorized by K.S.A. 2008 Supp. 65-1444 and K.S.A. 74-1406; implementing K.S.A. 2008 Supp. 65-1444; effective Nov. 19, 2010.)

**71-5-8. Applicability of regulations.** The regulations in this article shall apply in all treatment settings except when a dentist is treating a patient in a medical care facility. (Authorized by K.S.A. 2008 Supp. 65-1444 and K.S.A. 74-1406; implementing K.S.A. 2008 Supp. 65-1444; effective Nov. 19, 2010.)

**71-5-9. General requirements.** (a) A dentist shall not be required to obtain a permit from the board to administer nitrous oxide and oxygen to a patient of any age when either substance is used alone or with a local anesthetic.

(b) A dentist shall not be required to obtain a permit from the board to prescribe sedative agents designed to achieve only anxiolysis to a patient of any age.

(c) Each system used to administer nitrous oxide shall include an operational fail-safe mechanism to ensure the delivery of not less than 25 percent oxygen to the patient.

(d) On and after December 1, 2010, a dentist shall not administer enteral conscious sedation or combination inhalation-enteral conscious sedation to a patient 12 years of age or younger unless the dentist has a current level I, II, or III permit issued by the board and has completed one of the following training requirements:

(1) A residency program approved by the board in dental anesthesia or pediatric dentistry or any other program that the board determines to be equivalent;

(2) a residency program approved by the board in general practice, oral and maxillofacial surgery,

endodontics, periodontics, or other advanced education in general dentistry, which shall include training in conscious sedation for patients 12 years of age or younger; or

(3) a postgraduate course or training program approved by the board that includes training in conscious sedation for patients 12 years of age or younger.

(e) On and after December 1, 2010, a dentist shall not administer parenteral conscious sedation to a patient 12 years of age or younger unless the dentist has a current level II or III permit issued by the board and has completed one of the following training requirements:

(1) A residency program approved by the board in dental anesthesia or pediatric dentistry or any other program that the board determines to be equivalent;

(2) a residency program approved by the board in general practice, oral and maxillofacial surgery, endodontics, periodontics, or other advanced education in general dentistry, which shall include training in parenteral conscious sedation for patients 12 years of age or younger; or

(3) a postgraduate course or training program approved by the board that includes training in parenteral conscious sedation for patients 12 years of age or younger.

(f) On and after December 1, 2010, a dentist shall not administer deep sedation or general anesthesia to a patient 12 years of age or younger unless the dentist has a current level III permit issued by the board and has completed one of the following training requirements:

(1) A residency program approved by the board in dental anesthesia or pediatric dentistry or any other program that the board determines to be equivalent;

(2) a residency program approved by the board in general practice, oral and maxillofacial surgery, endodontics, periodontics, or other advanced education in general dentistry, which shall include training in deep sedation or general anesthesia for patients 12 years of age or younger; or

(3) a postgraduate course or training program approved by the board that includes training in deep sedation or general anesthesia for patients 12 years of age or younger.

(g) On and after December 1, 2010, a dentist shall not administer enteral conscious sedation or combination inhalation-enteral conscious sedation to an adult patient unless the dentist has a current level I, II, or III permit issued by the board.

(h) On and after December 1, 2010, a dentist shall not administer parenteral conscious sedation to an adult patient unless the dentist has a current level II or III permit issued by the board.

(i) On and after December 1, 2010, a dentist shall not administer deep sedation or general anesthesia to an adult patient unless the dentist has a current level III permit issued by the board.

(j) A dentist shall not be required to obtain a level I, II, or III permit if the sedative agent used is administered to the dentist's patient by a person licensed under Kansas law to administer this agent without supervision.

(k) On and after December 1, 2010, only a dentist with an appropriate license or permit, another person authorized by Kansas law to administer the sedative agent under supervision at the time of administration, or a person authorized by Kansas law to administer the sedative agent without supervision may administer a sedative agent that is designed to achieve anxiolysis, enteral conscious sedation, parenteral conscious sedation, deep sedation, or general anesthesia as part of a dental procedure.

(l) Each dentist shall submit a written report to the board within 30 days of any mortality or morbidity that resulted in transportation to an acute medical care facility or that is likely to result in permanent physical or mental injury to a patient during, or as a result of, any general anesthesia-related or sedation-related incident. The report shall include the following:

(1) A description of the dental procedure;

(2) a description of the preoperative physical condition of the patient;

(3) a list of the sedative agents and dosages administered, with the time and route of each administration;

(4) a description of the incident, which shall include the following:

(A) The details of the patient's symptoms;

(B) the treatment attempted or performed on the patient; and

(C) the patient's response to the treatment attempted or performed;

(5) a description of the patient's condition upon termination of any treatment attempted or performed; and

(6) the name of each auxiliary staff member in attendance. (Authorized by K.S.A. 2008 Supp. 65-1444 and K.S.A. 74-1406; implementing K.S.A. 2008 Supp. 65-1444; effective Nov. 19, 2010.)

**71-5-10. Level I permit: enteral conscious sedation or combination inhalation-enteral conscious sedation.** (a) To be eligible for issuance of a level I permit, each dentist shall submit the following to the board:

(1) An application on the form provided by the board;

(2) evidence of a current "basic cardiac life support for the health care provider" certificate from the American heart association or a current certificate deemed equivalent by the board from a provider approved by the board;

(3)(A) Evidence of having successfully completed a course or postdoctoral training program in the control of anxiety and pain in dentistry that is approved by the board; or

(B) evidence of performance of 20 clinical cases of conscious sedation over the preceding five years, which shall be evaluated by the board;

(4) the level I permit fee of $100; and

(5) an explanation of any sedation-related mortality or morbidity that occurred to a patient of the applicant during the preceding five years and could have been associated with the administration of a sedative agent.

(b) To be approved by the board, each course or training program specified in paragraph (a)(3)(A) shall meet the following requirements:

(1) Provide comprehensive training in the administration and management of enteral conscious sedation or combination inhalation-enteral conscious sedation;

(2) include training in patient evaluation and selection, use of equipment, personnel requirements, monitoring, documentation, patient medical management, and emergency management; and

(3) include a minimum of 18 hours of education and 20 clinical experiences, which may be simulation or video presentations, or both, but shall include at least one experience in which a patient is deeply sedated and returned to consciousness.

(c)(1) Each level I permit shall be renewed before the expiration of the dentist's license and as part of the biennial license renewal.

(2) To apply for renewal of a level I permit, each dentist shall provide the following to the board:

(A) Evidence of a current "basic cardiac life support for the health care provider" certificate from the American heart association or a current certificate deemed equivalent by the board from a provider approved by the board;

(B) in addition to the continuing education required to renew the dentist's license, proof of six hours of continuing education on sedation; and

(C) the renewal fee of $100.

(d) Before administering enteral conscious sedation or combination inhalation-enteral conscious sedation, each treating dentist shall perform the following:

(1) Review the patient's medical history and current medications;

(2) for all patients with a severe systemic disease, consult with the patient's primary care physician or any consulting medical specialist regarding the potential risks;

(3) document that the patient or guardian received written preoperative instructions, including dietary instructions that are based on the sedation technique to be used and the patient's physical status, and that the patient or guardian reported that the patient complied with the instructions;

(4) obtain from the patient or guardian a signed informed consent form;

(5) evaluate the inhalation equipment for proper operation;

(6) determine that an adequate oxygen supply is available and can be delivered to the patient if an emergency occurs;

(7) obtain the patient's vital signs and perform a patient assessment; and

(8) confirm the time when the patient last took any solid or liquid by mouth.

(e) During the administration of enteral conscious sedation or combination inhalation-enteral conscious sedation, each treating dentist shall ensure that both of the following conditions are met:

(1) At least one additional staff person who has either a current "basic cardiac life support for the health care provider" certificate from the American heart association or a current certificate deemed equivalent by the board from a provider approved by the board is present.

(2) The following equipment is available and in working order:

(A) A pulse oximeter;

(B) a drug kit that includes an agent to reverse the effects of the sedation agent administered, if an agent to reverse the effects of the sedation agent is commercially available;

(C) a bag-valve mask with patient-appropriate masks that have all connections necessary to attach the bag-valve mask to a 100 percent oxygen source or a separate positive-pressure oxygen source; and

(D) oropharyngeal airways in patient-appropriate sizes.

(f) Whenever enteral conscious sedation or combination inhalation-enteral conscious sedation is administered, each treating dentist shall cause the following records to be contemporaneously created. These records shall be maintained, for at least 10 years, as part of each patient's record:

(1) The date, the type of procedure, the personnel present, and the patient's name, address, and date of birth;

(2) documentation of the sedative agents administered, the approximate time when the sedative agents were administered, the amount of each agent administered, and the patient's blood pressure, heart rate, and oxygen saturation readings at the start of sedation and at the end of the surgical or operative procedure and at 15-minute intervals throughout the procedure;

(3) an indication of the extent to which the effects of the sedation had abated at the time of the patient's release;

(4) the gases used, with flow rates expressed in liters per minute or relative percentages, and the amount of time during which each gas was administered;

(5) the full name of the person to whom the patient was released;

(6) a record of all prescriptions written or ordered for the patient; and

(7) each type of monitor used.

(g) During the administration of enteral conscious sedation or combination inhalation-enteral conscious sedation and the recovery phase, the treating dentist shall ensure that all of the following conditions are met:

(1) The patient is continuously observed.

(2) The patient is continuously monitored with a pulse oximeter.

(3) The patient's respiration is continuously confirmed.

(4) The patient's blood pressure, heart rate, and oxygen saturation reading are recorded at least every 15 minutes.

(5) The patient's ability to appropriately respond to physical stimulation or verbal command is documented every 15 minutes.

(h) Following the administration of enteral conscious sedation or combination inhalation-enteral conscious sedation and during the recovery phase, each treating dentist shall ensure that all of the following conditions are met:

(1) Oxygen and suction equipment are immediately available in the recovery area.

(2) The patient is continuously supervised until oxygenation, ventilation, and circulation are stable and until the patient is appropriately responsive for discharge from the facility.

(3) Written and verbal postoperative instructions, including an emergency telephone number to contact the treating dentist, are provided to the patient, guardian, or any escort present at the time of discharge.

(4) The patient meets the discharge criteria established by the treating dentist, including having stable vital signs, before leaving the office.

(i) Whenever enteral conscious sedation or combination inhalation-enteral conscious sedation is administered, each treating dentist shall cause the following information to be entered into a sedation log:

(1) The name of each patient;

(2) the date of administration of each sedative agent; and

(3) the name, strength, and dose of each sedative agent.

Each entry shall be maintained for at least 10 years. (Authorized by K.S.A. 2008 Supp. 65-1444, K.S.A. 2008 Supp. 65-1447, and K.S.A. 74-1406; implementing K.S.A. 2008 Supp. 65-1444 and K.S.A. 2008 Supp. 65-1447; effective Nov. 19, 2010.)

**71-5-11. Level II permit: parenteral conscious sedation.** (a) To be eligible for issuance of a level II permit, each dentist shall submit the following to the board:

(1) An application on the form provided by the board;

(2) (A) Evidence of a current "advanced cardiac life support for the health care provider" certificate from the American heart association;

(B) evidence of a current certificate deemed equivalent to the certificate specified in paragraph (a)(2)(A) by the board from a provider approved by the board; or

(C) evidence of satisfactory completion of a simulated office emergency course approved by the board;

(3)(A) Evidence of having successfully completed a course or postdoctoral training program in parenteral conscious sedation that is approved by the board; or

(B) evidence of performance of at least 20 clinical cases of parenteral sedation over the preced-

ing two years, which shall be evaluated by the board;

(4) a level II permit fee of $150; and

(5) an explanation of any sedation-related mortality or morbidity that occurred to a patient of the applicant during the preceding five years and could have been associated with the administration of a sedative agent.

(b) To be approved by the board, each course or training program specified in paragraph (a)(3)(A) shall meet the following requirements:

(1) Provide comprehensive training in the administration and management of parenteral conscious sedation;

(2) include training in patient evaluation and selection, use of equipment, personnel requirements, monitoring, documentation, patient medical management, and emergency management, including emergency airway management; and

(3) include a minimum of 40 hours of didactic instruction and 20 clinical cases of parenteral conscious sedation.

(c)(1) Each level II permit shall be required to be renewed before the expiration of the dentist's license and as part of the biennial license renewal.

(2) To apply for renewal of a level II permit, each dentist shall provide the following to the board:

(A)(i) Evidence of a current "advanced cardiac life support for the health care provider" certificate from the American heart association;

(ii) evidence of a current certificate deemed equivalent to the certificate specified in paragraph (c)(2)(A)(i) by the board from a provider approved by the board; or

(iii) evidence of satisfactory completion, within the 12-month period preceding the filing of the renewal application, of a simulated office emergency course approved by the board;

(B) in addition to the continuing education required to renew the dentist's license, proof of eight hours of continuing education limited to sedation, which shall include the complications associated with parenteral conscious sedation and their management; and

(C) the biennial renewal fee of $150.

(d) Before administering parenteral conscious sedation, each treating dentist shall meet all of the requirements specified in K.A.R. 71-5-10(d).

(e) During the administration of parenteral conscious sedation, each treating dentist shall meet the requirements specified in K.A.R. 71-5-10(e) and ensure that an automated external defibrillator or defibrillator is available and in working order.

(f) Whenever parenteral conscious sedation is administered, a record containing the information specified in K.A.R. 71-5-10(f)(1), (3), (4), (5), (6), and (7) shall be contemporaneously created. This record shall include the following:

(1) The name and amount of each fluid administered;

(2) the site of administration of each medication and the type of catheter used, if applicable; and

(3) documentation of the sedative agents administered, the approximate time when the sedative agents were administered, the amount of each agent administered, and the patient's blood pressure, heart rate, and oxygen saturation readings at the start of sedation, at the end of the surgical or operative procedure, and at five-minute intervals throughout the procedure.

These records shall be maintained for at least 10 years as a part of the patient's record.

(g) During the administration of parenteral conscious sedation and the recovery phase, each treating dentist shall ensure that the requirements specified in K.A.R. 71-5-10(g)(1), (2), and (3) and the following conditions are met:

(1) The patient's blood pressure, heart rate, and oxygen saturation reading are recorded at least every five minutes.

(2) The patient's ability to appropriately respond to physical stimulation or verbal command is documented every five minutes.

(h) Following the administration of parenteral conscious sedation and the recovery phase, each treating dentist shall ensure that the requirements specified in K.A.R. 71-5-10(h) are met.

(i) Whenever parenteral conscious sedation is administered, the records required by K.A.R. 71-5-10(i) shall be contemporaneously created. These records shall be maintained for at least 10 years as part of the patient's record. (Authorized by K.S.A. 2008 Supp. 65-1444, K.S.A. 2008 Supp. 65-1447, and K.S.A. 74-1406; implementing K.S.A. 2008 Supp. 65-1444 and K.S.A. 2008 Supp. 65-1447; effective Nov. 19, 2010.)

**71-5-12. Level III permit: deep sedation and general anesthesia.** (a) To be eligible for issuance of a level III permit, each dentist shall submit the following to the board:

(1) An application on the form provided by the board;

(2) (A) Evidence of a current "advanced cardiac

life support for the health care provider" certificate from the American heart association;

(B) evidence of a current certificate deemed equivalent to the certificate specified in paragraph (a)(2)(A) by the board from a provider approved by the board; or

(C) evidence of satisfactory completion of a simulated office emergency course approved by the board;

(3)(A) Evidence of having successfully completed a postdoctoral training program that is approved by the board; or

(B) evidence of performance of at least 20 clinical cases of deep sedation or general anesthesia, or both, over the preceding two years;

(4) the level III permit fee of $200; and

(5) an explanation of any sedation-related mortality or morbidity that occurred to a patient of the applicant during the preceding five years and could have been associated with the administration of a sedative agent.

(b) To be approved by the board, each postdoctoral training program specified in paragraph (a)(3)(A) shall be at least one academic year in duration and shall include training in the administration and management of deep sedation and general anesthesia.

(c)(1) Each level III permit shall be renewed before the expiration of the dentist's license and as part of the biennial license renewal.

(2) To apply for renewal of a level III permit, each dentist shall provide the following to the board:

(A)(i) Evidence of a current "advanced cardiac life support for the health care provider" certificate from the American heart association;

(ii) evidence of a current certificate deemed equivalent to the certificate specified in paragraph (c)(2)(A)(i) by the board from a provider approved by the board; or

(iii) evidence of satisfactory completion, within the 12-month period preceding the filing of the renewal application, of a simulated office emergency course approved by the board;

(B) in addition to the continuing education required to renew the dentist's license, proof of eight hours of continuing education limited to sedation, which shall include the complications associated with airways and intravenous sedation and their management; and

(C) the biennial renewal fee of $200.

(d) Before administering deep sedation or general anesthesia, each treating dentist shall comply with all of the requirements specified in K.A.R. 71-5-10(d).

(e) During the administration of deep sedation or general anesthesia, each treating dentist shall meet the following requirements:

(1) Ensure that at least two additional staff persons with a current certificate in cardiopulmonary resuscitation for health care providers are present in addition to the treating dentist;

(2) comply with all of the requirements specified in K.A.R. 71-5-11(e); and

(3) ensure that the location at which the deep sedation or general anesthesia is administered has readily available emergency agents and devices necessary to perform advanced cardiac life support.

(f) Whenever deep sedation or general anesthesia is administered, each treating dentist shall contemporaneously cause the records required by K.A.R. 71-5-10(i) and K.A.R. 71-5-11(f) to be created. These records shall be maintained for at least 10 years as part of the patient's record.

(g) During the administration of deep sedation or general anesthesia, each treating dentist shall ensure that the requirements specified in K.A.R. 71-5-11(g) are met.

(h) Following the administration of deep sedation or general anesthesia, each treating dentist shall ensure that the requirements specified in K.A.R. 71-5-11(h) and the following requirements are met:

(1) End-tidal carbon dioxide monitoring of the patient if an endotracheal tube or a laryngeal mask airway was used during the administration of the deep sedation or general anesthesia; and

(2) the continuous use of an ECG monitor if patient cooperation and the length of the procedure permit.

(i) Whenever deep sedation or general anesthesia is administered, the records required by K.A.R. 71-5-10(i) shall be contemporaneously created. These records shall be maintained for at least 10 years as part of the patient's record. (Authorized by K.S.A. 2008 Supp. 65-1444, K.S.A. 2008 Supp. 65-1447, and K.S.A. 74-1406; implementing K.S.A. 2008 Supp. 65-1444 and K.S.A. 2008 Supp. 65-1447; effective Nov. 19, 2010.)

**71-5-13. Grounds for refusal to issue permit or for revocation, suspension, or limitation of permit.** Any permit authorized by this article may be refused issuance or may be revoked, suspended, restricted, or subjected to any

other action that the board is authorized to take regarding a dentist's license, including assessing a fine, if at least one of the following is established, after providing the dentist with notice and an opportunity for a hearing in accordance with the Kansas administrative procedures act:

(a) The dentist is no longer in compliance with one or more of the requirements of these regulations.

(b) The dentist has, in one or more instances, acted in a way that does not adhere to the applicable standard of dental care to a degree that constitutes ordinary negligence.

(c) The dentist has, in one or more instances, failed to act in a way that adheres to the applicable standard of dental care to a degree that constitutes ordinary negligence.

(d) Facts or conditions that justify the board's taking adverse action against the dentist's license, other than those specified in subsections (a), (b), and (c), exist. (Authorized by K.S.A. 2008 Supp. 65-1444 and K.S.A. 74-1406; implementing K.S.A. 2008 Supp. 65-1444; effective Nov. 19, 2010.)

## Article 11.—MISCELLANEOUS PROVISIONS

**71-11-1. Practice of dentistry.** Each nonlicensed person who provides any service or procedure meeting either of the following conditions shall be deemed to be practicing dentistry, unless the person provides the service or procedure under the direct supervision of a dentist licensed and practicing in Kansas:

(a) Alters the color or physical condition of natural, restored, or prosthetic teeth; or

(b) requires the positioning and adjustment of equipment or appliances for the purpose of altering the color or physical condition of natural, restored, or prosthetic teeth. (Authorized by K.S.A. 74-1406(l); implementing K.S.A. 65-1422; effective Aug. 21, 2009.)

# Agency 74
# Board of Accountancy

*Articles*


74-4. Permits to Practice and Continuing Professional Education Requirements.
74-5. Code of Professional Conduct.
74-6. Additional Offices.
74-7. Firm Registration.
74-11. Peer Review Program.
74-12. Fees.
74-15. Practice of Certified Public Accountancy by Notification.


## Article 4.—PERMITS TO PRACTICE AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

**74-4-7. Continuing professional education requirements.** (a)(1) Each applicant for renewal of a permit to practice as a certified public accountant in Kansas shall have completed 80 hours of acceptable continuing professional education (CPE) during each biennial period for renewal. Each applicant for renewal of a permit shall have completed two hours in professional ethics relating to the practice of certified public accountancy as part of the continuing professional education requirement.

(2) Ethics courses, which shall be defined as courses dealing with regulatory and behavioral ethics, shall be limited to courses on the following:

(A) Professional standards;
(B) licenses and renewals;
(C) SEC oversight;
(D) competence;
(E) acts discreditable;
(F) advertising and other forms of solicitation;
(G) independence;
(H) integrity and objectivity;
(I) confidential client information;
(J) contingent fees;
(K) commissions;
(L) conflicts of interest;
(M) full disclosure;
(N) malpractice;
(O) record retention;
(P) professional conduct;
(Q) ethical practice in business;
(R) personal ethics;
(S) ethical decision making; and
(T) corporate ethics and risk management as these topics relate to malpractice and relate solely to the practice of certified public accountancy.

(3) The subject of circular no. 230 issued by the federal department of the treasury shall not qualify for ethics CPE credit but shall qualify for non-ethics CPE credit.

(b) Each applicant for renewal of a permit to practice as a licensed municipal public accountant in Kansas shall have completed a 16-hour program of acceptable continuing professional education during each year within the biennial period. At least eight of the 16 hours shall be in the area of municipal accounting or auditing.

(c) The standards used to determine acceptable continuing professional education shall include the following:

(1) One hour of credit shall be granted for each 50 minutes of participation in a group, independent study, or self-study program. One-half hour of credit shall be granted for each 25-minute period after the first hour of credit has been earned.

(2) Hours devoted to actual preparation time by an instructor, discussion leader, or speaker for formal programs shall be computed at a maximum of up to twice the number of continuing professional education credits that a participant would be entitled to receive, in addition to the time for presentation. No CPE credit shall be granted for time devoted to preparation by a participant.

(3) Hours served as an instructor, discussion leader, or speaker shall be included to the extent

that they contribute to the professional competence of the applicant. Repeated presentations of the same course shall not be counted unless it is demonstrated that the program content involved was substantially changed and the change required significant additional study or research.

(4) Hours devoted to actual preparation as specified in paragraph (c)(2) and hours served as an instructor, discussion leader, or speaker as specified in paragraph (c)(3) shall not exceed, alone or in combination, 50 percent of the total number of continuing education hours required for permit renewal.

(d) The requirements of subsection (a) may be waived by the board for reasons of health, military service, foreign residence, or retirement, or for other good cause determined by the board.

(e) Any applicant for renewal of a permit to practice as a certified public accountant may carry over a maximum of 20 hours of continuing professional education earned in the previous renewal period. Any professional ethics hours that exceed the two-hour requirement may be included in the 20-hour carryover, but these hours shall not be used to meet the professional ethics requirement for any subsequent renewal period.

(f) If an applicant for renewal fails to obtain the continuing professional education required by this regulation, the applicant may be required by the board to obtain an additional eight hours of continuing professional education within a period of time specified by the board before the applicant's permit to practice is renewed. (Authorized by K.S.A. 1-202 and K.S.A. 75-1119; implementing K.S.A. 1-202, K.S.A. 2007 Supp. 1-310, and K.S.A. 75-1119; effective, E-82-27, Dec. 22, 1981; effective May 1, 1982; amended May 1, 1985; amended July 13, 1992; amended Sept. 25, 1998; amended Nov. 17, 2000; amended Nov. 15, 2002; amended Nov. 14, 2003; amended May 19, 2006; amended May 23, 2008; amended May 29, 2009.)

**74-4-8. Continuing professional education programs; requirements.** (a) A program designed to allow a participant to learn a given subject through interaction with an instructor and other participants in a classroom or conference setting, or intrafirm program using the internet, may be approved for continuing professional education credit under K.A.R. 74-4-7 if the program meets the following conditions:

(1) It is a formal program of learning that maintains or improves the professional competence of a permit holder and requires attendance.

(2) Participants are informed in advance of the learning objectives, prerequisites, program level, program content, any requirements for advance preparation, instructional delivery methods, recommended CPE credit, and course registration requirements.

(3) The program is at least 50 minutes in length.

(4) The program is conducted by a person qualified in the subject area.

(5) The program sponsor issues to each participant a certificate of attendance that reflects the name of the program sponsor, title and description of content, date and location of the program, and number of CPE contact hours.

(6) A record of registration and attendance is retained for five years by the program sponsor.

(b) The following types of programs shall qualify as acceptable continuing professional education if they meet the requirements of subsection (a):

(1) Professional development programs of the American institute of certified public accountants, and of state societies and local chapters of certified public accountants;

(2) technical sessions at meetings of the American institute of certified public accountants, and of state societies and local chapters of certified public accountants;

(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;

(4) university or college non-credit courses. These courses shall qualify for continuing professional education credit that equals the number of actual, full 50-minute class hours attended;

(5) formal, organized, in-firm or interfirm educational programs;

(6) programs in accounting, auditing, consulting services, specialized knowledge and applications, taxation, management of a practice, or ethics; and

(7) personal development courses. Hours from personal development courses shall not exceed 30 percent of the total number of continuing education hours required for permit renewal. Personal development courses, which shall be defined as courses dealing with self-management and self-improvement both inside and outside of the business environment, shall be limited to courses on communication, leadership, character

development, dealing effectively with others, interviewing, counseling, career planning, emotional growth and learning, and social interactions and relationships.

(c) Any author of a published article or book and any writer of a continuing professional education program may receive continuing professional education credit for the actual research and writing time if all of the following conditions are met:

(1) The board determines that the research and writing maintain or improve the professional competence of the author or writer.

(2) The number of credit hours claimed is consistent with the quality and scope of the article, book, or program.

(3) The article or book has been published or the program was created during the biennial period for which credit is claimed.

(d)(1) Group internet-based programs and individual self-study programs that allow 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 requirements are met:

(A) The program sponsor shall meet one of the following requirements:

(i) Has been approved by NASBA's national registry of continuing professional education sponsors or NASBA's quality assurance service;

(ii) is sponsored through the American institute of certified public accountants; or

(iii) is sponsored through a state society of certified public accountants.

(B) The program shall require registration.

(C) The sponsor shall provide a certificate of satisfactory completion.

(2) In addition to meeting the requirements specified in paragraph (d)(1), each individual self-study program shall meet the following requirements:

(A) The program shall include a final examination.

(B) Each participant shall be required to score at least 70 percent on the final examination.

(e) The amount of credit for group internet-based programs and self-study programs shall be determined by the board, as follows:

(1) Programs may be approved for one hour of continuing professional education credit for each 50 minutes of participation and one-half credit for each 25-minute period of participation after the first hour of credit has been earned.

(2) The amount of credit shall not exceed the number of recommended hours assigned by the program sponsor.

(f) Independent study programs that are designed to allow a participant to learn a given subject under the guidance of a continuing professional education program sponsor may be eligible for continuing professional education credit if all of the following conditions are met:

(1) The program meets one of the following requirements:

(A) Has been approved by NASBA's national registry of continuing professional education sponsors or NASBA's quality assurance service;

(B) is sponsored through the American institute of certified public accountants; or

(C) is sponsored through a state society of certified public accountants.

(2) The participant has a written learning contract with a program sponsor that contains a recommendation of the number of credit hours to be awarded upon successful completion of the program.

(3) The program sponsor reviews and signs a report indicating that all of the requirements of the independent study program, as outlined in the learning contract, are satisfied.

(4) The program is completed in 15 weeks or less.

(g) A participant in an independent study program may receive up to one hour of credit for each 50 minutes of participation and one-half hour of credit for each 25-minute period of participation after the first hour of credit has been earned. (Authorized by K.S.A. 1-202 and K.S.A. 75-1119; implementing K.S.A. 1-202, K.S.A. 2009 Supp. 1-310, and K.S.A. 75-1119; effective, E-82-27, Dec. 22, 1981; effective May 1, 1982; amended May 1, 1985; amended Feb. 14, 1994; amended Sept. 25, 1998; amended Nov. 2, 2001; amended Nov. 15, 2002; amended Nov. 14, 2003; amended May 27, 2005; amended May 19, 2006; amended May 23, 2008; amended May 29, 2009; amended Nov. 29, 2010.)

**74-4-9. Continuing professional education controls and reporting.** (a) At the time of applying for renewal of the permit to practice, each applicant shall sign a statement indicating the applicant's compliance with the requirements in K.A.R. 74-4-7 and 74-4-8, unless the applicant qualifies for the exemption outlined in K.S.A. 1-310 and amendments thereto.

(b)(1) Any applicant may be required by the board to verify the number of CPE hours claimed in subsection (a), on a form provided by the board, which shall include the following information:

(A) The name of the organization, school, firm, or other sponsor conducting the program or course;

(B) the location of the program or course attended;

(C) the title of the program or course, or a brief description;

(D) the dates attended or the date the program or course was completed; and

(E) the number of continuing professional education credits that the applicant received for participating in a program or course.

(2) Each applicant specified in paragraph (b)(1) shall provide the board with a certificate of completion or attendance for all attended, group, independent, and self-study program CPE hours claimed. Each certificate of completion or attendance shall include the name of the sponsor, title and description of content, date and location of the program or course attended, and number of CPE contact hours.

(3) For instruction credit, each applicant shall provide the board with a certificate or other verification supplied by the CPE program sponsor.

(4) For a university or college course that is successfully completed for credit, each applicant shall provide the board with an official transcript of the grade that the participant received.

(5) For a university or college non-credit course, each applicant shall provide the board with a certificate of attendance issued by a representative of the university or college.

(c) Each applicant shall retain documentation of completion or attendance for any continuing professional education program or course for five years from the end of the year in which the program or course was completed. (Authorized by K.S.A. 1-202 and K.S.A. 75-1119; implementing K.S.A. 1-202, K.S.A. 2009 Supp. 1-310, and K.S.A. 75-1119; effective, E-82-27, Dec. 22, 1981; effective May 1, 1982; amended May 1, 1985; amended Sept. 25, 1998; amended Nov. 22, 2002; amended Nov. 14, 2003; amended May 23, 2008; amended Nov. 29, 2010.)

## Article 5.—CODE OF PROFESSIONAL CONDUCT

**74-5-2. Definitions.** Each of the following terms, wherever used in this article, shall have the meaning specified in this regulation:

(a) "AICPA" means the American institute of certified public accountants.

(b) "AICPA professional standards" means the standards, including definitions and interpretations, in "AICPA professional standards," volumes 1 and 2, published by the AICPA, as in effect on June 1, 2009, which are hereby adopted by reference, except for the following portions of volume 2:

(1) Pages 1795 through 1948, bylaws of the AICPA;

(2) pages 2275 through 2299, continuing professional education;

(3) pages 1677 through 1698, section 191 under rules 101 and 102;

(4) pages 1745 through 1761, section 591 under rules 501, 502, and 503;

(5) pages 1743 through 1744, section 505;

(6) pages 1717 through 1723, section 391 under rules 301 and 302;

(7) page 1703, section 202; and

(8) pages 1707 through 1709, section 291 under rules 201, 202, and 203.

(c) "Audit" means an independent examination of financial information or assertions of any entity, regardless of profit orientation, size, and legal form, if the examination is conducted to express an opinion thereon.

(d) "Board" means the Kansas state board of accountancy.

(e) "Certified public accountant" and "CPA" mean any of the following:

(1) A holder of a Kansas certificate;

(2) a person practicing certified public accountancy under the authorization to practice by notification as provided in K.S.A. 1-322 and amendments thereto; or

(3) a firm.

(f) "Compilation" shall have the meaning specified in K.S.A. 1-321 and amendments thereto.

(g) "Firm" shall have the meaning specified in K.S.A. 1-308 and amendments thereto.

(h) "Generally accepted accounting principles" and "GAAP" mean the following standards, as applicable, in effect as specified and hereby adopted by reference:

(1) "Federal accounting standards," issued by the federal accounting standards advisory board as follows:

(A) "Statements of federal financial accounting concepts and standards," (SFFAS), including the interpretations, technical bulletins, technical re-

leases, staff implementations and appendices, as in effect on June 30, 2009;

(B) technical bulletin 2009-1, "deferral of the effective date of technical bulletin 2006-1, recognition and measurement of asbestos-related cleanup costs," as in effect on September 22, 2009;

(C) SFFAS 34, "the hierarchy of generally accepted accounting principles, including the application of standards issued by the financial accounting standards board," dated July 28, 2009;

(D) SFFAS 35, "estimating the historical cost of general property, plant, and equipment," dated October 14, 2009; and

(E) SFFAS 36, "reporting comprehensive long-term fiscal projections for the U.S. government," dated September 28, 2009;

(2) "financial accounting standards board (FASB) accounting standards codification," including accounting standards updates, as contained in volumes 1 through 4, published by FASB, as in effect on October 31, 2009;

(3) "codification of governmental accounting and financial reporting standards," except for pages vii through xv and appendices B and C, issued by the governmental accounting standards board, as in effect on June 30, 2009; and

(4) "international financial reporting standards®"
(IFRSs®), parts A and B, issued by the international accounting standards board, as in effect on January 1, 2010.

(i) "Government auditing standards" means the "government auditing standards," July 2007 revision, except for appendix II, which is hereby adopted by reference.

(j) "Licensed municipal public accountant" and "LMPA" mean a holder of a permit issued under the laws of Kansas to practice as a municipal public accountant.

(k) "Practice of certified public accountancy" means performing or offering to perform attest or nonattest services for the public while using the designation "certified public accountant" or "CPA" in conjunction with these services. "Attest" and "nonattest" services shall have the meaning specified in K.S.A. 1-321 and amendments thereto.

(l) "PCAOB" means the public company accounting oversight board created by the Sarbanes-Oxley act of 2002.

(m) "Standards of the PCAOB" means the following standards and related rules in "bylaws and rules of the public accounting oversight board" as in effect on March 5, 2010, which are hereby adopted by reference:

(1) Auditing standards numbers 1, 3, 4, 5, 6, and 7;

(2) conforming amendments to PCAOB interim standards; and

(3) rules, section 3, "professional standards," part 1, "general requirements," and part 5, "ethics."

(n) "Staff accountant" means a certified public accountant who meets the following requirements:

(1) Holds both a Kansas certificate and a Kansas permit;

(2) is employed by a firm that is the certified public accountant's primary employer; and

(3) works at least 1,040 hours for the firm during a calendar year. (Authorized by and implementing K.S.A. 1-202; effective Jan. 1, 1974; amended May 1, 1978; amended May 1, 1979; amended May 1, 1985; amended July 22, 1991; amended July 13, 1992; amended April 5, 1993; amended Aug. 23, 1993; amended Jan. 12, 1996; amended Jan. 8, 1999; amended Nov. 17, 2000; amended Nov. 2, 2001; amended May 27, 2005; amended May 19, 2006; amended Feb. 16, 2007; amended Jan. 11, 2008; amended May 29, 2009; amended Nov. 29, 2010.)

**74-5-2a. Definitions of terms in the AICPA professional standards.** The definitions of the terms in section 92 of the "AICPA professional standards," as adopted by reference in K.A.R. 74-5-2, shall be applicable wherever these terms are used in this article, including any document adopted by reference in this article. (Authorized by and implementing K.S.A. 1-202; effective May 29, 2009.)

**74-5-101. Independence.** (a) Each certified public accountant and each licensed municipal public accountant who performs professional services requiring independence shall comply with the following standards, as applicable:

(1) Rule 101 of the code of professional conduct, including the interpretations under rule 101, as contained in the "AICPA professional standards" adopted by reference in K.A.R. 74-5-2;

(2) chapter three of the government auditing standards adopted by reference in K.A.R. 74-5-2;

(3) regulation S-X codified at 17 C.F.R. Part 210, as in effect on March 11, 2010, which is hereby adopted by reference; and

(4) PCAOB rules, section 3, "professional standards," part 5, "ethics," as adopted by reference in K.A.R. 74-5-2.

(b) In determining whether a certified public accountant's or a licensed municipal public accountant's independence is impaired, any other circumstances, relationship, or activity that the board determines could impair independence may be considered by the board. (Authorized by and implementing K.S.A. 1-202; effective Jan. 1, 1966; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1978; amended May 1, 1985; amended Nov. 15, 2002; amended May 27, 2005; amended May 19, 2006; amended Feb. 16, 2007; amended Jan. 11, 2008; amended May 29, 2009; amended Nov. 29, 2010.)

**74-5-102. Integrity and objectivity.** (a) In the performance of professional services, each certified public accountant and each licensed municipal public accountant shall maintain objectivity and integrity, shall be free of conflicts of interest, and shall not knowingly misrepresent facts to others or subordinate the accountant's or firm's judgment to another's judgment. In tax practice, any certified public accountant or licensed municipal public accountant may resolve doubt in favor of the client if there is reasonable support for that position.

(b) Each certified public accountant and each licensed municipal public accountant shall comply with the following applicable standards:

(1) Rule 102 of the code of professional conduct, including the interpretations under rule 102, as contained in the "AICPA professional standards" adopted by reference in K.A.R. 74-5-2, which shall be used in determining whether integrity and objectivity have been maintained;

(2) chapter three of the government auditing standards adopted by reference in K.A.R. 74-5-2; and

(3) PCAOB rules, section 3, "professional standards," part 5, "ethics," as adopted by reference in K.A.R. 74-5-2. (Authorized by and implementing K.S.A. 1-202 and K.S.A. 75-1119; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1978; amended May 1, 1985; amended Nov. 15, 2002; amended May 27, 2005; amended May 19, 2006; amended May 29, 2009.)

**74-5-103. Commissions and referral fees.** Each certified public accountant shall comply with rule 503 of the code of professional conduct regarding commissions and referral fees, including the interpretations under rule 503, as contained in the "AICPA professional standards" adopted by reference in K.A.R. 74-5-2. (Authorized by and implementing K.S.A. 1-202; effective May 1, 1978; amended July 13, 1992; amended Jan. 12, 1996; amended Jan. 8, 1999; amended Sept. 10, 1999; amended May 27, 2005; amended May 29, 2009.)

**74-5-201. General standards.** Each certified public accountant or licensed municipal public accountant shall comply with rule 201 of the code of professional conduct regarding general standards, including the interpretations under rule 201, as contained in the "AICPA professional standards" adopted by reference in K.A.R. 74-5-2. (Authorized by and implementing K.S.A. 1-202; effective Jan. 1, 1966; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1978; amended May 1, 1985; amended May 27, 2005; amended Jan. 11, 2008; amended May 29, 2009.)

**74-5-202. Compliance with standards.** (a) Each certified public accountant who performs auditing, attestation, review, compilation, management consulting, tax, or other professional services shall comply with the applicable professional standards promulgated by the following entities, which are adopted by reference in K.A.R. 74-5-2 and this regulation:

(1) The federal accounting standards advisory board;

(2) the financial accounting standards board;

(3) the governmental accounting standards board;

(4) the AICPA accounting and review services committee;

(5) the AICPA auditing standards board;

(6) the AICPA management consulting services executive committee;

(7) the AICPA tax executive committee;

(8) the AICPA forensic and valuation services executive committee;

(9) the AICPA professional ethics executive committee;

(10) the PCAOB;

(11) the international accounting standards board; and

(12) the municipal accounting section of the division of accounts and reports, department of administration.

(b) Each licensed municipal public accountant shall comply with applicable, generally accepted auditing standards in the 2010 revised "Kansas

municipal audit guide," including appendices A through L, prescribed by the municipal accounting section of the division of accounts and reports, department of administration, and hereby adopted by reference. (Authorized by and implementing K.S.A. 1-202; effective Jan. 1, 1966; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1978; amended, E-82-27, Dec. 22, 1981; amended May 1, 1982; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended May 22, 1989; amended Jan. 7, 1991; amended July 13, 1992; amended Aug. 23, 1993; amended Sept. 26, 1994; amended Jan. 12, 1996; amended Sept. 25, 1998; amended Sept. 10, 1999; amended Nov. 17, 2000; amended Nov. 2, 2001; amended Nov. 15, 2002; amended Nov. 14, 2003; amended May 27, 2005; amended May 19, 2006; amended Feb. 16, 2007; amended Jan. 11, 2008; amended May 29, 2009; amended Nov. 29, 2010.)

**74-5-203. Accounting principles.** Each certified public accountant or licensed municipal public accountant shall comply with rule 203 of the code of professional conduct regarding accounting principles, including the interpretations under rule 203, as contained in the "AICPA professional standards" adopted by reference in K.A.R. 74-5-2. (Authorized by and implementing K.S.A. 1-202 and K.S.A. 75-1119; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1978; amended, E-82-27, Dec. 22, 1981; amended May 1, 1982; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended May 22, 1989; amended Jan. 7, 1991; amended July 13, 1992; amended Aug. 23, 1993; amended Sept. 26, 1994; amended Jan. 12, 1996; amended Sept. 25, 1998; amended Sept. 10, 1999; amended Nov. 17, 2000; amended May 27, 2005; amended May 19, 2006; amended Nov. 29, 2010.)

**74-5-301. Confidential client information.** (a) A certified public accountant shall not disclose any confidential client information without the consent of the client.

(b) Rule 301 of the code of professional conduct, including the interpretations under rule 301 of the "AICPA professional standards" adopted by reference in K.A.R. 74-5-2, shall be used by the board in determining compliance with subsection (a). (Authorized by and implementing K.S.A. 1-202; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1978; amended Sept. 25, 1998; amended May 27, 2005; amended May 29, 2009.)

**74-5-302. Retention of client records.** Each certified public accountant shall comply with rule 501, including the interpretations under rule 501, as adopted by reference in K.A.R. 74-5-401. (Authorized by and implementing K.S.A. 1-202; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1978; amended Nov. 2, 2001; amended Nov. 15, 2002; amended May 29, 2009.)

**74-5-401. Acts discreditable.** (a) A certified public accountant shall not commit any act discreditable to the profession.

(b) Rule 501 of the code of professional conduct, including the terminology and interpretations under rule 501 of the "AICPA professional standards" adopted by reference in K.A.R. 74-5-2. Rule 501, including the interpretations, shall be used by the board in determining whether a certified public accountant has committed an act discreditable to the profession. (Authorized by and implementing K.S.A. 1-202; effective Jan. 1, 1966; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1978; amended Nov. 15, 2002; amended May 27, 2005; amended May 29, 2009.)

**74-5-403. Advertising.** (a) A certified public accountant shall not advertise in a manner that is false, misleading, or deceptive.

(b) The use of any non-CPA's name or the name of any entity not registered with the board as a CPA firm in any advertisement or publication or under any heading used for certified public accountants shall be prohibited.

(c) Rule 502 of the code of professional conduct, including the interpretations under rule 502 as contained in the "AICPA professional standards" adopted by reference in K.A.R. 74-5-2, shall be used by the board in determining whether a certified public accountant has violated subsection (a). (Authorized by and implementing K.S.A. 1-202; effective May 1, 1978; amended May 1, 1985; amended July 22, 1991; amended May 27, 2005; amended Feb. 16, 2007; amended May 29, 2009.)

**74-5-405a. Certified public accountants who own a separate business.** Each certified public accountant in the practice of certified public accountancy who owns an interest in a separate business shall comply with interpretation 505-2 of the code of professional conduct, as contained in the "AICPA professional standards"

adopted by reference in K.A.R. 74-5-2. (Authorized by K.S.A. 1-202; implementing K.S.A. 1-202 and K.S.A. 2007 Supp. 1-311; effective Jan. 11, 2008; amended May 29, 2009.)

**74-5-406. Firm names.** (a) A certified public accountant shall not practice public accountancy under a firm name or advertise a firm name that includes descriptive words relating to the quality of services offered or that is misleading concerning the legal form or the persons who are partners, officers, members, managers, or shareholders of the firm.

(b) A firm name shall not be considered to be misleading solely because it contains words describing the geographical area in which the services are offered or words describing the type of services actually being performed by the certified public accountants who are owners, partners, officers, members, managers, or shareholders of the firm.

(c) A firm name or designation shall be considered to be misleading in any of the following instances:

(1) The name contains a misrepresentation of facts.

(2) The name is intended or is likely to create false or unjustified expectations of favorable results.

(3) The name implies education, professional attainment, or licensing recognition of its owners, partners, officers, members, managers, or shareholders that is not supported by facts.

(4) The name of a firm that is a Kansas professional corporation or association, limited liability company, limited liability partnership, or general corporation does not include its full legal name each time the firm name is used.

(5) The terms "& Company," "& Associate," or "Group" are used, but the firm does not include, in addition to the named partner, shareholder, owner, or member, at least one other unnamed partner, shareholder, owner, member, or staff accountant holding both a Kansas certificate and a Kansas permit to practice.

(6) The plural term "& Associates" is used, but the firm does not include, in addition to the named partner, shareholder, owner, or member, at least two other unnamed partners, shareholders, owners, members, or staff accountants holding both a Kansas certificate and a Kansas permit to practice.

(7) The name of the firm contains the name or names of one or more former partners, shareholders, or owners without their written consent.

(d) A fictitious firm name shall be defined as a name that does not contain the name or names of one or more present or former partners, members, or shareholders. A fictitious firm name may be used by a firm if the name is registered with the board and is not false or misleading as determined by the board.

(e) A fictitious firm name that uses the terms "& Company," "& Associate," or "Group" shall be considered misleading if the firm has only one partner, shareholder, owner, or member and no other partner, shareholder, owner, member, or staff accountant holding both a Kansas certificate and a Kansas permit to practice.

(f) A fictitious firm name that uses the term "& Associates" shall be considered misleading if the firm has only one partner, shareholder, owner, or member and only one or no other partner, shareholder, owner, member, or staff accountant holding both a Kansas certificate and a Kansas permit to practice.

(g) Each firm that falls out of compliance with this regulation due to any change in firm ownership or personnel shall notify the board within 30 days after the change. A reasonable period of time may be granted by the board for a firm to take corrective action.

(h) If a firm does not have an office in Kansas but is required to register as a firm with the board pursuant to K.S.A. 1-308(d) and amendments thereto, the name of that firm shall not be considered misleading even if the name meets the criteria for being "misleading" as specified in paragraph (c) (5) or (6) or subsection (e) or (f) of this regulation. (Authorized by K.S.A. 1-202; implementing K.S.A. 1-202 and K.S.A. 2007 Supp. 1-308; effective May 1, 1978; amended Oct. 8, 1990; amended Aug. 23, 1993; amended Jan. 12, 1996; amended Sept. 25, 1998; amended Sept. 10, 1999; amended Nov. 15, 2002; amended Jan. 11, 2008; amended May 29, 2009.)

## Article 6.—ADDITIONAL OFFICES

**74-6-2. Management of an office.** (a) Each firm with an office, as defined by K.A.R. 74-6-1, that is located in this state shall have one resident manager in charge who is the holder of a current permit to practice as a certified public accountant issued by this state and who devotes

more than half of the resident manager's working time to the affairs of that office.

(b) Any firm specified in subsection (a) may, however, have one additional office that does not meet the resident manager requirement in subsection (a) if the additional office meets the following requirements:

(1) A certified public accountant who holds a current Kansas permit to practice shall supervise directly the additional office as the resident manager and shall oversee the planning, administration, direction, and review of the services being performed in that office.

(2) The resident manager shall be present at least two-thirds of the hours the office is listed as being open.

(3) The firm shall register the additional office by providing a written statement to the board, listing the name of the resident manager and the days and hours the additional office will be advertised as being open. (Authorized by K.S.A. 1-202; implementing K.S.A. 2009 Supp. 1-308; effective Jan. 1, 1972; amended May 1, 1980; amended May 1, 1982; amended Aug. 21, 1989; amended Aug. 23, 1993; amended Jan. 12, 1996; amended Sept. 25, 1998; amended Nov. 17, 2000; amended Nov. 29, 2010.)

## Article 7.—FIRM REGISTRATION

**74-7-4. Notification; firm registration; sole proprietors.** Each certified public accountant who is an unincorporated sole proprietor shall perform the following, upon the issuance of the first report subject to peer review:

(a) Notify the board, on a form provided by the board;

(b) register as a firm with the board in compliance with K.S.A. 1-308 and amendments thereto; and

(c) provide a peer review letter of completion to the board within 18 months after the date on which the report subject to peer review was issued. (Authorized by K.S.A. 1-202; implementing K.S.A. 1-202 and K.S.A. 1-308; effective Nov. 15, 2002; amended May 29, 2009.)

## Article 11.—PEER REVIEW PROGRAM

**74-11-6. Definitions.** Each of the following terms, wherever used in this article, shall have the meaning specified in this regulation:

(a) "AICPA" means the American institute of certified public accountants.

(b) "AICPA professional standards" means the "AICPA professional standards," volumes 1 and 2, published by the AICPA, as in effect on June 1, 2009, which are adopted by reference in K.A.R. 74-5-2.

(c) "Firm" shall have the meaning specified in K.S.A. 1-308 and amendments thereto.

(d) "Peer review" means a review of a firm's accounting and auditing practice in accordance with the standards for performing and reporting on peer reviews.

(e) "Peer review team" means persons or organizations participating in the peer review program required by the regulations in this article. This term shall specifically include the team captain, team members, review captain, the report acceptance committee, and the oversight body, but shall not include the board.

(f) "Standards for performing and reporting on peer reviews" means the AICPA "standards for performing and reporting on peer reviews" contained in volume two of the AICPA professional standards, as adopted by reference in K.A.R. 74-5-2.

(g)(1) "Substantially similar program" means a peer review program that meets the following requirements:

(A) The peer review team shall be approved by a nationally recognized accounting organization as having the qualifications, training, and experience to perform the peer review function required by this regulation.

(B)(i) The peer review shall be conducted pursuant to peer review standards as issued by a nationally recognized peer review program that has received prior approval by the board; or

(ii) the peer review shall be conducted pursuant to a written submission detailing the qualifications of the peer review team to conduct the peer review and providing a written plan for the peer review illustrating the means of compliance with this regulation with the prior specific approval of the board.

(2) Each inspection performed by the public company accounting oversight board of areas of a firm's practice related to audits of issuers, as defined by the public company accounting oversight board, shall be deemed to satisfy the peer review requirements related to this element of the firm's practice.

(h) For peer reviews commencing on and after January 1, 2009, "modified peer review report" shall mean a peer review report with a peer review

rating of "pass with deficiencies," as defined in the AICPA standards for performing and reporting on peer reviews.

(i) For peer reviews commencing on and after January 1, 2009, "adverse peer review report" shall mean a peer review report with a peer review rating of "fail," as defined in the AICPA standards for performing and reporting on peer reviews. (Authorized by and implementing K.S.A. 1-202, K.S.A. 2009 Supp. 1-312, and K.S.A. 2009 Supp. 1-501; effective Feb. 14, 1994; amended Sept. 25, 1998; amended Sept. 10, 1999; amended Nov. 17, 2000; amended Nov. 2, 2001; amended Nov. 15, 2002; amended Nov. 14, 2003; amended May 27, 2005; amended May 19, 2006; amended Feb. 16, 2007; amended May 29, 2009; amended Nov. 29, 2010.)

**74-11-7. Renewal of a firm's registration.** (a) Each application for renewal of a firm's registration shall include one of the following:

(1) A letter issued by the administering entity stating that a peer review has been completed and including a due date for the next peer review; or

(2) a completed form titled "peer review form," which shall be provided by the board and completed by the firm.

(b) If a firm has received a waiver pursuant to K.S.A. 1-501 and amendments thereto, before commencement of any attestation engagement, the firm shall have in place a system of internal quality control and shall notify the board. The firm shall provide a letter of completion to the board within 18 months after the date on which the report subject to peer review was issued.

(c) The letter of completion shall be valid until the due date for the next peer review specified in the letter of completion. (Authorized by K.S.A. 1-202; implementing K.S.A. 1-202 and K.S.A. 2009 Supp. 1-501; effective Feb. 14, 1994; amended Sept. 25, 1998; amended Nov. 2, 2001; amended Nov. 15, 2002; amended Nov. 14, 2003; amended May 19, 2006; amended Nov. 29, 2010.)

## Article 12.—FEES

**74-12-1. Fees.** Each applicant shall submit the appropriate application form and fee as shown in the following schedule.

| | | |
|---|---|---|
| (a) | Issuance of Kansas certificate (initial or duplicate) | $25.00 |
| (b) | Issuance of reciprocal certificate | $250.00 |
| (c) | Initial permit to practice as a certified public accountant: | |
| (1) | For more than one year of a biennial period | $150.00 |
| (2) | For one year or less of a biennial period | $75.00 |
| (d) | Renewal of biennial permit to practice as a certified public accountant: | |
| (1) | If received on or before July 1 of the renewal year in which the permit expires | $150.00 |
| (2) | If received after July 1 of the renewal year in which the permit expires | $225.00 |
| (e) | Reinstatement of permit to practice as a certified public accountant whose permit has expired: | |
| (1) | For more than one year of a biennial period | $225.00 |
| (2) | For one year or less of a biennial period | $112.50 |
| (f) | Issuance of a duplicate permit | $25.00 |
| (g) | Renewal of a biennial permit to practice as a licensed municipal public accountant: | |
| (1) | If received on or before July 1 of the odd-numbered renewal years | $50.00 |
| (2) | If received after July 1, or for reinstatement of a permit to practice that has been expired for one or more years | $75.00 |
| (h) | To proctor another state's candidate at a CPA examination in Kansas | $100.00 |
| (i) | Firm registration fee: | |
| (1) | Initial registration | $40.00 |
| (2) | Annual renewal | $40.00 |
| (3) | Late renewal | $60.00 |

(Authorized by and implementing K.S.A. 2009 Supp. 1-301 and K.S.A. 75-1119; effective May 1, 1988; amended May 22, 1989; amended Dec. 18, 1989; amended Sept. 26, 1994; amended Aug. 23, 1996; amended July 18, 1997; amended May 28, 1999; amended November 29, 1999; amended Nov. 17, 2000; amended Nov. 2, 2001; amended Nov. 14, 2003; amended Nov. 29, 2010.)

## Article 15.—PRACTICE OF CERTIFIED PUBLIC ACCOUNTANCY BY NOTIFICATION

**74-15-2.** (Authorized by K.S.A. 1999 Supp. 1-202, as amended by L. 2000, Ch. 81, § 4, and L. 2000, Ch. 81, § 2; implementing L. 2000, Ch. 81, § 2; effective Nov. 17, 2000; revoked Nov. 29, 2010.)

# Agency 75

# State Bank Commissioner—Consumer and Mortgage Lending Division

**Editor's Note:**

The office of the consumer credit commissioner was abolished on July 1, 1999. Powers, duties and functions of the department were transferred to the state bank commissioner. The deputy commissioner for consumer and mortgage lending shall be the successor in every way to those powers, duties and functions of the consumer credit commissioner concerning the administration of the uniform consumer credit code. See K.S.A. 75-1314 and 75-1315.

*Articles*

75-6. UNIFORM CONSUMER CREDIT CODE.

## Article 6.—UNIFORM CONSUMER CREDIT CODE

**75-6-1. Making transactions outside of the scope of the Kansas uniform consumer credit code subject to same.** The parties to a sale, lease, loan, or modification of a sale, lease, or loan that is not a consumer credit transaction may agree in a writing signed by the parties to make the transaction subject to the Kansas uniform consumer credit code. Any such agreement may be included in the contractual agreement evidencing the credit transaction, and when so included, no additional signatures shall be required to evidence the agreement to include the transaction within the scope of the Kansas uniform consumer credit code other than the signatures normally used in executing the credit transaction. In order to be effective, each such agreement shall be executed simultaneously with the contractual agreement evidencing the credit transaction. (Authorized by K.S.A. 16a-6-104(e), as amended by 2009 SB 240, §21; implementing K.S.A. 16a-1-109; effective, E-74-13, Jan. 1, 1974; effective May 1, 1975; amended Oct. 2, 2009.)

**75-6-9. Additional charges.** (a) The charges enumerated in K.S.A. 16a-2-501 (1)(d), and amendments thereto, shall be considered "additional charges in connection with a consumer credit transaction" if the charges meet the following requirements:

(1) Are made under conditions that permit their exclusion from the definition of "finance charge" under K.S.A. 16a-1-301 (22) and amendments thereto; and

(2) are payable to a third party who is not related to the creditor, except as allowed by K.S.A. 16a-1-301 (10)(b) and amendments thereto.

(b) Additional charges shall be considered "in connection with a consumer credit transaction," as used in K.S.A. 16a-2-501 and amendments thereto and subsection (a) of this regulation, if either of the following conditions is met:

(1) In relation to insurance premiums, the creditor or a person related to the creditor receives a commission on any insurance sold on the same day on which the consumer credit transaction was consummated.

(2) In relation to all other additional charges, the charges are made for goods, services, or both rendered within one month before or after the consummation of the consumer credit transaction. (Authorized by K.S.A. 16a-6-104(e), as amended by 2009 SB 240, §21; implementing K.S.A. 16a-2-501(1)(d); effective, E-74-13, Jan. 1, 1974; effective May 1, 1975; amended May 1, 1985; amended Sept. 20, 1996; amended Oct. 2, 2009.)

**75-6-31. Bond requirements.** (a) Each applicant for a supervised loan license shall submit a bond in the following amounts:

(1) For any applicant who engages in or intends to engage in making loans secured by an interest in real property or contracts for deed, $250,000.00 for the first licensed place of business, plus an additional $25,000.00 for each ad-

ditional licensed place of business or, if the applicant made more than $50,000,000.00 in such loans in Kansas during the previous calendar year, $300,000.00; or

(2) for all other applicants, $100,000.00 for the first licensed place of business, plus an additional $25,000.00 for each additional licensed place of business.

(b) The total bond requirement for each applicant shall not exceed $300,000.00, unless the administrator determines, after consideration of the factors specified in subsection (c), that special circumstances require a higher bond amount in order to adequately protect Kansas consumers.

(c) In determining whether a higher bond amount is necessary, the following factors shall be considered by the administrator:

(1) Whether the business proposed to be conducted by the applicant involves technology or methods that may require additional regulatory oversight by the administrator;

(2) whether the applicant has been the subject of regulatory or disciplinary actions by the administrator, any regulatory body of this state or any other state, or any federal regulatory body; or

(3) whether the applicant's structure, business activities, or operations possess elements of risk that may require additional regulatory oversight by the administrator. (Authorized by K.S.A. 16a-2-302(1)(a), as amended by 2009 SB 240, §17, and K.S.A. 16a-6-104, as amended by 2009 SB 240, §21; implementing K.S.A. 16a-2-302(2), as amended by 2009 SB 240, §17; effective July 14, 2000; amended Jan. 6, 2006; amended Oct. 2, 2009.)

**75-6-33.** (Authorized by K.S.A. 2002 Supp. 16a-6-104; implementing K.S.A. 2002 Supp. 16a-2-304; effective Oct. 31, 2003; revoked Oct. 2, 2009.)

**75-6-34.** (Authorized by K.S.A. 2002 Supp. 16a-6-104 and K.S.A. 2002 Supp. 16a-3-308; implementing K.S.A. 2002 Supp. 16a-3-308; effective Sept. 12, 2003; revoked Oct. 2, 2009.)

**75-6-36. Prelicensing and continuing education; requirements.** (a) Each individual required to register as a residential mortgage loan originator pursuant to the Kansas uniform consumer credit code, K.S.A. 16a-1-101 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 residential mortgage loan originator pursuant to the Kansas uniform consumer credit code, K.S.A. 16a-1-101 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 CPE course shall first be approved by the administrator, or the administrator's 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 administrator. A request for PPE or CPE course approval may be submitted by any person, as defined by K.S.A. 16a-1-301 and amendments thereto.

(g) Evidence of satisfactory completion of approved PPE or CPE courses shall be submitted in the manner prescribed by the administrator. Each residential mortgage loan originator registrant shall ensure that PPE or CPE credit has been properly submitted to the administrator 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) Each residential mortgage loan originator

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 residential mortgage loan originator registrant who fails to renew the registrant's certificate of registration, in accordance with K.S.A. 16a-2-302 and amendments thereto, shall obtain all delinquent CPE before receiving a new certificate of registration.

(k) A residential mortgage loan originator 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. 16a-6-104, as amended by 2009 SB 240, §21; effective Oct. 2, 2009.)

**75-6-37. Prelicensure testing.** (a) On and after July 31, 2010, each individual required to register as a residential mortgage loan originator pursuant to the Kansas uniform consumer credit code, K.S.A. 16a-1-101 et seq. and amendments thereto, shall pass a qualified written test. For purposes of this regulation, the administrator'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;

(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 registered mortgage loan originator 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. 16a-6-104, as amended by 2009 SB 240, §21; effective Oct. 2, 2009.)

**75-6-38. Record retention.** (a) In any loan, lease, or credit sale not secured by an interest in real estate, the licensee or any person required to file notification with the administrator pursuant to K.S.A. 16a-6-202, and amendments thereto, shall retain the following:

(1) The following documents, as applicable, in any transaction closed in the name of the licensee or person filing notification, for at least 36 months following the closing date or, if the transaction is not closed, the application date:

(A) The application;

(B) the contract and any addendum or rider;

(C) the final truth-in-lending disclosure statement, including an itemization of the amount financed and an itemization of any prepaid finance charges, or consumer lease disclosures;

(D) any written agreements with the borrower that describe rates or fees;

(E) any documentation that aided the licensee or person in making a credit decision, including a credit report, verification of employment, verification of income, bank statements, payroll records, and tax returns;

(F) all paid invoices for credit report, filing, and any other closing costs;

(G) any credit insurance requests and insurance certificates;

(H) the assignment of the contract;

(I) phone log or any correspondence with associated notes detailing each contact with the consumer;

(J) all other agreements for products or services charged in connection with each transaction by the licensee, person filing notification, or third party, including guaranteed asset protection (GAP) and warranties; and

(K) any other disclosures or statements required by law; and

(2) the following documents, as applicable, in any transaction in which the licensee or person filing notification owns the account and directly or indirectly undertakes collection of payments or

enforcement of rights against debtors, for at least 36 months after the final entry to each account:

(A) A complete payment history, including the following:

(i) An explanation of transaction codes, if used;

(ii) the principal balance;

(iii) the payment amount;

(iv) the payment date;

(v) the distribution of the payment amount to interest, principal, and late fees or other fees; and

(vi) any other amounts that have been added to, or deducted from, a consumer's account;

(B) any other statements, disclosures, invoices, or information for each account, including the following:

(i) 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, skip tracing, retaking, or repossession fees;

(ii) loan modification agreements;

(iii) forbearance or any other repayment agreements;

(iv) subordination agreements;

(v) surplus or deficiency balance statements;

(vi) default-related correspondence or documents;

(vii) evidence of sale of repossessed collateral;

(viii) the notice of the consumer's right to cure;

(ix) property insurance advance disclosure;

(x) force-placed property insurance;

(xi) notice and evidence of credit insurance premium refunds;

(xii) deferred interest;

(xiii) suspense accounts;

(xiv) phone log or any correspondence with associated notes detailing each contact between the servicer and the consumer; and

(xv) any other product or service agreements; and

(C) documents related to the general servicing activities of the licensee, including the following:

(i) Historical records for all adjustable rate indices used;

(ii) a log of all accounts sold, transferred, or assigned that details to whom the accounts were sold, transferred, or assigned;

(iii) a log of all accounts in which repossession activity has been initiated;

(iv) a log of all credit insurance claims and accounts paid by credit insurance; and

(v) a schedule of servicing fees and charges imposed by the licensee or a third party.

(b) In any loan secured by an interest in real estate, the licensee shall retain the following:

(1) The following documents, as applicable, in any mortgage loan in which the licensee does not close the transaction in the licensee's name, for at least 36 months following the closing date or, if the transaction is not closed, the application date:

(A) The application;

(B) the good faith estimate;

(C) the early truth-in-lending disclosure statement;

(D) any written agreements with the borrower that describe rates, fees, broker compensation, and any other similar fees;

(E) 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 automated valuation model, pursuant to K.S.A. 16a-1-301(6) and amendments thereto, acceptable to the administrator;

(F) the adjustable rate mortgage (ARM) disclosure;

(G) the home equity line of credit (HELOC) disclosure statement;

(H) the affiliated business arrangement disclosure;

(I) 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;

(J) the certificate of counseling for home equity conversion mortgages (HECMs);

(K) the loan cost disclosure statement for HECMs;

(L) the notice to the borrower for HECMs;

(M) phone log or any correspondence with associated notes detailing each contact with the consumer;

(N) 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;

(O) the settlement statement; and

(P) all paid invoices for appraisal, title work, credit report, and any other closing costs;

(2) the following documents, as applicable, in any transaction in which the licensee provides any money to fund the loan or closes the mortgage loan in the licensee's name, for at least 36 months from the closing date of the transaction:

(A) The high loan-to-value notice required by K.S.A. 16a-3-207 and amendments thereto;

(B) the final truth-in-lending disclosure statement, including an itemization of the amount financed and an itemization of any prepaid finance charges;

(C) any credit insurance requests and insurance certificates;

(D) the note and any other applicable contract addendum or rider;

(E) a copy of the filed mortgage or deed;

(F) a copy of the title policy or search;

(G) the assignment of the mortgage and note;

(H) the initial escrow account statement or escrow account waiver;

(I) the notice of the right to rescind or waiver of the right to rescind;

(J) the special home ownership and equity protection act disclosures required by regulation Z in 12 CFR 226.32(c) and 226.34(a)(2), if applicable;

(K) the mortgage servicing disclosure statement and applicant acknowledgement;

(L) the notice of transfer of mortgage servicing;

(M) any interest rate lock-in agreement or float agreement; and

(N) any other disclosures or statements required by law; and

(3) the following documents, as applicable, 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, for at least 36 months from the final entry to each account:

(A) A complete payment history, including the following:

(i) An explanation of transaction codes, if used;

(ii) the principal balance;

(iii) the payment amount;

(iv) the payment date;

(v) the distribution of the payment amount to interest, principal, late fees or other fees, and escrow; and

(vi) any other amounts that have been added to, or deducted from, a consumer's account;

(B) any other statements, disclosures, invoices, or information for each account, including the following:

(i) Documentation supporting any amounts added to a consumer's account or evidence that a service was actually performed in connection with these amounts, including costs of collection, attorney's fees, property inspections, property preservations, and broker price opinions;

(ii) annual escrow account statements and related escrow account analyses;

(iii) notice of shortage or deficiency in escrow account;

(iv) loan modification agreements;

(v) forbearance or any other repayment agreements;

(vi) subordination agreements;

(vii) foreclosure notices;

(viii) evidence of sale of foreclosed homes;

(ix) surplus or deficiency balance statements;

(x) default-related correspondence or documents;

(xi) the notice of the consumer's right to cure;

(xii) property insurance advance disclosure;

(xiii) force-placed property insurance;

(xiv) notice and evidence of credit insurance premium refunds;

(xv) deferred interest;

(xvi) suspense accounts;

(xvii) phone log or any correspondence with associated notes detailing each contact between the servicer and the consumer; and

(xviii) any other product or service agreements; and

(C) documents related to the general servicing activities of the licensee, including the following:

(i) Historical records for all adjustable rate mortgage indices used;

(ii) a log of all accounts sold, transferred, or assigned that details to whom the accounts were sold, transferred, or assigned;

(iii) a log of all accounts in which foreclosure activity has been initiated;

(iv) a log of all credit insurance claims and accounts paid by credit insurance; and

(v) a schedule of servicing fees and charges imposed by the licensee or a third party.

(c) In addition to meeting the requirements specified in subsections (a) and (b), each licensee or person filing notification shall retain for at least

the previous 36 months the documents related to the general business activities of the licensee or person filing notification, which shall include the following:

(1) Advertising records, including copies of printed advertisements or solicitations and those by internet or other electronic means;

(2) the business account check ledger or register;

(3) all financial statements, balance sheets, or statements of condition;

(4) a detailed list of all transactions originated, closed, purchased, or serviced; and

(5) a schedule of the licensee's fees and charges. (Authorized by K.S.A. 16a-6-104, as amended by 2009 SB 240, §21; implementing K.S.A. 16a-2-304, as amended by 2009 SB 240, §19; effective Oct. 2, 2009.)

# Agency 81
# Office of the Securities Commissioner

*Articles*


81-2. Filing, Fees and Forms.
81-3. Licensing; Broker-Dealers and Agents.
81-5. Exemptions.
81-14. Investment Advisers and Investment Adviser Representatives.
81-20. General Purpose and Applicability.
81-22. Procedures for Registration.
81-23. Fees, Maximum Registration and Forms.
81-24. Standards for Approval.
81-25. Public Offering Statements.
81-26. Contracts, Deeds and Title.
81-28. Effectiveness and Inspections.
81-30. Administrative Procedure.


## Article 2.—FILING, FEES AND FORMS

**81-2-1. Forms and adoptions by reference.** (a) Forms. Whenever any of these regulations requires the filing of any of the following forms, the filer shall use the form as issued or approved by the administrator:

(1) Uniform forms:

| FORM | TITLE |
|---|---|
| ADV | Uniform application for investment adviser registration |
| ADV-W | Notice of withdrawal from registration as investment adviser |
| BD | Uniform application for broker-dealer registration |
| BDW | Uniform request for broker-dealer withdrawal |
| BR | Uniform branch office registration form |
| D | Notice of sale of securities |
| NF | Uniform investment company notice filing |
| U-1 | Uniform application to register securities |
| U-2 | Uniform consent to service of process |
| U-2A | Uniform form of corporate resolution |
| U-4 | Uniform application for securities industry registration or transfer |
| U-5 | Uniform termination notice for securities industry registration |
| U-7 | Disclosure document |
| U-SB | Uniform surety bond form |
| | Model accredited investor exemption uniform notice of transaction |

(2) Kansas forms:

| FORM | TITLE |
|---|---|
| KSC-1 | Sales report or renewal application |
| KSC-15 | Solicitation of interest form for issuers organized or based in Kansas |

(3) SEC forms:

| FORM | TITLE |
|---|---|
| 1-A | Regulation A offering statement under the securities act of 1933 |
| SB-2 | Registration statement under the securities act of 1933 |

(b) Federal statutes. The following federal statutes, as in effect on July 21, 2010, are hereby adopted by reference:

(1) Sections 2, 3, and 17 of the securities act of 1933, 15 U.S.C. §§ 77b, 77c, and 77q;

(2) sections 9, 10, 13, and 15 of the securities exchange act of 1934, 15 U.S.C. §§ 78i, 78j, 78m, and 78o;

(3) sections 203, 204A, 205, and 215 of the investment advisers act of 1940, 15 U.S.C. §§ 80b-3, 80b-4a, 80b-5, and 80b-15;

(4) sections 3 and 5 of the investment company act of 1940, 15 U.S.C. §§ 80a-3 and 80a-5; and

(5) section 6f of the commodity exchange act, 7 U.S.C. § 6f.

(c) SEC rules and regulations. The following rules and regulations of the securities and

exchange commission, as in effect on October 21, 2010, are hereby adopted by reference:

(1) 17 C.F.R. 210.2-02;

(2) rule 134, 17 C.F.R. 230.134;

(3) rule 147, 17 C.F.R. 230.147;

(4) regulation A, 17 C.F.R. 230.251 through 230.263;

(5) rules 501, 504, 505, and 506 of regulation D, 17 C.F.R. 230.501, 230.504, 230.505, and 230.506;

(6) rule 8c-1, 17 C.F.R. 240.8c-1;

(7) rule 10b-10, 17 C.F.R. 240.10b-10;

(8) rule 15c2-1, 17 C.F.R. 240.15c2-1;

(9) rules 15c3-1, 15c3-2, and 15c3-3, 17 C.F.R. 240.15c3-1, 240.15c3-2, and 240.15c3-3;

(10) rules 17a-3, 17a-4, and 17a-5, 17 C.F.R. 240.17a-3, 240.17a-4, and 240.17a-5;

(11) rule 17a-11, 17 C.F.R. 240.17a-11;

(12) regulation M, 17 C.F.R. 242.100 through 242.105;

(13) regulation SHO, 17 C.F.R. 242.200 through 242.204;

(14) regulation FD, 17 C.F.R. 243.100 through 243.103;

(15) regulation S-P, 17 C.F.R. 248.1 through 248.30;

(16) rule 205-3, 17 C.F.R. 275.205-3; and

(17) rule 206(4)-1, 17 C.F.R. 275.206(4)-1.

(d) NASD and New York stock exchange rules and bylaws. The following rules and bylaws, as in effect on July 1, 2005, are hereby adopted by reference:

(1) Article I of the NASD bylaws;

(2) the NASD "conduct rules (2000-3000)"; and

(3) rule 472 of the New York stock exchange, "communications with the public." (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a608; effective Jan. 1, 1966; amended, E-70-15, Feb. 4, 1970; amended Jan. 1, 1971; amended, E-77-40, Aug. 12, 1976; amended Feb. 15, 1977; amended, T-86-38, Dec. 11, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-88-29, Aug. 19, 1987; amended May 1, 1988; amended March 25, 1991; amended Oct. 7, 1991; amended April 17, 1995; amended May 31, 1996; amended Dec. 19, 1997; amended Aug. 18, 2006; amended Aug. 12, 2011.)

## Article 3.—LICENSING; BROKER-DEALERS AND AGENTS

**81-3-6. Dishonest or unethical practices of broker-dealers and agents.** (a) Unethical conduct. "Dishonest or unethical practices," as used in K.S.A. 17-12a412(d)(13) and amendments thereto, shall include the conduct prohibited in this regulation.

(b) Fraudulent conduct. "An act, practice, or course of business that operates or would operate as a fraud or deceit," as used in K.S.A. 17-12a501(3) and amendments thereto, shall include the conduct prohibited in paragraphs (e)(9)(A), (9)(B), (10), (11), (14) through (18), (20), (21), (24), and (27), paragraphs (f)(1) through (6), and subsections (g) and (i).

(c) General standard of conduct. A person registered as a broker-dealer or agent under the act shall not fail to observe high standards of commercial honor and just and equitable principles of trade in the conduct of the person's business.

(d) Conduct rules: NASD, New York stock exchange, and SEC. A person registered as a broker-dealer or agent under the act shall not fail to comply with each of the following rules and laws, as adopted by reference in K.A.R. 81-2-1:

(1) The NASD "conduct rules (2000-3000)";

(2) rule 472 of the New York stock exchange, "communications with the public";

(3) section 17 of the securities act of 1933, 15 U.S.C. § 77q;

(4) sections 9 and 10 of the securities exchange act of 1934, 15 U.S.C. §§ 78i and 78j;

(5) SEC regulation M, 17 C.F.R. 242.100 through 242.105;

(6) SEC regulation SHO, 17 C.F.R. 242.200 through 242.203; and

(7) SEC regulation FD, 17 C.F.R. 243.100 through 243.103.

(e) Prohibited conduct: sales and business practices. Each person registered as a broker-dealer or agent under the act shall refrain from the following practices in the conduct of the person's business. For purposes of this subsection, a security shall include any security as defined by K.S.A. 17-12a102, and amendments thereto, including a federal covered security as defined by K.S.A. 17-12a102, and amendments thereto, or section 2 of the securities act of 1933, 15 U.S.C. § 77b, as adopted by reference in K.A.R. 81-2-1.

(1) Delays in delivery or payment. A broker-dealer shall not engage in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of the broker-dealer's customers or in the payment upon request of free credit balances reflecting completed transactions of any of its customers.

(2) Excessive trading. A broker-dealer or agent shall not induce trading in a customer's account that is excessive in size or frequency in view of the financial resources and character of the account.

(3) Unsuitable recommendations. A broker-dealer or agent shall not recommend to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer or agent.

(4) Unauthorized trading. A broker-dealer or agent shall not execute a transaction on behalf of a customer without authorization to do so.

(5) Improper use of discretionary authority. A broker-dealer or agent shall not exercise any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders.

(6) Failure to obtain margin agreement. A broker-dealer or agent shall not execute any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account.

(7) Failure to segregate. A broker-dealer shall not hold securities carried for the account of any customer that have been fully paid for or that are excess margin securities, unless the securities are segregated and identified by a method that clearly indicates the interest of the customer in those securities.

(8) Improper hypothecation. A broker-dealer shall not hypothecate a customer's securities without having a lien on the securities unless the broker-dealer has secured from the customer a properly executed written consent, except as permitted by SEC rule 8c-1, 17 C.F.R. 240.8c-1, or SEC rule 15c2-1, 17 C.F.R. 240.15c2-1, as adopted by reference in K.A.R. 81-2-1.

(9) Unreasonable charges. A broker-dealer or agent shall not engage in any of the following conduct:

(A) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security;

(B) receiving an unreasonable commission or profit; or

(C) charging unreasonable and inequitable fees for services performed, including the collection of monies due for principal, dividends, or interest; exchange or transfer of securities; appraisals; safekeeping or custody of securities; and other miscellaneous services related to the broker-dealer's securities business.

(10) Failure to timely deliver prospectus. A broker-dealer or agent shall not fail to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document that together include all information set forth in the final prospectus.

(11) Contradicting prospectus. A broker-dealer or agent shall not contradict or negate the importance of any information contained in a prospectus or any other offering materials with the intent to deceive or mislead.

(12) Non-bona fide offers. A broker-dealer shall not offer to buy from or sell to any person any security at a stated price, unless the broker-dealer is prepared to purchase or sell at the price and under the conditions that are stated at the time of the offer to buy or sell.

(13) Misrepresentation of market price. A broker-dealer shall not represent that a security is being offered to a customer "at the market" or at a price relevant to the market price, unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than a market made, created, or controlled by the broker-dealer, any person for whom the broker-dealer is acting or with whom the broker-dealer is associated in the distribution of securities, or any person controlled by, controlling, or under common control with the broker-dealer.

(14) Market manipulation. A broker-dealer or agent shall not effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive, or fraudulent device, practice, plan, program, design, or contrivance, including the following:

(A) Effecting any transaction in a security that involves no change in its beneficial ownership;

(B) entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of the same security for substan-

tially the same volume, time, and price have been or will be entered for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security. However, nothing in this paragraph shall prohibit a broker-dealer from entering bona fide agency cross transactions for the broker-dealer's customers;

(C) effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security for the purpose of inducing the purchase or sale of the security by others;

(D) engaging in general solicitation and using aggressive, high-pressure, or deceptive marketing tactics to affect the market price of the security; and

(E) using fictitious or nominee accounts.

(15) Guarantees against loss. A broker-dealer shall not guarantee a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer.

(16) Deceptive advertising. A broker-dealer or agent shall not use any advertising or sales presentation in a manner that is deceptive or misleading, including the following:

(A) Using words, pictures, or graphs in an advertisement, brochure, flyer, or display to present any nonfactual data or material; any conjecture, unfounded claims or assertions, or unrealistic claims or assertions; or any information that supplements, detracts from, supersedes or defeats the purpose or effect of any prospectus or disclosure; and

(B) publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind that purports to report any transaction as a purchase or sale of any security unless the broker-dealer or agent believes that the transaction was a bona fide purchase or sale of the security or that purports to quote the bid price or asked price for any security unless the broker-dealer or agent believes that the quotation represents a bona fide bid for or offer of the security.

(17) Failure to disclose conflicts of interest. A broker-dealer shall not fail to disclose to any customer that the broker-dealer is controlled by, controlling, affiliated with, or under common control with the issuer of a security that is offered or sold to the customer. The disclosure shall be made before entering into any contract with or for the customer for the purchase or sale of the security, and if the disclosure is not made in writing, the disclosure shall be supplemented by the giving or sending of written disclosure before the completion of the transaction.

(18) Withholding securities. A broker-dealer shall not fail to make a bona fide public offering of all of the securities allotted to the broker-dealer for distribution, whether acquired as an underwriter, as a selling group member, or from a member participating in the distribution as an underwriter or selling group member, by engaging in conduct including the following:

(A) Parking or withholding securities; and

(B) transferring securities to a customer, another broker-dealer, or a fictitious account with the understanding that those securities will be returned to the broker-dealer or the broker-dealer's nominees.

(19) Failure to respond to customer. A broker-dealer shall not fail or refuse to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint.

(20) Misrepresenting the possession of nonpublic information. A broker-dealer or agent shall not falsely lead a customer to believe that the broker-dealer or agent is in possession of material, nonpublic information that would impact the value of a security.

(21) Contradictory recommendations. A broker-dealer or agent shall not engage in a pattern or practice of making contradictory recommendations to different investors of similar investment objectives for some to sell and others to purchase the same security, at or about the same time, if not justified by the particular circumstances of each investor.

(22) Lending, borrowing, or maintaining custody. An agent shall not lend or borrow money or securities from a customer, or act as a custodian for money, securities, or an executed stock power of a customer.

(23) Selling away. An agent shall not effect a securities transaction that is not recorded on the regular books or records of the broker-dealer that the agent represents, unless the transaction is au-

thorized in writing by the broker-dealer before the execution of the transaction.

(24) Fictitious account information. An agent shall not establish or maintain an account containing fictitious information.

(25) Unauthorized profit-sharing. An agent shall not share directly or indirectly in the profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer that the agent represents.

(26) Commission splitting. An agent shall not divide or otherwise split the agent's commissions, profits, or other compensation from the purchase or sale of securities with any person who is not also registered as an agent for the same broker-dealer or a broker-dealer under direct or indirect common control.

(27) Misrepresenting solicited transactions. A broker-dealer or agent shall not mark any order ticket or confirmation as unsolicited if the transaction was solicited.

(28) Failure to provide account statements. A broker-dealer or agent shall not fail to provide to each customer, for any month in which activity has occurred in a customer's account and at least every three months, a statement of account that contains a value for each over-the-counter non-NASDAQ equity security in the account based on the closing market bid on a date certain, if the broker-dealer has been a market maker in the security at any time during the period covered by the statement of account.

(f) Prohibited conduct: over-the-counter transactions. A broker-dealer or agent shall not engage in the following conduct in connection with the solicitation of a purchase or sale of an over-the-counter, unlisted non-NASDAQ equity security:

(1) Failing to disclose to a customer, at the time of solicitation and on the confirmation, any and all compensation related to a specific securities transaction to be paid to the agent, including commissions, sales charges, and concessions;

(2) in connection with a principal transaction by a broker-dealer that is a market maker, failing to disclose to a customer, both at the time of solicitation and on the confirmation, the existence of a short inventory position in the broker-dealer's account of more than three percent of the issued and outstanding shares of that class of securities of the issuer;

(3) conducting sales contests in a particular security;

(4) failing or refusing to promptly execute sell orders after a solicited purchase by a customer in connection with a principal transaction;

(5) soliciting a secondary market transaction if there has not been a bona fide distribution in the primary market;

(6) engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security; and

(7) failing to promptly provide the most current prospectus or the most recently filed periodic report filed under section 13 of the securities exchange act of 1934 when requested to do so by the customer.

(g) Prohibited conduct: designated security transactions.

(1) Except as specified in paragraph (g)(2), a broker-dealer or agent shall not engage in the following conduct in connection with the solicitation of a purchase of a designated security:

(A) Failing to disclose to the customer the bid and ask price at which the broker-dealer effects transactions of the security with individual retail customers, as well as the price spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents; and

(B) failing to include with the confirmation a written explanation of the bid and ask price in a form that substantially complies with part II of the NASAA statement of policy titled "fraudulent and unethical sales practices—manipulative conduct," as amended by NASAA on April 29, 1992 and hereby adopted by reference, or in an equivalent form approved by the administrator.

(2) Exceptions. Paragraph (g)(1) shall not apply to the following transactions:

(A) Transactions in which the price of the designated security is five dollars or more, exclusive of costs or charges. However, if the designated security is a unit composed of one or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities shall be five dollars or more, and any component of the unit that is a warrant, option, right, or similar securities, or a convertible security shall have an exercise price or conversion price of five dollars or more;

(B) transactions that are not recommended by the broker-dealer or agent;

(C) transactions by a broker-dealer whose commissions, commission equivalents, and markups

from transactions in designated securities during each of the immediately preceding three months, and during 11 or more of the preceding 12 months, did not exceed five percent of its total commissions, commission-equivalents, and markups from transactions in securities during those months and who has not executed principal transactions in connection with the solicitation to purchase the designated security that is the subject of the transaction in the immediately preceding 12 months; and

(D) any transaction or transactions that, upon prior written request or upon the administrator's own motion, the administrator conditionally or unconditionally exempts as not encompassed within the scope of paragraph (g)(1).

(h) Prohibited conduct: investment company shares.

(1) A broker-dealer or agent shall not engage in the following conduct in connection with the solicitation of a purchase or sale of investment company shares:

(A) Failing to adequately disclose to a customer all sales charges, including asset-based and contingent deferred sales charges, that could be imposed with respect to the purchase, retention, or redemption of investment company shares;

(B) stating or implying to a customer, either orally or in writing, that the shares are sold without a commission, are "no load," or have "no sales charge" if there is associated with the purchase of the shares a front-end charge; a contingent deferred sales charge; an SEC rule 12b-1 fee or a service fee that in total exceeds .25 percent of average net fund assets per year; or, in the case of closed-end investment company shares, underwriting fees, commissions, or other offering expenses;

(C) failing to disclose to a customer any relevant sales charge discount on the purchase of shares in dollar amounts at or above a breakpoint, or failing to disclose any relevant letter of intent feature, if available, that will reduce the sales charges;

(D) recommending to a customer the purchase of a specific class of investment company shares in connection with a multiclass sales charge or fee arrangement without reasonable grounds to believe that the sales charge or fee arrangement associated with the class of shares is suitable and appropriate based on the customer's investment objectives, financial situation, other securities holdings, and the associated transaction or other fees;

(E) recommending to a customer the purchase of investment company shares that results in the customer's simultaneously holding shares in different investment company portfolios having similar investment objectives and policies without reasonable grounds to believe that the recommendation is suitable and appropriate based on the customer's investment objectives, financial situation, other securities holdings, and any associated transaction charges or other fees;

(F) recommending to a customer the liquidation or redemption of investment company shares for the purpose of purchasing shares in a different investment company portfolio having similar investment objectives and policies without reasonable grounds to believe that the recommendation is suitable and appropriate based on the customer's investment objectives, financial situation, other securities holdings, and any associated transaction charges or other fees;

(G) stating or implying to a customer the fund's current yield or income without disclosing the fund's average annual total return, as stated in the fund's most recent form N-1A filed with the SEC, for one-year, five-year, and 10-year periods and without fully explaining the difference between current yield and total return. However, if the fund's registration statement under the securities act of 1933 has been in effect for less than one, five, or 10 years, the time during which the registration statement was in effect shall be substituted for the periods otherwise prescribed;

(H) stating or implying to a customer that the investment performance of an investment company portfolio is comparable to that of a savings account, certificate of deposit, or other bank deposit account without disclosing to the customer the fact that the shares are not insured or otherwise guaranteed by the FDIC or any other government agency and the relevant differences regarding risk, guarantees, fluctuation of principal or return or both, and any other factors that are necessary to ensure that the comparisons are fair, complete, and not misleading;

(I) stating or implying to a customer the existence of insurance, credit quality, guarantees, or similar features regarding securities held, or proposed to be held, in the investment company's portfolio without disclosing to the customer the

other kinds of relevant investment risks, including interest rate, market, political, liquidity, and currency exchange risks, that could adversely affect investment performance and result in loss or fluctuation of principal notwithstanding the creditworthiness of the portfolio securities;

(J) stating or implying to a customer that the purchase of shares shortly before an ex dividend date is advantageous to the customer unless there are specific, clearly described tax or other advantages to the customer, or stating or implying that a distribution of long-term capital gains by an investment company is part of the income yield from an investment in the shares; and

(K) making projections of future performance, statements not warranted under existing circumstances, or statements based upon nonpublic information.

(2) In connection with the solicitation of investment company shares, the delivery of a prospectus shall not be dispositive that the broker-dealer or agent has given the customer full and fair disclosure or has otherwise fulfilled the duties specified in this subsection.

(i) Prohibited conduct: use of senior-specific certifications and professional designations.

(1) A broker-dealer or agent shall not use a senior-specific certification or designation that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in any way that misleads any person. This prohibition shall include the following:

(A) The use of a certification or professional designation by a person who has not earned or is otherwise ineligible to use the certification or designation;

(B) the use of a nonexistent or self-conferred certification or professional designation;

(C) the use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

(D) the use of a certification or professional designation that was obtained from a designating or certifying organization that meets any of the following conditions:

(i) Is primarily engaged in the business of instruction in sales or marketing;

(ii) does not have reasonable standards or procedures for ensuring the competency of its designees or certificants;

(iii) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(iv) does not have reasonable continuing education requirements for its designees or certificants to maintain the professional designation or certification.

(2) There shall be a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of paragraph (i)(1)(D) if the organization has been accredited by any of the following:

(A) The American national standards institute;

(B) the national commission for certifying agencies; or

(C) an organization that is on the United States department of education's list titled "accrediting agencies recognized for title IV purposes," if the designation or credential does not primarily apply to sales or marketing, or both.

(3) In determining whether a combination of words or an acronym or initialism standing for a combination of words constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, the factors to be considered shall include the following:

(A) The use of one or more words including "senior," "retirement," "elder," or similar words, combined with one or more words including "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or similar words, in the name of the certification or professional designation; and

(B) the manner in which the words are combined.

(4) For purposes of this subsection, the terms "certification" and "professional designation" shall not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, including an agency that regulates broker-dealers, investment advisers, or investment companies, if that job title indicates seniority or standing within the organization or specifies an individual's area of specialization within the organization. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a412(d)(13) and 17-12a501(3); effective Aug. 18, 2006; amended May 22, 2009.)

## Article 5.—EXEMPTIONS

**81-5-14. Notice filings and fees for offerings of investment company securities.** (a) Before the initial offer in this state of a security that is a federal covered security as described in K.S.A. 17-12a302(a) and amendments thereto, an investment company shall file the following for each portfolio or series:

(1) A notice of intention to sell on form NF, completed in accordance with the instructions to the form; and

(2) a filing fee of $500 for a unit investment trust or $750 for a portfolio or series of an investment company other than a unit investment trust.

(b) Upon written request of the administrator and within the time period specified in the request, an investment company that has filed a registration statement under the securities act of 1933 shall file a form U-2 and a copy of any other requested document that is part of the registration statement or an amendment to the registration statement filed with the SEC.

(c) Each notice filed under subsection (a) shall be effective for one year as provided by K.S.A. 17-12a302(b), and amendments thereto. The notice may be renewed on or before expiration by filing a form NF and the appropriate fee as specified under paragraph (a)(2).

(d) If an investment company has filed a notice under subsection (a) and the name of the investment company, portfolio, or series changes, the investment company shall file an additional form NF and pay a fee of $100 for each portfolio or series of the investment company that is affected by a name change before the initial offer in this state of a security under the new name. The investment company shall indicate the former name of the investment company, portfolio, or series on the new form NF.

(e) If an investment company desires confirmation of filing or effectiveness of a form NF, the investment company shall file an additional copy of form NF with an addressed return envelope or shall obtain confirmation through an electronic filing system as provided under subsection (f).

(f) Any investment company may file notice filings and fees electronically through a centralized securities registration depository or other electronic filing system, in accordance with the procedures and controls established by that depository or system and approved by the administrator. (Authorized by and implementing K.S.A. 17-12a302 and K.S.A. 17-12a605(a); effective Dec. 19, 1997; amended Jan. 19, 2007; amended May 15, 2009.)

**81-5-21. Invest Kansas exemption.** (a) Exemption from registration requirements. The offer or sale of a security by an issuer shall be exempt from the requirements of K.S.A. 17-12a301 through 17-12a306 and K.S.A. 17-12a504, and amendments thereto, and each individual who represents an issuer in an offer or sale shall be exempt from the requirements of K.S.A. 17-12a402(a), and amendments thereto, if the offer or sale is conducted in accordance with each of the following requirements:

(1) The issuer of the security shall be a business or organization formed under the laws of the state of Kansas and registered with the secretary of state.

(2) The transaction shall meet the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the securities act of 1933, 15 U.S.C. § 77c(a)(11), and SEC rule 147, 17 C.F.R. 230.147, as adopted by reference in K.A.R. 81-2-1.

(3) The sum of all cash and other consideration to be received for all sales of the security in reliance upon this exemption shall not exceed $1,000,000, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance upon this exemption.

(4) The issuer shall not accept more than $1,000 from any single purchaser unless the purchaser is an accredited investor as defined by rule 501 of SEC regulation D, 17 C.F.R. 230.501, as adopted by reference in K.A.R. 81-2-1.

(5) A commission or other remuneration shall not be paid or given, directly or indirectly, for any person's participation in the offer or sale of securities for the issuer unless the person is registered as a broker-dealer or agent under the act.

(6) All funds received from investors shall be deposited into a bank or depository institution authorized to do business in Kansas, and all the funds shall be used in accordance with representations made to investors.

(7) Before the use of any general solicitation or the twenty-fifth sale of the security, whichever occurs first, the issuer shall provide a notice to the administrator in writing or in electronic form. The notice shall specify that the issuer is conducting an offering in reliance upon this exemption and

shall contain the names and addresses of the following persons:

(A) The issuer;

(B) all persons who will be involved in the offer or sale of securities on behalf of the issuer; and

(C) the bank or other depository institution in which investor funds will be deposited.

(8) The issuer shall not be, either before or as a result of the offering, an investment company as defined in section 3 of the investment company act of 1940, 15 U.S.C. § 80a-3, or subject to the reporting requirements of section 13 or 15(d) of the securities exchange act of 1934, 15 U.S.C. § 78m and 78o(d), as adopted by reference in K.A.R. 81-2-1.

(9) The issuer shall inform all purchasers that the securities have not been registered under the act and, therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under K.S.A. 17-12a202 and amendments thereto, K.A.R. 81-5-3, or another regulation. In addition, the issuer shall make the disclosures required by subsection (f) of SEC rule 147, 17 C.F.R. 230.147(f), as adopted by reference in K.A.R. 81-2-1.

(b) Offers and sales to controlling persons. This exemption shall not be used in conjunction with any other exemption under these regulations or K.S.A. 17-12a202 and amendments thereto, except for offers and sales to controlling persons of the issuer. Sales to controlling persons shall not count toward the limitation in paragraph (a)(3).

(c) Disqualifications. This exemption shall not be available if the issuer is subject to a disqualifying event specified in K.A.R. 81-5-13(b), except as permitted under K.A.R. 81-5-13(c). (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a203 and 17-12a402(b)(9); effective Aug. 12, 2011.)

## Article 14.—INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

**81-14-5. Dishonest and unethical practices of investment advisers, investment adviser representatives, and federal covered investment advisers.** (a) Unethical conduct. "Dishonest or unethical practices," as used in K.S.A. 17-12a412(d)(13) and amendments thereto, shall include the conduct prohibited in this regulation.

(b) Fraudulent conduct. "An act, practice, or course of business that operates or would operate as a fraud or deceit," as used in K.S.A. 17-12a502(a)(2) and amendments thereto, shall include the conduct prohibited in paragraphs (d)(6), (9), (10), and (11) and subsections (e), (f), (g), and (h).

(c) General standard of conduct. Each person registered as an investment adviser or investment adviser representative under the act shall not fail to observe high standards of commercial honor and just and equitable principles of trade in the conduct of the person's business. An investment adviser or investment adviser representative is a fiduciary and shall act primarily for the benefit of its clients.

(d) Prohibited conduct: sales and business practices. Each person registered as an investment adviser or investment adviser representative under the act shall refrain from the practices specified in this subsection in the conduct of the person's business. For purposes of this subsection, a security shall include any security as defined by K.S.A. 17-12a102, and amendments thereto, including a federal covered security as defined by K.S.A. 17-12a102, and amendments thereto, or section 2 of the securities act of 1933, 15 U.S.C. § 77b, as adopted by reference in K.A.R. 81-2-1.

(1) Unsuitable recommendations. An investment adviser or investment adviser representative shall not recommend to any client to whom investment supervisory, management, or consulting services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser or investment adviser representative.

(2) Improper use of discretionary authority. An investment adviser or investment adviser representative shall not exercise any discretionary power in placing an order for the purchase or sale of securities for any client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power is limited to the price at which and the time when an order shall be executed for a definite amount of a specified security.

(3) Excessive trading. An investment adviser or

investment adviser representative shall not induce trading in a client's account that is excessive in size or frequency in light of the financial resources, investment objectives, and character of the account.

(4) Unauthorized trading. An investment adviser or investment adviser representative shall not perform either of the following:

(A) Place an order to purchase or sell a security for the account of a client without authority to do so; or

(B) place an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

(5) Borrowing from or loaning to a client. An investment adviser or investment adviser representative shall not perform either of the following:

(A) Borrow money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds; or

(B) loan money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(6) Misrepresenting qualifications, services, or fees. An investment adviser or investment adviser representative shall not misrepresent to any advisory client or prospective client the qualifications of the investment adviser, investment adviser representative, or any employee of the investment adviser, or misrepresent the nature of the advisory services being offered or fees to be charged for the service. An investment adviser or investment adviser representative shall not omit to state a material fact that is necessary to make any statements made regarding qualifications, services, or fees, in light of the circumstance under which the statements are made, not misleading.

(7) Failure to disclose source of report. An investment adviser or investment adviser representative shall not provide a report or recommendation to any advisory client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact. This prohibition shall not apply to a situation in which the adviser uses published research reports or statistical analyses to render advice or in which an adviser orders a research report in the normal course of providing service.

(8) Unreasonable fee. An investment adviser or investment adviser representative shall not charge a client an unreasonable advisory fee.

(9) Failure to disclose conflicts of interest. An investment adviser or investment adviser representative shall not fail to disclose to a client, in writing and before any advice is rendered, any material conflict of interest relating to the investment adviser, investment adviser representative, or any of the investment adviser's employees that could reasonably be expected to impair the rendering of unbiased and objective advice, including the following:

(A) Compensation arrangements connected with advisory services to the client that are in addition to compensation from the client for the advisory services; and

(B) charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to the advice will be received by the investment adviser, investment adviser representative, or any of the adviser's employees.

(10) Guaranteeing performance. An investment adviser or investment adviser representative shall not guarantee a client that a specific result will be achieved with advice that is rendered.

(11) Deceptive advertising. An investment adviser or investment adviser representative shall not publish, circulate, or distribute any advertisement that does not comply with SEC rule 206(4)-1, 17 C.F.R. 275.206(4)-1, as adopted by reference in K.A.R. 81-2-1, notwithstanding the fact that the adviser may be exempt from federal registration pursuant to section 203(b) of the investment advisers act of 1940, 15 U.S.C. § 80b-3(b) as adopted by reference in K.A.R. 81-2-1.

(12) Failure to protect confidential information.

(A) An investment adviser or investment adviser representative shall not disclose the identity, affairs, or investments of any client unless required by law to do so or unless the client consents to the disclosure.

(B) An investment adviser shall not fail to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of section 204A of the investment advisers act of 1940, 15 U.S.C. § 80b-4a, as adopted by reference in K.A.R. 81-2-1, notwithstanding the fact that the adviser may be exempt from federal registration pursuant to section 203(b) of the investment advisers act of 1940, 15 U.S.C. § 80b-3(b).

(13) Improper advisory contract. An investment adviser shall not engage in the following conduct, notwithstanding the fact that the adviser may be exempt from federal registration pursuant to section 203(b) of the investment advisers act of 1940, 15 U.S.C. § 80b-3(b):

(A) Enter into, extend, or renew any investment advisory contract unless the contract is in writing and discloses the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, an indication of whether the contract grants discretionary power to the adviser, and that no assignment of the contract shall be made by the investment adviser without the consent of the other party to the contract;

(B) enter into, extend, or renew any advisory contract containing performance-based fees contrary to the provisions of section 205 of the investment advisers act of 1940, 15 U.S.C. § 80b-5, as adopted by reference in K.A.R. 81-2-1, except as permitted by SEC rule 205-3, 17 C.F.R. 275.205-3, as adopted by reference in K.A.R. 81-2-1; and

(C) include in an advisory contract any indication of a condition, stipulation, or provision binding a person to waive compliance with any provision of the act or of the investment advisers act of 1940, or engage in any other practice contrary to the provisions of section 215 of the investment advisers act of 1940, 15 U.S.C. § 80b-15, as adopted by reference in K.A.R. 81-2-1.

(14) Indirect misconduct. An investment adviser or investment adviser representative shall not engage in any conduct or any act, indirectly or through or by any other person, that would be unlawful for the person to do directly under the provisions of the act or these regulations.

(e) Prohibited conduct: failure to disclose financial condition and disciplinary history.

(1) Definitions. For purposes of this subsection, the following definitions shall apply:

(A) "Found" means determined or ascertained by adjudication or consent in a final self-regulatory organization proceeding, administrative proceeding, or court action.

(B) "Investment-related" means pertaining to securities, commodities, banking, insurance, or real estate, including acting as or being associated with a broker, dealer, investment company, investment adviser, government securities broker or dealer, municipal securities broker or dealer, bank, savings and loan association, commodities broker or dealer, or fiduciary.

(C) "Involved" means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

(D) "Management person" means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an investment adviser that is a company or to determine the general investment advice given to clients.

(E) "Self-regulatory organization" means any national securities or commodities exchange, registered association, or registered clearing agency.

(2) An investment adviser registered or required to be registered under the act shall not fail to disclose to any client or prospective client all material facts with respect to either of the following:

(A) A failure to meet the adjusted net worth requirements of K.A.R. 81-14-9(d); or

(B) any financial condition of the investment adviser or legal or disciplinary event that is material to an evaluation of the investment adviser's integrity or ability to meet contractual commitments to clients.

(3) It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the investment adviser or a management person of the investment adviser are material to an evaluation of the adviser's integrity for a period of 10 years from the date of the event, unless the legal or disciplinary event was resolved in the investment adviser's or management person's favor or was subsequently reversed, suspended, or vacated:

(A) A criminal or civil action in a court of competent jurisdiction resulting in any of the following:

(i) The individual was convicted of a felony or misdemeanor, or is the named subject of a pending criminal proceeding, for a crime involving an investment-related business or fraud, false statements, omissions, wrongful taking of property, bribery, forgery, counterfeiting, extortion, or crimes of a similar nature;

(ii) the individual was found to have been involved in a violation of an investment-related statute or regulation; or

(iii) the individual was the subject of any order, judgment, or decree permanently or temporarily enjoining the person or otherwise limiting the

person from engaging in any investment-related activity;

(B) any administrative proceedings before any federal or state regulatory agency resulting in any of the following:

(i) The individual was found to have caused an investment-related business to lose its authorization to do business; or

(ii) the individual was found to have been involved in a violation of an investment-related statute or regulation and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's association with, an investment-related business, or otherwise significantly limiting the person's investment-related activities; and

(C) any self-regulatory organization proceeding resulting in either of the following:

(i) The individual was found to have caused an investment-related business to lose its authorization to do business; or

(ii) the individual was found to have been involved in a violation of the self-regulatory organization's rules and was the subject of an order by the self-regulatory organization barring or suspending the person from association with other members, expelling the person from membership, fining the person more than $2,500, or otherwise significantly limiting the person's investment-related activities.

(4) The information required to be disclosed by paragraph (e)(2) shall be disclosed to clients before further investment advice is given to the clients. The information shall be disclosed to prospective clients at least 48 hours before entering into any written or oral investment advisory contract, or no later than the time of entering into the contract if the client has the right to terminate the contract without penalty within five business days after entering into the contract.

(5) For purposes of calculating the 10-year period during which events shall be presumed to be material under paragraph (e)(3), the date of a reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.

(6) Compliance with this subsection shall not relieve any investment adviser from any other disclosure requirement under any federal or state law.

(f) Prohibited conduct: cash payment for client solicitations. An investment adviser registered or required to be registered under the act shall not pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless the solicitation arrangement meets all of the requirements of paragraphs (f)(2) through (f)(7).

(1) Definitions. For the purposes of this subsection, the following definitions shall apply:

(A) "Client" shall include any prospective client.

(B) "Impersonal advisory services" means investment advisory services provided solely by means of any of the following:

(i) Written materials or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts;

(ii) statistical information containing no expression of opinion as to the investment merits of a particular security; or

(iii) any combination of the materials, statements, or information specified in paragraphs (f)(1)(B)(i) and (ii).

(C) "Solicitor" means any person or entity who, for compensation, directly or indirectly solicits any client for, or refers any client to, an investment adviser.

(2) The investment adviser shall be properly registered under the act.

(3) The solicitor shall not be a person who meets any of the following conditions:

(A) Is subject to an order by any regulatory body that censures or places limitations on the person's activities, or that suspends or bars the person from association with an investment adviser;

(B) was convicted within the previous 10 years of any felony or misdemeanor involving the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, misappropriation of funds or securities, or conspiracy to commit any such act;

(C) has been found to have engaged in the willful violation of any provision of these regulations, the act, the federal securities act of 1933, the federal securities exchange act of 1934, the federal investment company act of 1940, the federal investment advisers act of 1940, the federal commodity exchange act, the federal rules under any of these federal acts, or the rules of the NASD or municipal securities rulemaking board; or

(D) is subject to an order, judgment, or decree by which the person has been convicted anytime during the preceding 10-year period of any crime that is punishable by imprisonment for one or more years or a substantially equivalent crime by a foreign court of competent jurisdiction.

(4) The cash fee shall be paid pursuant to a written agreement to which the investment adviser is a party.

(5) The cash fee shall be paid to a solicitor only under any of the following circumstances:

(A) The cash fee is paid to the solicitor with respect to solicitation activities for the provision of impersonal advisory services only;

(B) the cash fee is paid to a solicitor who is a partner, officer, director, or employee of the investment adviser, or a partner, officer, director, or employee of a person who controls, is controlled by, or is under common control with the investment adviser, if the status of the solicitor as a partner, officer, director, or employee of the investment adviser or other person, and any affiliation between the investment adviser and the other person, is disclosed to the client at the time of the solicitation or referral; or

(C) the cash fee is paid to a solicitor other than a solicitor specified in paragraph (f)(5)(A) or (B), if all of the following conditions are met:

(i) The written agreement required by paragraph (f)(4) describes the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received, contains an undertaking by the solicitor to perform the solicitor's duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the act and the implementing regulations, and requires the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, to provide the client with a current copy of the investment adviser's written disclosure statement required under the brochure delivery requirements of K.A.R. 81-14-10(b) and a separate written disclosure document described in paragraph (f)(6).

(ii) The investment adviser receives from the client, before or when entering into any written or oral investment advisory contract with the client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document.

(iii) The investment adviser makes a bona fide effort to ascertain whether the solicitor has complied with the written agreement required by paragraph (f)(4), and the investment adviser has a reasonable basis for believing that the solicitor has complied with the agreement.

(6) The separate written disclosure document required to be furnished by the solicitor to the client shall contain the following information:

(A) The name of the solicitor;

(B) the name of the investment adviser;

(C) the nature of the relationship, including any affiliation, between the solicitor and the investment adviser;

(D) a statement that the solicitor will be compensated for the solicitation services by the investment adviser;

(E) the terms of the compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and

(F) the amount in addition to the advisory fee that the client will be charged for the costs of the solicitor's services, and any difference in fees paid by clients if the difference is attributable to the existence of any arrangement in which the investment adviser has agreed to compensate the solicitor for soliciting clients for, or referring clients to, the investment adviser.

(7) Nothing in this subsection shall be deemed to relieve any person of any fiduciary or other obligation to which a person may be subject under any law.

(g) Prohibited conduct: agency cross transactions.

(1) For the purposes of this subsection, "agency cross transaction for an advisory client" shall mean a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with the investment adviser, including an investment adviser representative, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction. Each person acting in this capacity shall be required to be registered as a broker-dealer in this state unless excluded from the definition of broker-dealer under K.S.A. 17-12a102, and amendments thereto.

(2) An investment adviser shall not effect an agency cross transaction for an advisory client unless all of the following conditions are met:

(A) The advisory client executes a written consent prospectively authorizing the investment ad-

viser to effect agency cross transactions for the client.

(B) Before obtaining this written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as broker-dealer for both parties to the transaction, receive commissions from both parties, and have a potentially conflicting division of loyalties and responsibilities.

(C) At or before the completion of each agency cross transaction, the investment adviser sends the client a written confirmation. The written confirmation shall include all of the following information:

(i) A statement of the nature of the transaction;

(ii) the date the transaction took place;

(iii) an offer to furnish, upon request, the time when the transaction took place; and

(iv) the source and amount of any other remuneration that the investment adviser received or will receive in connection with the transaction.

In the case of a purchase in which the investment adviser was not participating in a distribution, or a sale in which the investment adviser was not participating in a tender offer, the written confirmation may state whether the investment adviser has received or will receive any other remuneration and that the investment adviser will furnish the source and amount of remuneration to the client upon the client's written request.

(D) At least annually, the investment adviser sends each client a written disclosure statement identifying the total number of agency cross transactions during the period since the date of the last disclosure statement and the total amount of all commissions or other remuneration that the investment adviser received or will receive in connection with agency cross transactions for the client during the period.

(E) Each written disclosure and confirmation required by this subsection includes a conspicuous statement that the client may revoke the written consent required under paragraph (g)(2)(A) of this regulation at any time by providing written notice to the investment adviser.

(F) No agency cross transaction is effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

(3) Nothing in this subsection shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interests of the client, including fulfilling fiduciary duties with respect to the best price and execution for the particular transaction for the client, nor shall this subsection relieve any investment adviser or investment adviser representative of any other disclosure obligations imposed by the act or the regulations under the act.

(h) Prohibited conduct: use of senior-specific certifications and professional designations.

(1) An investment adviser or investment adviser representative shall not use a senior-specific certification or designation that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in any way that misleads any person. This prohibition shall include the following:

(A) The use of a certification or professional designation by a person who has not earned or is otherwise ineligible to use that certification or designation;

(B) the use of a nonexistent or self-conferred certification or professional designation;

(C) the use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

(D) the use of a certification or professional designation that was obtained from a designating or certifying organization that meets any of the following conditions:

(i) Is primarily engaged in the business of instruction in sales or marketing;

(ii) does not have reasonable standards or procedures for ensuring the competency of its designees or certificants;

(iii) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(iv) does not have reasonable continuing education requirements for its designees or certificants to maintain the professional designation or certification.

(2) There shall be a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of paragraph (h)(1)(D) if the organization has been accredited by any of the following:

(A) The American national standards institute;

(B) the national commission for certifying agencies; or

(C) an organization that is on the United States department of education's list titled "accrediting agencies recognized for title IV purposes," if the designation or credential does not primarily apply to sales or marketing, or both.

(3) In determining whether a combination of words or an acronym or initialism standing for a combination of words constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, the factors to be considered shall include the following:

(A) The use of one or more words including "senior," "retirement," "elder," or similar words, combined with one or more words including "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or similar words, in the name of the certification or professional designation; and

(B) the manner in which the words are combined.

(4) For purposes of this subsection, the terms "certification" and "professional designation" shall not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, including an agency that regulates broker-dealers, investment advisers, or investment companies, if that job title indicates seniority or standing within the organization or specifies an individual's area of specialization within the organization.

(i) Applicability to federal covered investment advisers. To the extent permitted by federal law, the provisions of this regulation governing investment advisers shall also apply to federal covered investment advisers. (Authorized by K.S.A. 17-12a502(b) and 17-12a605(a); implementing K.S.A. 17-12a412(d)(13) and 17-12a502(a)(2); effective Oct. 26, 2001; amended Aug. 18, 2006; amended Aug. 15, 2008; amended May 22, 2009.)

## Article 20.—GENERAL PURPOSE AND APPLICABILITY

**81-20-1.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; amended, E-77-40, Aug. 12, 1976; amended Feb. 15, 1977; revoked July 1, 2011.)

**81-20-2.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; amended Jan. 1, 1972; amended, E-77-40, Aug. 12, 1976; amended Feb. 15, 1977; revoked July 1, 2011.)

## Article 22.—PROCEDURES FOR REGISTRATION

**81-22-1. Applications for registration.** Each application for registration required by K.S.A. 58-3305, and amendments thereto, shall be filed with the commissioner in substantially the form and containing the exhibits required by form K-20, which may be obtained from the commissioner's office. Each application for registration shall provide complete and accurate disclosure of the information required by K.S.A. 58-3305, and amendments thereto. (Authorized by K.S.A. 58-3310(a); implementing K.S.A. 58-3305; effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; amended Jan. 1, 1972; amended July 1, 2011.)

**81-22-2.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked July 1, 2011.)

## Article 23.—FEES, MAXIMUM REGISTRATION AND FORMS

**81-23-1, 81-23-2.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked July 1, 2011.)

## Article 24.—STANDARDS FOR APPROVAL

**81-24-1.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; revoked July 1, 2011.)

## Article 25.—PUBLIC OFFERING STATEMENTS

**81-25-1 through 81-25-3.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; revoked July 1, 2011.)

## Article 26.—CONTRACTS, DEEDS AND TITLE

**81-26-3.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; revoked July 1, 2011.)

## Article 28.—EFFECTIVENESS AND INSPECTIONS

**81-28-1.** (Authorized by K.S.A. 58- 3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; revoked July 1, 2011.)

**81-28-2.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; amended, E-77-40, Aug. 12, 1976; amended Feb. 15, 1977: revoked July 1, 2011.)

## Article 30.—ADMINISTRATIVE PROCEDURE

**81-30-1.** (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; revoked July 1, 2011.)

# Agency 82

# Kansas Corporation Commission

*Articles*

82-1. Rules of Practice and Procedure.
82-3. Production and Conservation of Oil and Gas.
82-4. Motor Carriers of Persons and Property.
82-11. Natural Gas Pipeline Safety.
82-12. Wire-Stringing Rules.
82-14. The Kansas Underground Utility Damage Prevention Act.
82-16. Electric Utility Renewable Energy Standards.
82-17. Net Metering.

## Article 1.—RULES OF PRACTICE AND PROCEDURE

**82-1-219. General requirements relating to pleadings and other papers.** Except as otherwise provided in K.A.R. 82-1-231, each pleading shall contain the formal parts and meet the requirements specified in this regulation.

(a) Caption. The caption of a pleading shall include the heading, the descriptive title of the docket, and the docket number assigned to the matter by the executive director of the commission.

(1) Heading. Each pleading shall contain the heading "BEFORE THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS" which shall be centered at the top of the first page of the pleading.

(2) Descriptive title. Immediately beneath the heading, and to the left of the center of the page, shall be the descriptive title of the docket. This title shall begin with the words "In the matter of" and shall be followed by a concise statement of the matter presented to the commission for its determination, including, if appropriate, a brief description of the order, authorization, permission, or certificate sought by the party initiating the docket. The name of the party initiating the docket and the names of all other parties to whom the initial pleading is directed shall be stated in the descriptive title, followed by a designation of each party's status in the proceeding. These designations shall include applicant, complainant, defendant, and respondent.

(3) Docket number. Upon the filing of the initial pleading in a docket, a docket number shall be assigned by the executive director of the commission, which shall be placed immediately to the right of the docket title. All pleadings filed in the docket after the formal initiation of the matter shall bear the same caption as that of the original pleading.

(b) Pleading title. The title of the pleading shall be centered immediately beneath the caption and shall describe the pleading contained in the numbered paragraphs that follow.

(c) Numbered paragraphs. Following the title of the pleading, the pertinent allegations of fact and law, in compliance with these regulations, shall be set forth in numbered paragraphs.

(d) Numbered pages. Beginning with the second page of the pleading, each page of the pleading shall be numbered consecutively.

(e) The prayer. The numbered paragraphs of the pleading shall be followed by the prayer, which shall be a concise and complete statement of all relief sought by the pleader. The prayer shall be brief, but shall be complete so that an order granting the prayer includes all of the relief desired and requested by the pleader.

(f) Subscription. Each pleading shall be personally subscribed or executed by one of the following methods:

(1) By the party making the same or by one of the parties, if there is more than one party;

(2) by an officer of the party, if the party is a corporation or association; or

(3) for the party, by its attorney. The names and the addresses of all parties shall appear either in the subscription or elsewhere in the pleading. The name, address, telephone number, and telefacsi-

mile number of the attorney for the party who is the pleader shall appear either in the subscription or immediately below it. Abbreviations of names and addresses shall not be used.

(g) Verification. Each pleading shall be verified by the party or by the party's attorney, if the attorney has actual knowledge of the truth of the statements in the pleading or reasonable grounds to believe that the statements are true. Each pleading shall be verified upon affirmation that meets the requirements of K.S.A. 54-104, and amendments thereto. Any pleading by a corporation or an association may be verified by an officer or director of the corporation or association. Written verification may be waived by the commission by order at its discretion.

(h) Certificate of service. Whenever service of a pleading is required by these regulations, the party responsible for effecting service shall endorse a certificate of service upon the pleading to show compliance with these regulations. The certificate shall show service by any method authorized by K.A.R. 82-1-216.

(i) Form. Each pleading shall be typewritten on paper that is 8½" wide and 11" long. The left-hand margin shall not be less than one inch wide. The impression shall be on only one side of the paper and shall be double-spaced, except that lengthy quotations may be single-spaced and indented. Photocopies of the pleading may be filed.

(j) Rejection of document. Each document that contains defamatory, scurrilous, or unethical language shall be rejected and returned to the party filing the document. Papers, correspondence, or pleadings or any copies of papers, correspondence, or pleadings that are not clearly legible shall be rejected and returned to the party filing the document.

(k) Amendments. The amendment of any pleading may be allowed by the commission at its discretion, either by replacement of the original pleading with an amended version of it or by interlineations or deletion of material on the original pleading. (Authorized by and implementing K.S.A. 66-106; effective Jan. 1, 1966; amended Feb. 15, 1977; amended July 23, 1990; amended Oct. 10, 2003; amended July 23, 2010.)

## Article 3.—PRODUCTION AND CONSERVATION OF OIL AND GAS

**82-3-101a. Procedures for determining location using global positioning system.** Whenever an operator is required to report a location using a global positioning system (GPS), the operator shall obtain and report the GPS reading according to all of the following requirements:

(a)(1) The GPS unit shall be enabled by the wide area augmentation system (WAAS) when each GPS reading is taken; or

(2) if the GPS unit is not capable of using the WAAS system, the unit shall be rated by the manufacturer to be accurate to within 50 feet, at least 95 percent of the time.

(b) Each GPS reading shall be taken when the GPS unit indicates that the unit is in a stationary position for a sufficient amount of time to meet the accuracy requirement of paragraph (a)(1) or (2).

(c) Each GPS reading shall be expressed in the decimal form to the fifth place.

(d) A horizontal reference datum approved by the director shall be used and reported with each GPS reading. Acceptable horizontal reference datums shall include the following: North American datum (NAD) 27, North American datum (NAD) 83, and world geodetic system (WGS) 84. (Authorized by and implementing K.S.A. 55-152; effective Nov. 5, 2010.)

**82-3-120. Operator or contractor licenses: application; financial responsibility; denial of application; penalty.** (a)(1) No operator or contractor shall undertake any of the following activities without first obtaining or renewing a current license:

(A) Drilling, completing, servicing, plugging, or operating any oil, gas, injection, or monitoring well;

(B) operating a gas-gathering system, even if the system does not provide gas-gathering services as defined in K.S.A. 55-1,101(a), and amendments thereto; or

(C) constructing or operating an underground porosity gas storage facility.

Each operator in physical control of any such well or gas storage facility shall maintain a current license even if the well or storage facility is shut in or idle.

(2) Each licensee shall annually submit a completed license renewal form on or before the expiration date of the current license.

(b) To qualify for a license or license renewal, the applicant shall be in compliance with applicable laws, as required in subsection (g), and shall

submit the following items to the conservation division:

(1) An application meeting the requirements of subsection (c);

(2) a $100 license fee, except that an applicant for a license who is operating one gas well used strictly for the purpose of heating a residential dwelling shall pay an annual license fee of $25;

(3) for each rig as defined in subsection (d), a $25 fee and copies of property tax receipts on all rigs; and

(4) financial assurance in accordance with K.S.A. 55-155(d), and amendments thereto.

(c) The application for a license or a license renewal shall be verified and filed with the commission showing the following information:

(1) The applicant's full legal name and any other name or names under which the applicant transacts or intends to transact business under the license and the applicant's correct mailing address. If the applicant is a partnership or association, the application shall include the name and address of each partner or member of the partnership or association. If the applicant is a corporation, the application shall contain the names and addresses of the principal officers;

(2) the number of rigs sought to be licensed; and

(3) any other information that the forms provided may require.

Each application for a license shall be signed and verified by the applicant if the applicant is a natural person, by a partner or a member if the applicant is a partnership or association, by an executive officer if the applicant is a corporation, or by an authorized agent of the applicant.

(d) "Rig" shall mean any crane machine used for drilling or plugging wells. An identification tag shall be issued by the commission for each rig licensed according to this regulation. The operator shall display a current identification tag on each rig at all times.

(e) "An acceptable record of compliance" shall mean that both of the following conditions are met:

(1) The operator neither has been assessed by final order of the commission with $3,000 or more in penalties nor has been cited by final commission order for five or more violations in the preceding 36 months.

(2) The operator has no outstanding undisputed orders or unpaid fines, penalties, or costs assessed by the commission and has no officer or director that has been or is associated substantially with another operator that has any such outstanding orders or unpaid fines, penalties, or costs.

(f) Each operator furnishing financial assurance under K.S.A. 55-155(d)(1), and amendments thereto, shall also furnish a complete inventory of wells and the depth of each well for which the operator is responsible. Each operator furnishing financial assurance under K.S.A. 55-155(d)(2), (4), (5), or (6), and amendments thereto, either shall furnish a well inventory or shall be required to furnish the $45,000 bond, letter of credit, fee, or other financial assurance based on that amount. Falsification of the well inventory shall be punishable by a penalty of up to $5,000 and possible suspension of the operator's license.

(g) (1) If the applicant is registered with the federal securities and exchange commission, the applicant shall demonstrate to the commission that the applicant complies with all requirements of K.S.A. 55-101 et seq. and amendments thereto, all implementing regulations, and all commission orders and enforcement agreements.

(2) If the applicant is not registered with the federal securities and exchange commission, the applicant shall demonstrate to the commission that the following individuals comply with all requirements of K.S.A. 55-101 et seq. and amendments thereto, all implementing regulations, and all commission orders and enforcement agreements:

(A) The applicant;

(B) any officer, director, partner, or member of the applicant;

(C) any stockholder owning in the aggregate more than five percent of the stock of the applicant; and

(D) any spouse, parent, brother, sister, child, parent-in-law, brother-in-law, or sister-in-law of any of the individuals specified in paragraphs (g)(2)(A) through (C).

(h) Upon approval of the application by the conservation division, a license shall be issued to the applicant. Each license shall be in effect for one year unless suspended or revoked by the commission.

(i) An application or renewal application shall be denied if the applicant has not satisfied the requirements of this regulation. Denial of a license application shall constitute a summary proceeding under K.S.A. 77-537, and amendments thereto. A denial pursuant to K.S.A. 55-155(c)(3)

or (4), and amendments thereto, shall be considered a license revocation.

(j) Upon revocation of a license, no new license shall be issued to that operator or contractor until after the expiration of one year from the date of the revocation.

(k) The failure to obtain or renew an operator or contractor license before operating shall be punishable by a $500 penalty.

(l) Each operator shall notify the conservation division in writing within 30 days of any change in information supplied in conjunction with the license application. If the change involves an increase in the number or depth of the wells listed on the operator's well inventory, the operator's notification shall be accompanied by additional financial assurances to cover the additional number or depth of wells. (Authorized by K.S.A. 55-152 and 55-1,115; implementing K.S.A. 2009 Supp. 55-155 and K.S.A. 55-164 and 55-1,115; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 8, 1989; amended April 23, 1990; amended March 20, 1995; amended Aug. 29, 1997; amended Jan. 25, 2002; amended, T-82-6-27-02, July 1, 2002; amended Oct. 29, 2002; amended Nov. 5, 2010.)

**82-3-311a. Drilling through $CO_2$ storage facility or $CO_2$ enhanced oil recovery reservoirs.** (a) Each person, firm, or corporation that, for any purpose, drills or causes the drilling of a well or test hole that penetrates or bores through any stratum or formation utilized for $CO_2$ storage or $CO_2$ enhanced oil recovery shall seal off the $CO_2$ stratum or formation by either of the following:

(1) The methods and materials recommended by the operator of the $CO_2$ storage facility or $CO_2$ enhanced oil recovery project and approved by the director or the director's authorized representative; or

(2) any methods and materials that the director determines to be fair and reasonable.

(b) Each person, firm, or corporation specified in subsection (a) shall maintain the well or test hole in a manner that protects the stratum or formation at all times from pollution and the escape of $CO_2$.

(c) At least 30 days before commencing or plugging a well or test hole as specified in subsection (a), the person, firm, or corporation desiring to commence drilling or plugging operations shall give to the operator of the $CO_2$ storage facility or $CO_2$ enhanced oil recovery project and the conservation division written notice, by registered mail, of the date desired for commencement of drilling or plugging the well.

(d) Within 10 days after receipt of notice, the operator of the $CO_2$ storage facility or $CO_2$ enhanced oil recovery project shall forward to the conservation division the operator's recommendations for the manner, methods, and materials to be used in the sealing off or plugging operation. The operator of the $CO_2$ storage facility or $CO_2$ enhanced oil recovery project shall give notice of the recommendations by mailing or delivering a copy to the person, firm, or corporation that seeks to drill or plug a well or test hole. The notice shall be mailed or delivered on or before the date on which the recommendations are mailed to or filed with the conservation division.

(e) Each objection or complaint stating why the recommendations proposed by the operator of the $CO_2$ storage facility or $CO_2$ enhanced oil recovery project are not feasible, practical, or reasonable shall be filed within five days after the recommendation is filed.

(f) If any objections or complaints are filed or if the director deems that there should be a hearing on the recommendation of the operator of the $CO_2$ storage facility or $CO_2$ enhanced oil recovery project, a hearing shall be held. Notice of the hearing shall be published according to K.A.R. 82-3-135.

(g) Following the hearing or receipt of the recommendations proposed by the operator of the $CO_2$ storage facility or $CO_2$ enhanced oil recovery project, the manner, methods, and materials to be used in the sealing off or plugging operation shall be prescribed by the director. Operations shall not commence until the director has prescribed the manner, methods, and materials to be used.

(h) The operator of the $CO_2$ storage facility or $CO_2$ enhanced oil recovery project involved may have a representative present at all times during the drilling, completing, or plugging of the well or test hole and shall have access to all records relating to the drilling, equipping, maintenance, operation, or plugging of the well.

(i) Each operator of the $CO_2$ storage facility or $CO_2$ enhanced oil recovery project involved, in conjunction with the conservation division or its representative and with the operator of the well, shall have the right to inspect or test the well to discover any leaks or defects that could affect the

$CO_2$ storage or $CO_2$ enhanced oil recovery stratum or formation.

(j) The operator of the $CO_2$ storage facility or enhanced oil recovery project shall pay each cost necessarily incurred in sealing off the stratum or formation or in plugging, maintaining, inspecting, or testing the well, as recommended by the operator of the $CO_2$ storage facility or $CO_2$ enhanced oil recovery project and subsequently either approved or independently determined by the director or the director's representative, that exceeds the ordinary cost of operations using similar methods. (Authorized by and implementing K.S.A. 2008 Supp. 55-1637; effective Feb. 26, 2010.)

**82-3-1100. Definitions: carbon dioxide ($CO_2$) storage facilities.** The following terms, as used in these regulations for carbon dioxide ($CO_2$) storage facilities, shall have the following meanings:

(a) "Abandonment" means the process of plugging all $CO_2$ storage wells in a storage facility and the removal of all surface equipment.

(b) "$CO_2$" means carbon dioxide.

(c) "$CO_2$ capture, sequestration, or utilization machinery and equipment" means any machinery and equipment that are located in this state and meet one of the following conditions:

(1) Are used to capture carbon dioxide from industrial and other anthropogenic sources, or to convert this carbon dioxide into one or more products;

(2) are used to inject carbon dioxide into a carbon dioxide injection well; or

(3) are used to recover carbon dioxide from sequestration.

(d) "$CO_2$ closure period" means the period of time from the permanent cessation of active injection or withdrawal operations until the beginning of the $CO_2$ postclosure period. During this period, the operator is responsible for activities that include the following:

(1) Monitoring the plume's pressure;

(2) monitoring the horizontal and vertical extent of the plume; and

(3) monitoring plugged and abandoned wells.

(e) "$CO_2$ postclosure period" means the time after the $CO_2$ closure period in which all wells are plugged and monitoring of the storage reservoir is no longer necessary because the plume is stable and is not a threat to public health and safety or usable water.

(f) "$CO_2$ storage" means the storage of $CO_2$ in geologic strata that have been converted for $CO_2$ storage.

(g) "$CO_2$ storage facility" and "storage facility" mean the leased acreage and $CO_2$ storage reservoir. This term shall include the $CO_2$ storage well, well bore tubular goods, the wellhead, and any related equipment, including the last positive shutoff valve attached to the flow line.

(h) "$CO_2$ storage observation well" and "observation well" mean a well either completed or recompleted for the purpose of observing subsurface phenomena, including the presence of $CO_2$, pressure fluctuations, fluid levels and flow, and temperature.

(i) "$CO_2$ storage recovery well" and "recovery well" mean a well used for the withdrawal of storage $CO_2$ that has migrated from the $CO_2$ storage reservoir and is trapped in a different reservoir. The wells are used in the recovery of storage $CO_2$ as remediation of a loss of containment.

(j) "$CO_2$ storage reservoir" and "storage reservoir" mean a porous, brine-filled stratum of the earth that is separated from any other similar porous stratum by an impermeable stratum and is capable of being used for the storage of $CO_2$.

(k) "$CO_2$ storage well" means any $CO_2$ storage injection or withdrawal well, $CO_2$ storage withdrawal well, $CO_2$ storage observation well, or $CO_2$ recovery well completed or recompleted as part of a $CO_2$ storage facility.

(l) "$CO_2$ storage withdrawal well" and "withdrawal well" mean a well used only for the withdrawal of $CO_2$ stored in a reservoir.

(m) "Decommission" means a declaration that $CO_2$ injection or withdrawal will cease at a $CO_2$ storage field and the storage field will be taken out of service.

(n) "Fracture gradient" means the pressure gradient, measured in pounds per square inch per feet, that if applied to a subsurface formation, will cause that formation to physically fracture.

(o) "Fresh water" means water containing not more than 1,000 milligrams of total dissolved solids per liter.

(p) "Kansas certified laboratory" means a laboratory certified by the Kansas department of health and environment.

(q) "Leak" means a loss of $CO_2$. A loss occurs when $CO_2$ has migrated or is migrating from the wellhead, tubing, or casing or around the packer.

(r) "Leak detector" means a device capable of detecting by chemical or physical means the pres-

ence of $CO_2$ or the escape of $CO_2$ through a small opening.

(s) "Licensed engineer" means an engineer who is licensed or authorized to practice engineering in Kansas by the Kansas state board of technical professions.

(t) "Licensed geologist" means a geologist who is licensed or authorized to practice geology in Kansas by the Kansas state board of technical professions.

(u) "Loss of containment" means that $CO_2$ has migrated or is migrating out of the $CO_2$ reservoir or facility. Generally, the term "loss of containment" is used when referring to $CO_2$ that has migrated or is migrating from the $CO_2$ storage reservoir or beyond the authorized facility boundary.

(v) "Material change" shall include any of the following:

(1) Adding a storage zone;

(2) a change in $CO_2$ storage volume; or

(3) a change in the maximum surface operating pressure.

(w) "Monitoring means" means the steps taken to evaluate pressure data or other data for any indication that a leak or loss of containment could be occurring or has occurred.

(x) "Normal operating condition" means that the master valve and the first positive shutoff valve must fully open and close with reasonable ease and must be able to hold pressure in the closed position.

(y) "Packer" means an expanding mechanical device used in a well to seal off certain sections of the well when cementing, testing, or isolating the well from the completed interval.

(z) "Small, well-defined outside area" means an area, including a playground, recreation area, outdoor theater, and other place of public assembly, that is occupied by 20 or more persons at least five days a week for 10 weeks in any 12-month period. The days and weeks shall not be required to be consecutive.

(aa) "Usable water" means water containing not more than 10,000 milligrams of total dissolved solids per liter. This upper limit is approximately equivalent to 10,000 parts of salt per million or 5,000 parts of chloride per million. (Authorized by and implementing K.S.A. 2007 Supp. 55-1637; effective Feb. 26, 2010.)

**82-3-1101. $CO_2$ storage facility; permit application.** (a) No entity shall operate a $CO_2$ storage facility without a permit to operate the facility.

(b) Each applicant for a permit shall submit the application on a form provided by the conservation division. The applicant shall sign and verify the application. The applicant shall file the original and two copies of the application with the conservation division.

(c) Each application shall contain the following information:

(1) The applicant's name and license number;

(2) the name of the proposed $CO_2$ storage facility;

(3) the name, description, and average depth of the $CO_2$ storage reservoir or reservoirs proposed to be utilized for $CO_2$ storage;

(4) a generalized stratigraphic column of the geologic formations encountered at the proposed $CO_2$ storage facility supported with geophysical logs:

(A) Each generalized stratigraphic column and geophysical log shall identify the geologic formations from the surface through the first formation below the storage reservoir and clearly label all fresh and usable water aquifers and all known active and inactive oil and gas producing horizons within the $CO_2$ storage facility and within a one-mile radius around the $CO_2$ storage facility; and

(B) minimum required geophysical logging analysis curves for each $CO_2$ storage well shall be on a scale of 5"=100' and shall include the following: correlation gamma ray, formation density, porosity curves, spontaneous potential, cement bond log and temperature log;

(5) a geologic, hydrogeologic, and reservoir evaluation of the proposed $CO_2$ storage facility, including the predicted amount of $CO_2$ that will be stored in the reservoir. The evaluation shall describe the geologic, geomechanic, hydrogeologic, and reservoir characteristics of the proposed $CO_2$ storage reservoir or reservoirs, the adjacent confining layer or layers, and the reservoir conditions that control the trapping mechanism. The evaluation shall consist of written text as specified in this paragraph and shall be illustrated with maps and cross sections. In addition, the evaluation shall identify any petroleum and water resources that have the potential to impact or be impacted by $CO_2$ storage operations. The evaluation under this paragraph, including all written materials and all accompanying maps, shall be cer-

tified by a licensed engineer or licensed geologist. This evaluation shall include the following:

(A) An assessment of the regional and local geological setting, including regional or local faulting and structural or stratigraphic features;

(B) the geological characterization of the trapping and containment mechanisms of the proposed $CO_2$ storage reservoir and adjacent confining layers, using all available geophysical data;

(C) a geochemistry evaluation to quantitatively predict water-$CO_2$-rock reactions and their effects on the storage reservoir;

(D) an evaluation of the $CO_2$ concentrations in the proposed storage reservoir and adjacent formations;

(E) reservoir evaluation and modeling for long-term distribution of $CO_2$ in the subsurface, including the rate of dissolution of the $CO_2$ in the formation water, miscibility, migration rates, direction, and the monitoring of the $CO_2$ reservoir pressure and migration;

(F) reservoir modeling of long-term movement of brine displaced by the injection of $CO_2$;

(G) exhibits and plan view maps showing the following:

(i) All $CO_2$ storage wells;

(ii) all water, oil, and natural gas exploration and development wells and other man-made surface structures and activities within one mile outside of the storage facility boundary;

(iii) all regional or local faulting;

(iv) an isopach map of the $CO_2$ storage reservoir or reservoirs;

(v) an isopach map of the adjacent confining layer or layers;

(vi) a structure map of the top and base of the $CO_2$ storage reservoir or reservoirs;

(vii) the extent of the area of maximum volume and all structural spill points or stratigraphic anomalies controlling the containment of stored $CO_2$ or associated fluids. The base for this map shall be a structure map on top of the storage reservoir;

(viii) structural and stratigraphic cross sections that depict the geologic conditions at the proposed $CO_2$ storage facility;

(ix) a detailed plan that outlines timely and permanent monitoring of soil, usable water, and the first porous zone immediately above the $CO_2$ reservoir's confining layer; and

(x) a saline fluid flow map of the storage reservoir showing local and regional fluid flow direction; and

(H) an evaluation of all potential migration pathways that could lead to any potential loss of containment;

(6) a closure plan, which shall include the following:

(A) Pressure in the injection zone before injection began and the anticipated pressure in the injection zone at the time of closure;

(B) the predicted time when pressure in the storage reservoir will decrease to a point at which the storage reservoir's static fluid level will be below the base of the lowermost usable water formation;

(C) the predicted position of the leading edge of $CO_2$ plume at closure; and

(D) monitoring of the $CO_2$ plume and the lowest usable water zone;

(7) an area of review evaluation, which shall be certified by a licensed geologist or licensed engineer and shall include the following:

(A) A review of the data of public record and all available records for all wells that penetrate the $CO_2$ storage reservoir and those wells that penetrate the $CO_2$ storage reservoir within one-fourth mile of the boundary of the $CO_2$ storage facility. This review shall determine if all the abandoned wells have been plugged in a manner that prevents the movement of $CO_2$ or associated fluids from the $CO_2$ storage reservoir and if all unplugged wells that penetrate the $CO_2$ storage reservoir have adequate cement to isolate the storage interval from other reservoirs in the well and from behind the casing; and

(B) identification of any wells that appear from a review of public records to be unplugged or improperly plugged or any unplugged or improperly plugged wells of which the applicant has actual knowledge;

(8) the actual maximum injection rate per day for the injection of $CO_2$ certified by a licensed engineer or licensed geologist;

(9) a report characterizing the maximum storage facility operating pressure as a function of the fracture gradient of the storage reservoir. The fracture gradient of the storage reservoir shall be determined by a step rate test or calculated by other methods approved by the director and certified by a licensed engineer or licensed geologist. The operating pressure of a $CO_2$ storage facility shall not be greater than 75 percent of the fracture gradient for the storage reservoir as measured in PSIG;

(10) the calculated maximum surface and bot-

tom hole injection pressure of the $CO_2$ and water to be injected;

(11) the results of multiple water quality tests of fluid recovered from the $CO_2$ storage reservoir or reservoirs. The amount of chlorides and total dissolved solids of the fluid in milligrams per liter shall be reported. Water analysis shall be performed by a Kansas certified laboratory. No $CO_2$ storage shall be permitted in a usable water formation;

(12) a site map showing the boundaries of the $CO_2$ storage facility, the location and well number of all proposed $CO_2$ storage wells, including all observation wells, the location of cathodic protection boreholes or ground bed systems, and the location of all pertinent surface facilities within the boundary of the storage facility and within one-fourth mile of the outside of the proposed storage facility boundary. The applicant shall verify this site map;

(13) a statement confirming that the applicant holds the necessary property and mineral rights for construction and operation of the $CO_2$ storage facility;

(14) a storage facility safety plan. This plan shall include the following:

(A) Emergency response procedures and provisions to provide security against unauthorized entry;

(B) details for the safety procedures concerning residential, commercial, and public land use in the proximity of the storage facility;

(C) details for notifying all residents, commercial businesses, and areas of public use that could be impacted if an emergency occurs;

(D) emergency response procedures and contingency plans for $CO_2$ storage well leaks;

(E) emergency response procedures and contingency plans for a loss of containment from the $CO_2$ storage facility;

(F) specific contractors and equipment vendors capable of providing necessary services and equipment to respond to $CO_2$ storage well leaks or loss of containment from the $CO_2$ storage facility;

(G) a review of the safety plan with county emergency management, to determine how emergencies will be prevented, prepared for, and responded to;

(H) a schedule for updating county emergency management agencies; and

(I) a monitoring plan to ensure containment of the $CO_2$ within the $CO_2$ storage facility boundaries. This shall include monitoring wells to monitor for $CO_2$ migration vertically and horizontally;

(15) a demonstration of financial responsibility to ensure proper operation and closure of the $CO_2$ storage facility. The form and amount of financial responsibility shall be approved by the director. Adjustments to the financial responsibility may be required by the director;

(16) any other relevant information that the conservation division requires; and

(17) payment of the application fee required by K.A.R. 82-3-1119. (Authorized by and implementing K.S.A. 2007 Supp. 55-1637; effective Feb. 26, 2010.)

**82-3-1102. Notice of application for permit and protest.** (a) Each applicant for a permit to operate a $CO_2$ storage facility shall give notice on or before the date the application is filed with the conservation division by mailing or delivering a copy of the application to the following:

(1) Each operator or mineral lessee of record within one-half mile of the boundary of the storage facility;

(2) each owner of record of the minerals in unleased acreage within one-half mile of the boundary of the storage facility; and

(3) each landowner on whose land the storage facility will be located.

(b) The applicant shall publish notice of the application once each week for two consecutive weeks in the official county newspaper of each county in which the lands affected by the application are located, at least once in the Kansas Register, and at least once in the Wichita Eagle newspaper.

(c) The applicant shall give any additional notice that the director deems necessary to ensure due process.

(d) The application shall be held in abeyance for 30 days from the date of last publication or delivery of notice, whichever is later. If, during that 30-day period, a protest is filed according to K.A.R. 82-3-135b or if the director deems that a hearing is necessary to protect the health, safety, welfare, or property of residents or the water or soil resources of the state, a hearing on the application shall be held.

(e) The applicant shall publish notice of the hearing in the same manner as that required by subsection (b). (Authorized by and implementing K.S.A. 2007 Supp. 55-1637; effective Feb. 26, 2010.)

**82-3-1103. Application required to amend permit.** (a) The operator of a $CO_2$ storage facility shall file an application with the conservation division, on a form furnished by the conservation division, for an amendment to that permit if at least one of the following conditions is met:

(1) A material change in condition has occurred in the operation of the $CO_2$ storage facility or in the ability of the storage facility to operate without causing pollution.

(2) The areal extent of the $CO_2$ storage facility is expanded.

(3) The $CO_2$ storage reservoir pressure is increased above the maximum permitted pressure.

(4) An additional $CO_2$ storage well is added, or an existing well is converted to a $CO_2$ storage well.

(b) Notice of the amendment application and protest period shall be the same as provided in K.A.R. 82-3-1102.

(c) If an application for an amendment is administratively denied, the operator shall have a right to a hearing upon written request. (Authorized by and implementing K.S.A. 2007 Supp. 55-1637; effective Feb. 26, 2010.)

**82-3-1104. Transfer of a $CO_2$ storage facility permit.** (a) The authority to operate a $CO_2$ storage facility under a permit from the conservation division shall not be transferred from one operator to another without the approval of the director. The transferring operator shall notify the conservation division, on a form prescribed by the conservation division, of the intent to transfer the permit at least 30 days before the proposed transfer.

(b) The notification shall contain the following information:

(1) The name and address of the transferring operator and that operator's license number;

(2) the permit number;

(3) a list of all $CO_2$ storage wells on the storage facility authorized under the permit being transferred;

(4) the $CO_2$ storage reservoir or reservoirs covered by the permit;

(5) the proposed effective date of transfer;

(6) the signature of the transfering operator and the date signed;

(7) the name and address of the transferee operator and that operator's license number; and

(8) the signature of the transferee operator and the date signed.

(c) The transferee shall provide proof of financial responsibility in a form and an amount approved by the director before the transfer of the permit.

(d) A copy of the approved transfer shall be sent to the transferring operator and transferee operator.

(e) Within 90 days of transfer approval, the transferee operator shall change the identification signs specified in K.A.R. 82-3-1107(g) to show the transferee operator information. (Authorized by and implementing K.S.A. 2007 Supp. 55-1637; effective Feb. 26, 2010.)

**82-3-1105. Modification, suspension, or cancellation of permit.** (a) A permit may be modified, suspended, or canceled after notice and opportunity for hearing if either of the following conditions is met:

(1) A material change in condition has occurred in the operation of the $CO_2$ storage facility.

(2) Material deviations from the information originally furnished to the conservation division occur that affect the safe operation of the storage facility or the ability of the storage facility to operate without causing a threat to public health and safety or to usable water.

(b) All operations at a $CO_2$ storage facility shall cease upon suspension or cancellation of the permit for that storage facility. (Authorized by and implementing K.S.A. 2007 Supp. 55-1637; effective Feb. 26, 2010.)

**82-3-1106. Well construction requirements.** (a) As part of the application to install and operate a $CO_2$ storage facility, the applicant shall submit well construction information for proposed well completions for existing wells and wells to be drilled or reentered and used for $CO_2$ storage wells.

(b) Information on existing wells and wells to be drilled or reentered shall include the following:

(1) A plan specifying the drilling, completion, or conversion procedures for the proposed $CO_2$ storage well;

(2) a well bore schematic showing the name, description, construction, and depth of each well drilled or proposed to be drilled as a $CO_2$ storage well;

(3) a description of the casing, tubing, and packer in the $CO_2$ storage well or the proposed

casing for new wells, including a full description of cement already in place or as proposed;

(4) the proposed method of testing the wells to demonstrate mechanical integrity of the casing, tubing, and packer before use; and

(5) for existing wells and wells to be reentered, all available geophysical logs through the storage reservoir and cased-hole logs including gamma ray, neutron curves, cement bond log, and temperature log. For wells to be drilled, the information shall include a complete open-hole wireline log measuring rock formation parameters of spontaneous potential, resistivity, gamma ray, and neutron density through the storage reservoir and cased-hole logs, including gamma ray, neutron curves, cement bond log, and temperature log. Each log shall be annotated to identify the estimated location of the base of the deepest usable water formation, showing the stratigraphic position and thickness of all confining strata above the storage reservoir and the stratigraphic position and thickness of the storage reservoir. An alternative log may be used if the director determines that the alternative log is substantially equivalent to one of the logs specified. To obtain approval for use of an alternative log, the applicant shall submit the following to the director:

(A) A description of the log and the theory of operation;

(B) a description of the field conditions under which the log can be used;

(C) the procedure for interpreting the log; and

(D) an interpretation of the log upon completion of the logging event.

(c) Each $CO_2$ storage well shall meet the applicable casing and cementing requirements of K.A.R. 82-3-104, K.A.R. 82-3-105, and K.A.R. 82-3-106. However, all casing strings that are set in the well bore shall be cemented with a sufficient volume of cement to fill the annular space to a point 500 feet above the top of the $CO_2$ storage reservoir or to the surface, whichever is less.

(d) Each $CO_2$ storage well shall be completed with a tubing and packer configuration.

(e) All surface, intermediate, and production casing and all tubing strings shall meet the standards specified in either of the following, which are hereby adopted by reference:

(1) "Bulletin on performance properties of casing, tubing, and drill pipe," API bulletin 5C2, as published by the American petroleum institute in October 1999; or

(2) "specification for casing and tubing (U.S. customary units)," API specification 5CT, sixth edition, as published by the American petroleum institute in October 1998, except the publications adopted on page 1 of section 2.1, and the errata published in May 1999.

(f) Liners set within casing shall have cement circulated from the bottom of the liner to the top of the liner. If cement does not circulate, the annulus between the liner and casing shall be equipped in a way that the annulus can be monitored and tested for mechanical integrity.

(g) All surface, intermediate, and production casing and all tubing strings shall be new casing or reconditioned casing of equivalent quality that has been pressure-tested in accordance with the requirements of K.A.R. 82-3-1112(d)(1). For new pipe, the pressure test conducted at the manufacturing mill or fabrication plant may be used to fulfill this requirement.

(h) Emplacement of cement in setting intermediate casing, production casing, or any liners shall be verified by a cement bond log, cement evaluation log, or other evaluation method approved by the conservation division.

(i) All newly drilled wells shall demonstrate internal and external mechanical integrity before use for $CO_2$ injection, as required in K.A.R. 82-3-1112.

(j) The applicant shall submit a tabular summary containing the following information for each proposed $CO_2$ storage well:

(1) Location;

(2) completion date;

(3) well depth;

(4) casing; and

(5) cementing and completion information.

(k) Each $CO_2$ injection or withdrawal well located within 330 feet of an inhabited residence, commercial establishment, church, school, or small, well-defined outside area shall be equipped with a down-hole safety shutoff.

(l) Approval of the design of the proposed well may be obtained before actual construction of the well.

(m) Upon completion of each well, the applicant shall submit to the conservation division a copy of the well completion report, on a form furnished by the conservation division.

(n) All packers, packer elements, and any similar equipment critical to the containment of $CO_2$ shall be of a quality to withstand exposure to $CO_2$.

(o) For tubing completions, the packer shall

be set at a depth so that the packer will be opposite a cemented interval of the long-string casing and shall be set no more than 50 feet above the uppermost perforation or open hole of the $CO_2$ storage reservoir. (Authorized by and implementing K.S.A. 2007 Supp. 55-1637; effective Feb. 26, 2010.)

**82-3-1107. Storage facility requirements.** (a) All wellhead components, including the casinghead and tubing head, valves, and fittings, shall be made of material having operating pressure ratings sufficient to exceed the maximum injection pressure computed at the wellhead and to withstand the corrosive nature of $CO_2$.

(b) The ratings shall be clearly identified on valves and fittings.

(c) The wellhead master valve on each $CO_2$ storage well shall be fully opening and shall be sized to the diameter of the casing or tubing string to which the valve is attached.

(d) Each flow line connected to the wellhead shall be equipped with a manually operated positive shutoff valve located on the wellhead.

(e) Each wellhead shall be protected with safety devices to prevent pressures in excess of the maximum allowable operating pressure from being exerted on the storage reservoir and to prevent the backflow of any stored $CO_2$ if a flow line ruptures.

(f) The storage facility shall have a continuously operating supervisory control and data acquisition (SCADA) system approved by the director to monitor operations for each individual $CO_2$ storage well. The SCADA system shall be connected by a communication link with the local control room or any remote control center for service and maintenance crews. If an emergency occurs, the equipment shall be capable of automatically closing all inlets and outlets to the $CO_2$ storage facility. Each sensor or indicator shall be calibrated annually, and the documentation shall be kept for five years. Each of the following instruments shall be connected to an alarm:

(1) Flow indicator; and

(2) pressure indicator on the lines of the wellhead.

(g) The operator shall identify each $CO_2$ storage well and associated compressor site by posting a sign at the wellhead or compressor site. The sign shall be durable and shall be large enough to be legible under normal daytime conditions at a distance of 50 feet. The sign shall include all of the following information:

(1) The name and license number of the operator;

(2) the name of the storage facility and either the $CO_2$ storage well number or the compressor site name or number;

(3) the location of the $CO_2$ storage well or compressor site by quarter section, section, township, range, and county;

(4) the emergency contact phone number or numbers for the operator of the storage facility; and

(5) identification of the well as a $CO_2$ storage well.

(h) A leak detector shall be placed at each of the following locations:

(1) Any $CO_2$ storage well located within 330 feet of an inhabited residence, commercial establishment, church, school, or small, well-defined outside area;

(2) each enclosed compressor site; and

(3) any building housing a $CO_2$ pipe connection.

(i) The required leak detectors shall be integrated with automated warning systems. The inspection and testing of these leak detectors shall meet the requirements of K.A.R. 82-3-1111.

(j) The installation of monitor wells may be required by the director to determine the preinjection baseline parameters of soil and water. (Authorized by and implementing K.S.A. 2007 Supp. 55-1637; effective Feb. 26, 2010.)

**82-3-1108. Storage facility monitoring and reporting.** (a) During the first year of $CO_2$ storage operations, the operator shall file monthly pressure, injection, and withdrawal reports on forms provided by the conservation division. Each monthly report shall be due on or before the 10th of the month for the previous month and shall contain the following information:

(1) Maximum wellhead pressure reading for the month;

(2) minimum wellhead pressure reading for the month;

(3) average wellhead pressure reading for the month;

(4) total amount of $CO_2$ injected each week;

(5) total amount of $CO_2$ withdrawn each week; and

(6) cumulative total of $CO_2$ in the storage facility.

(b) (1) During the second and each subsequent year of $CO_2$ storage operations, the operator shall file quarterly pressure, injection, and withdrawal reports on forms provided by the conservation division. The quarterly reports shall be submitted according to the following schedule:

(A) For the period covering January 1 through March 31, on or before the following April 30;

(B) for the period covering April 1 through June 30, on or before the following July 31;

(C) for the period covering July 1 through September 30, on or before the following October 31; and

(D) for the period covering October 1 through December 31, on or before the following January 31.

(2) Each quarterly report shall contain the following information:

(A) Maximum wellhead pressure reading for each month;

(B) minimum wellhead pressure reading for each month;

(C) average wellhead pressure reading for each month;

(D) total amount of $CO_2$ injected each month;

(E) total amount of $CO_2$ withdrawn each month; and

(F) cumulative total of $CO_2$ in the storage facility.

(c) The $CO_2$ injectate shall be sampled monthly and tested at a Kansas certified laboratory for the percentage of $CO_2$. The report shall be filed with the conservation division on or before the 28th day of the following month. The $CO_2$ shall be of sufficient purity and quality not to compromise the safety and efficiency of the reservoir to effectively contain the $CO_2$.

(d) The total volume of $CO_2$ injected into or withdrawn from a storage facility shall be measured through a meter of sufficient capacity and approved by the director. The original field record consisting of magnetic tapes, digital electronic data, meter charts, or records of $CO_2$ injected or withdrawn shall be retained for at least five years. This information shall be made available to the conservation division upon request.

(e) The operator shall submit a detailed map, which shall be prepared by a licensed engineer or a licensed geologist, showing the areal extent of the $CO_2$ plume on December 31 of each year to the conservation division by the following January 31 of each year. The operator shall include a narrative description of how the areal extent of the $CO_2$ plume was determined. (Authorized by and implementing K.S.A. 2007 Supp. 55-1637; effective Feb. 26, 2010.)

**82-3-1109. Annual review of safety plan; safety plan update.** (a) Each operator of a $CO_2$ storage facility shall conduct an annual review of the safety plan required by K.A.R. 82-3-1101(c)(14) with its field staff and an agent of the conservation division.

(b) The annual review shall, at a minimum, include the following:

(1) Emergency response procedures;

(2) security against unauthorized entry;

(3) procedures to be followed if an emergency occurs, affecting the residential, commercial, and public land use within the $CO_2$ storage facility and within one-half mile of the storage facility;

(4) contingency plans for $CO_2$ storage well leak and loss of containment;

(5) the names of specific contractors and equipment vendors capable of providing necessary services and equipment to respond to an emergency or $CO_2$ storage well leak or loss of containment;

(6) availability of the safety plan at the $CO_2$ storage facility and the nearest operational office of the storage facility operator;

(7) safety training drills that occurred during the year, including a list of attendees and date on which each training drill was conducted;

(8) safety meetings that occurred during the year, including a list of attendees and the date on which each safety meeting was conducted; and

(9) a review of the safety plan to ensure that the plan is current.

(c) The operator shall notify the conservation division at least 10 days before the annual review so that a representative of the conservation division can be present.

(d) The operator shall submit a written report summarizing the annual review to the conservation division within 30 days following the review.

(e) An extension of time to conduct the annual review may be granted by the director, upon a showing of good cause by the operator.

(f) Subsequent reviews of the safety plan may be required by the director if an emergency or a safety-related incident occurs.

(g) The safety plan shall be updated as changes in safety features at the storage facility occur or as the director may require for the pro-

tection of public health and safety. An updated copy of the safety plan shall be maintained with the conservation division and either at the storage facility or at the nearest operational office. (Authorized by and implementing K.S.A. 2007 Supp. 55-1637; effective Feb. 26, 2010.)

**82-3-1110. Safety inspection.** (a) Each operator of a $CO_2$ storage facility shall perform an annual safety inspection of the storage field to ensure that all safety equipment and monitoring equipment are in working order.

(b) The operator shall notify the conservation division at least 10 days before each inspection so that a representative of the conservation division can be present to witness the inspection.

(c) An extension of time to conduct the annual safety inspection may be granted by the director upon a showing of good cause by the operator.

(d) The safety inspection shall demonstrate to the satisfaction of the conservation division's agent that all of the following conditions are met:

(1) All $CO_2$ storage well manual valves are in normal operating condition.

(2) All surface automatic shut-in safety valves are in normal operating condition.

(3) Wellheads and all related equipment are connected and functioning.

(4) All valves, annuli, and blow-downs open and close with reasonable ease.

(5) The cathodic protection systems are functioning.

(6) The warning signs are in compliance with these regulations.

(7) All safety fences, barriers, and security equipment are adequate.

(e) The operator shall file a written report consisting of the inspection procedures used and the results of the safety inspection with the conservation division within 30 days following the inspection. (Authorized by and implementing K.S.A. 2007 Supp. 55-1637; effective Feb. 26, 2010.)

**82-3-1111. Leak detector inspections and testing.** (a) Each leak detector required by K.A.R. 82-3-1107 shall be tested once each calendar year and, if defective, shall be repaired or replaced within 10 days.

(b) Each repaired or replaced detector shall be retested if required by the director.

(c) An extension of time for repair or replacement of a leak detector may be granted by the director upon a showing of good cause by the operator of the $CO_2$ storage facility.

(d) The operator shall maintain a record of each inspection, including the inspection results, for at least five years and shall make each record available to the conservation division upon request. (Authorized by K.S.A. 2008 Supp. 55-1637 and 55-1640; implementing K.S.A. 2008 Supp. 55-1637; effective Feb. 26, 2010.)

**82-3-1112. Mechanical integrity testing.** (a) Each $CO_2$ storage well shall be completed, equipped, operated, and maintained in a manner that prevents pollution of usable water and confines the $CO_2$ in the tubing or casing and in the formations approved for storage.

(b) A $CO_2$ storage well shall be considered to have mechanical integrity if the well demonstrates both internal and external integrity.

(c) Internal integrity shall be demonstrated by a successful pressure test. The operator shall perform a successful pressure test on each $CO_2$ storage well before placing the storage well in operation and at least once every two years thereafter.

(d) The pressure test shall be conducted under the supervision of an employee of the operator of the $CO_2$ storage facility. The date of the test shall be mutually agreed to by the $CO_2$ storage facility operator and the conservation division. The test shall be conducted as follows:

(1) A minimum fluid pressure of 300 psig shall be applied to the tubing casing annulus at the surface for a period of 30 minutes. Internal mechanical integrity shall be demonstrated if the applied pressure does not decrease by more than 10 percent.

(2) The test results shall be verified by the $CO_2$ storage facility's representative.

(e) External integrity shall be demonstrated by cased hole logs. A minimum of a gamma ray, neutron, and temperature logs shall be run from 50 feet above the point of injection continuously to the surface. The use of an alternative log may be approved by the director upon written request.

(f) Each $CO_2$ storage well shall demonstrate external integrity at least once every four years.

(g) If a $CO_2$ storage well fails to demonstrate mechanical integrity, the operator of the well shall, upon discovery, isolate each leak in a manner that contains $CO_2$ and associated fluids in the storage well or storage reservoir and demonstrates that the well does not pose a threat to public

health and safety and usable water. The operator shall perform one of the following within 90 days:

(1) Repair and retest the storage well to demonstrate mechanical integrity; or

(2) plug the storage well according to K.A.R. 82-3-1118. (Authorized by and implementing K.S.A. 2007 Supp. 55-1637; effective Feb. 26, 2010.)

**82-3-1113. Report of leak, potential leak, or loss of containment.** (a) Each operator of a $CO_2$ storage facility shall report each leak, each potential leak, and any pressure changes or other monitoring data that indicate a loss of containment of injected $CO_2$ or associated fluids. The report shall be made orally to the appropriate conservation division district office and to the conservation division central office by the next business day following discovery. The oral report shall be confirmed in writing to the conservation division central office within three business days following the oral report.

(b) The operator shall submit a written summary of the cause or causes of each leak or loss of containment or the data indicating a potential leak or potential loss of containment to the conservation division central office within 10 days following the written report required in subsection (a). The summary shall also evaluate whether the situation poses a threat to public health and safety, usable water, or property.

(c) Within 30 days following the summary report required by subsection (b), the operator of the $CO_2$ storage facility shall submit an action plan to repair the leak or regain containment for the conservation division's review and approval. The action plan shall describe any corrective action, monitoring, or operational procedures that have been or will be taken.

(d) The installation of observation or monitoring wells may be required by the director to gain additional information about the leak or loss of containment.

(e) Additional reports may be required by the director until the leak or loss of containment is remediated. (Authorized by and implementing K.S.A. 2007 Supp. 55-1637; effective Feb. 26, 2010.)

**82-3-1114. Temporary abandonment of storage wells.** (a) Within 90 days after a $CO_2$ storage well ceases operation, the operator of that well shall perform one of the following:

(1) Plug the well in accordance with K.A.R. 82-3-1118; or

(2) file an application with the conservation division requesting temporary abandonment, on a form provided by the conservation division.

(b) One of the following actions shall be taken by the director:

(1) Approval of temporary abandonment of the storage well for one year; or

(2) denial of temporary abandonment if the storage well poses a threat to public health and safety or usable water.

(c) Applications for one-year extensions of temporary abandonment may be granted by the director for a maximum of 10 years. Each application for extension of temporary abandonment shall be filed before the expiration of the previous one-year temporary abandonment period.

(d) Before a temporary abandonment or any extension is granted, a demonstration of the well's internal mechanical integrity may be required by the director by means of a pressure test according to K.A.R. 82-3-1112(d)(1).

(e) If a temporary abandonment application or any extension application is denied and the storage well is not placed back in service, the storage well shall be deemed permanently abandoned and shall be plugged in accordance with K.A.R. 82-3-1118. (Authorized by and implementing K.S.A. 2007 Supp. 55-1637; effective Feb. 26, 2010.)

**82-3-1115. Temporary abandonment of a storage facility.** (a) Any operator of a $CO_2$ storage facility may temporarily abandon the storage facility upon submitting written notice to the conservation division. The notice shall be submitted to the conservation division at least 90 days before the temporary abandonment. The notice shall include the following:

(1) The date on which the storage facility is to be temporarily abandoned;

(2) the projected temporary abandonment period;

(3) the monitoring procedures to be utilized at the facility during the temporary abandonment period;

(4) the temporary abandonment applications for each $CO_2$ storage well filed according to K.A.R. 82-3-1114, except any $CO_2$ storage wells for which temporary abandonment has already been approved; and

(5) any other relevant information required by the conservation division.

(b) One of the following actions shall be taken by the director:

(1) Approval of temporary abandonment of the storage facility for one year; or

(2) denial of temporary abandonment if the storage facility poses a threat to public health and safety or usable water.

(c) Applications for one-year extensions of temporary abandonment may be granted by the director for a maximum of 10 years. Each application for extension of temporary abandonment shall be filed before the expiration of the previous one-year temporary abandonment period. (Authorized by and implementing K.S.A. 2007 Supp. 55-1637; effective Feb. 26, 2010.)

**82-3-1116. Application for decommissioning and abandonment of storage facility.** Any operator of a $CO_2$ storage facility may permanently decommission and abandon the storage facility upon application to, and approval from, the conservation division. The application shall be submitted at least 90 days before the beginning of decommissioning activities and shall contain a detailed decommissioning plan that includes the following:

(a) The anticipated date on which the storage facility will cease injection and withdrawal;

(b) the anticipated storage reservoir pressure after injection and withdrawal cease;

(c) a schedule for abandoning the storage facility, including when and how all equipment and buildings will be abandoned and when the $CO_2$ storage wells will be plugged;

(d) the name and address of persons responsible for any equipment and buildings to be left in place;

(e) an updated closure plan as required by K.A.R. 82-3-1101;

(f) the method of monitoring to demonstrate the containment, pressure, and position of the $CO_2$ plume during the closure period; and

(g) any other relevant information that the director may require to ensure the protection of public health and safety and usable water, considering the unique conditions of the storage facility. (Authorized by and implementing K.S.A. 2007 Supp. 55-1637; effective Feb. 26, 2010.)

**82-3-1117. Postclosure determination.** (a) Each $CO_2$ storage facility operator seeking a postclosure determination shall submit an application to the conservation division.

(b) The $CO_2$ storage facility operator shall demonstrate that both of the following conditions are met before postclosure status may be granted:

(1) The $CO_2$ plume has stabilized, is contained within the storage reservoir, and is not a threat to public health and safety and usable water.

(2) The $CO_2$ storage reservoir pressure is stable.

(c) If the application is denied, the closure period activities shall continue as directed by the director.

(d) Upon written approval of postclosure status, the operator shall plug the remaining monitor wells in accordance with K.A.R. 82-3-1118. After the remaining monitor wells are plugged, the $CO_2$ storage facility permit shall be revoked. (Authorized by and implementing K.S.A. 2008 Supp. 55-1637; effective Feb. 26, 2010.)

**82-3-1118. Plugging methods and procedures, plugging report, and plugging fee for $CO_2$ storage wells.** (a) Each $CO_2$ storage well shall be plugged in accordance with a plugging plan submitted by the operator and approved by the director. Before commencing any plugging operations, the operator shall perform the following:

(1) Provide a written plugging plan to the appropriate conservation division district office and the conservation division central office at least 30 days before the planned commencement of plugging operations;

(2) demonstrate that each well to be plugged has internal and external mechanical integrity to ensure the long string casing and cement left in the subsurface after plugging have integrity; and

(3) complete one of the following operations:

(A) Set a mechanical bridge plug or other control device approved by the director immediately above the $CO_2$ storage reservoir or storage reservoirs; or

(B) place a cement plug across and above the $CO_2$ storage reservoir or storage reservoirs by a method approved by the appropriate conservation division district office.

(b) After each storage well is plugged, the operator shall meet the following requirements:

(1) File a plugging report in accordance with K.A.R. 82-3-117; and

(2) pay a plugging fee in accordance with

K.A.R. 82-3-118. (Authorized by and implementing K.S.A. 2007 Supp. 55-1637; effective Feb. 26, 2010.)

**82-3-1119. Fees for $CO_2$ storage facilities and $CO_2$ storage wells.** (a) For a storage facility permit application filed according to K.A.R. 82-3-1101, each applicant shall submit a fee of $4,500. In addition, for each $CO_2$ storage well included in the permit application, the applicant shall submit a fee of $100.

(b) For any application to amend a storage facility permit filed according to K.A.R. 82-3-1103, each applicant shall submit a fee of $250.

(c) The operator shall pay an annual fee of $1,000 for each active or inactive unplugged $CO_2$ storage well located within the boundary of the storage facility.

(1) The total annual well fee shall be based on the number of the operator's $CO_2$ storage wells in existence on the first day of November each year.

(2) The operator shall remit the total annual well fee in a single check to the conservation division, on or before the last day of January each year.

(d) The operator shall quarterly pay to the conservation division a fee of five cents per ton of $CO_2$ injected. The funds shall be held in the carbon dioxide injection well and underground storage fund to be used for the purposes specified in K.S.A. 55-1638(b), and amendments thereto.

(e) All fees shall be nonrefundable. (Authorized by and implementing K.S.A. 2007 Supp. 55-1637; effective Feb. 26, 2010.)

**82-3-1120. Penalties.** Monetary penalties in accordance with K.S.A. 55-1639 and amendments thereto may be assessed by the commission against any $CO_2$ storage facility operator violating any of the provisions of K.A.R. 82-3-1100 through K.A.R. 82-3-1119. (Authorized by and implementing K.S.A. 2007 Supp. 55-1639; effective Feb. 26, 2010.)

## Article 4.—MOTOR CARRIERS OF PERSONS AND PROPERTY

**82-4-1. Definitions.** The following terms used in connection with the regulations of the state corporation commission governing motor carriers shall be defined as follows:

(a) "Affiliate" means a person or company controlling, controlled by, or under common control or ownership with, another person or company.

(b) "Authorized agent" and "authorized representative" mean any authorized special agent or employee of the commission, any member of the Kansas highway patrol, or any law enforcement officer in the state certified in the inspection of motor carriers and authorized in accordance with the requirements of the Kansas motor carrier safety program.

(c) "Certificate" means a document evidencing a certificate of convenience and necessity or a certificate of public service issued to an intrastate common carrier to operate motor vehicles as a common carrier.

(d) "Commercial motor vehicle" means any of the following, except when used in 49 C.F.R. Part 382 as adopted by K.A.R. 82-4-3c:

(1) A vehicle that has a gross vehicle weight rating or gross combination weight rating, or a gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater;

(2) a vehicle designed or used to transport more than eight passengers, including the driver, for compensation;

(3) a vehicle that is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(4) a vehicle used in transporting material found by the secretary of transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding according to regulations prescribed by the secretary under 49 C.F.R. Part 172 as adopted in K.A.R. 82-4-20.

(e) "Commission" means the Kansas corporation commission.

(f) "Conviction" means any of the following, regardless of whether or not the penalty is reduced, suspended, or resolved by means of a probationary agreement:

(1) An unvacated adjudication of guilt or a determination by a federal, state, or local court of original jurisdiction or by an authorized administrative tribunal that a person has violated or failed to comply with the law;

(2) an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court;

(3) a plea of guilty or nolo contendere accepted by the court;

(4) the payment of a fine or court cost; or

(5) violation of a condition of release without bail.

(g) "Director" means the director of the transportation division of the commission.

(h) "Distance" means airline distances.

(1) Distances shall be computed from the corporate limits of incorporated communities and from the post office of unincorporated communities.

(2) If there is no post office in the unincorporated community, the distance shall be computed from the center of the business district.

(i) "Docketing" means entering a proposal in the organization files and then giving notice of the proposal to other carrier members of the organization and shipper subscribers.

(j) "Driveaway operation" and "towaway operation" mean any operation in which an empty or unladen motor vehicle with one or more sets of wheels on the surface of the roadway is being transported according to one of the following:

(1) Between a vehicle manufacturer's facilities;

(2) between a vehicle manufacturer and a dealership or purchaser;

(3) between a dealership, or other entity selling or leasing the vehicle, and a purchaser or lessee;

(4) to a motor carrier's terminal or repair facility for the repair of disabling damage, as defined in K.A.R. 82-4-3f, following a crash;

(5) to a motor carrier's terminal or repair facility for repairs associated with the failure of a vehicle component or system; or

(6) by means of a saddle-mount or towbar.

(k) "Driver" means any person who operates any commercial motor vehicle.

(l) "Entire direct case" shall include, for the purpose of this article, all testimony, exhibits, and other documentation offered in support of the proposed rates.

(m) "Express carrier" means a common carrier who carries packages or parcels, the maximum weight of which does not exceed 350 pounds for each package or parcel.

(n) "FHWA" means the federal highway administration.

(o) "FMCSA" means the federal motor carrier safety administration.

(p) "General increase" and "general decrease" mean a common motor carrier rate increase or decrease proposed as a general adjustment of substantially all the rates published in a tariff.

(q) "Hazardous material" means a substance or material that the U.S. secretary of transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce and has designated as hazardous under section 5103 of federal hazardous materials transportation law, 49 U.S.C. 5103. This term shall include hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the hazardous materials table in 49 C.F.R. 172.101 as adopted in K.A.R. 82-4-20, and materials that meet the criteria for hazard classes and divisions in 49 C.F.R. Part 173, subpart C as adopted in K.A.R. 82-4-20.

(r) "Hazardous materials regulations" and "HMR" mean the federal hazardous material regulations as adopted in K.A.R. 82-4-20.

(s) "Industry average carrier cost information" means the average intrastate cost of the carriers who participate in an organization tariff and who have authority from the commission to transport the commodities indicated in the organization tariff.

(t) "Joint line rate" means a rate, charge, or allowance established by two or more common motor carriers of property or passengers that is applicable over the carriers' lines and for which the transportation can be provided by these carriers.

(u) "License" means the document or registration receipt evidencing the registration of an interstate common motor carrier or interstate exempt motor carrier to operate motor vehicles in the state of Kansas in interstate commerce.

(v) "Licensed medical examiner" means a person who meets one of the following conditions:

(1) Is licensed by the Kansas state board of healing arts to practice medicine and surgery, osteopathic medicine and surgery, or chiropractic;

(2) is licensed by the Kansas state board of healing arts as a physician assistant; or

(3) is licensed by the Kansas state board of nursing as a registered professional nurse qualified to practice as an advanced registered nurse practitioner.

(w) "Motor carrier" means any corporation, limited liability company, partnership, limited liability partnership, or individual subject to the provisions of the motor carrier laws of Kansas and under the jurisdiction of the Kansas corporation commission.

(x) "Moving violation" means the commission or omission of an act by a person operating a motor vehicle that could result in injury or property damage and that is also a violation of a statute, ordinance, or regulation of this state or any other jurisdiction.

(y) "Notice" means advance notification to shipper subscribers through an organization's docket service.

(z) "Organization" means a legal entity that administers an agreement approved under K.A.R. 82-4-69.

(aa) "Out-of-service" and "OOS," when used to describe a driver, a commercial motor vehicle, or a motor carrier operation, mean that the driver, commercial motor vehicle, or motor carrier has ceased to operate or move pursuant to the statutes and regulations of the state of Kansas, the federal motor carrier safety administration regulations, or the industry standards specified in the "North American standard out-of-service criteria," including the appendixes, published by the commercial vehicle safety alliance, revised on April 1, 2011, and hereby adopted by reference.

(bb) "Ownership" means an equity holding in a business entity of at least five percent.

(cc) "Permit" means the document evidencing authority of a motor carrier to operate motor vehicles as a private carrier.

(dd) "PHMSA" means pipeline and hazardous materials safety administration of the United States department of transportation.

(ee) "Single line rate" means a rate, charge, or allowance established by a single common motor carrier of property or passengers that is applicable only over its line and for which the transportation can be provided by that carrier.

(ff) "Tariff publication" means the rates, charges, classification, ratings, or policies published by, for, or on behalf of common motor carriers of property or passengers.

(gg) "Transportation" means the movement of property and passengers and the loading, unloading, or storage incidental to this movement.

(hh) "USDOT" means the United States department of transportation. (Authorized by and implementing K.S.A. 2010 Supp. 66-1,112, K.S.A. 66-1,112g, K.S.A. 2010 Supp. 66-1,129; effective Jan. 1, 1971; modified, L. 1981, Ch. 424, May 1, 1981; amended, T-83-45, Dec. 8, 1982; amended May 1, 1983; amended May 1, 1984; amended April 30, 1990; amended Sept. 16, 1991; amended July 6, 1992; amended May 10, 1993; amended Oct. 3, 1994; amended Jan. 30, 1995; amended Jan. 4, 1999; amended July 28, 2000; amended Nov. 14, 2011.)

**82-4-2. General duty of carrier.** (a) Each motor carrier shall instruct its officers, agents, employees, and representatives to comply with all the regulations of the commission.

(b) Each motor carrier and its officers, agents, employees, and representatives shall comply with the regulations of the commission and with any reasonable requests of the commission or its authorized agents for inspection or examination of any operating credentials of motor carrier equipment or required parts and accessories.

(c) Each motor carrier who has obtained a certificate, license, or permit from the commission shall notify the commission within 10 days of any change of business or mailing address. (Authorized by K.S.A. 2009 Supp. 66-1,112 and K.S.A. 66-1,112g; implementing K.S.A. 2009 Supp. 66-1,111; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1984; amended May 1, 1987; amended Sept. 16, 1991; amended Jan. 31, 2003; amended Oct. 22, 2010.)

**82-4-2a. Authority of agents, employees, or representatives authorized by commission.** The special agents, agents, employees, or representatives authorized by the commission shall have the authority to perform the following:

(a) Examine motor carrier equipment operating on the highways in this state;

(b) enter upon any motor carrier's premises located in the state of Kansas and inspect and examine the motor carrier's records, books, and equipment located on the premises; and

(c) examine the manner of the motor carrier's conduct as it relates to the public safety and the operation of commercial motor vehicles in this state. (Authorized by K.S.A. 2010 Supp. 66-1,108a and K.S.A. 2010 Supp. 66-1,108c; implementing K.S.A. 2010 Supp. 66-1,108b; effective Nov. 14, 2011.)

**82-4-3a. Hours of service.** (a) With the following exceptions, 49 C.F.R. Part 395, as in effect on October 1, 2009, is hereby adopted by reference:

(1) The following revisions shall be made to 49 C.F.R. 395.1:

(A) 49 C.F.R. 395.1(a)(2), 49 C.F.R. 395.1(h), and 49 C.F.R. 395.1(i) shall be deleted.

(B) 49 C.F.R. 395.1(k) shall be deleted and replaced by the following:

"(k)(1) The provisions of this regulation shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes if the transportation meets the following conditions:

"(A) Is limited to an area within a 100-air-mile radius from the source of the commodities or the distribution point for the farm supplies; and

"(B) is conducted within the planting and harvesting seasons.

"(2) 'Planting and harvesting seasons' means the time periods for planting and harvesting that occur between January 1 and December 31."

(C) 49 C.F.R. 395.1(q) shall be deleted.

(2) The following revisions shall be made to 49 C.F.R. 395.2:

(A) The definition of "agricultural commodity" shall be deleted and replaced by the following: "'Agricultural commodity' means the unprocessed products of agriculture, horticulture, and cultivation of the soil, including wheat, corn, hay, milo, sorghum, sunflowers, and soybeans. Agricultural commodities shall not include livestock, honey, poultry products, timber products, and nursery stock."

(B) The definition of "farm supplies" shall be deleted and replaced by the following: "'Farm supplies' means supplies or equipment for use in the planting or harvesting of agricultural commodities and livestock feed."

(C) The definition of "sleeper berth" shall be deleted and replaced by the following: "'Sleeper berth' means a berth conforming to the requirements of 49 C.F.R. 393.76, as adopted in K.A.R. 82-4-3i."

(D) The phrase "found by the Secretary to be hazardous under 49 U.S.C. 5103 in a quantity requiring placarding under regulations issued to carry out such section," which appears in the definition of "transportation of construction materials and equipment," shall be deleted and replaced by "requiring placarding pursuant to 49 C.F.R. Part 172, as adopted in K.A.R. 82-4-20."

(3) The following revisions shall be made to 49 C.F.R. 395.8:

(A) The last sentence in 49 C.F.R. 395.8(a)(1) shall be deleted.

(B) The "Note" that appears between 49 C.F.R. 395.8(c) and (d) shall be deleted.

(C) The "Note" that appears between 49 C.F.R. 395.8(h)(5) and (i) shall be deleted.

(D) The "Note," including the graphic, that appears after 49 C.F.R. 395.8(k)(2) shall be deleted.

(4) The following revisions shall be made to 49 C.F.R. 395.13:

(A) In paragraph (a), the phrase "every special agent" shall be deleted and replaced by "any authorized representative of the commission, and any member of the Kansas highway patrol or any other law enforcement officer in the state who has been certified in the inspection of motor carriers based on the motor carrier safety assistance program."

(B) 49 C.F.R. 395.13(c)(2) shall be deleted and replaced by the following: "Within fifteen days following the date any driver is placed out of service, the motor carrier that employed the driver shall personally deliver or place in the U.S. mail to the division administrator or the state director of transportation and to the federal motor carrier safety administration a signed certification in a form acceptable to the commission. Any signed certification acceptable to the commission shall include the following information:

"(i) All violations have been corrected;

"(ii) action has been taken to assure compliance with 49 C.F.R. 395.1, 49 C.F.R. 395.2, 49 C.F.R. 395.3, 49 C.F.R. 395.5, 49 C.F.R. 395.8, 49 C.F.R. 395.13, and 49 C.F.R. 395.15; and

"(iii) the motor carrier understands that false certification can result in appropriate enforcement action."

(C) The phrase "as adopted in K.A.R. 82-4-3k" shall be added before the phrase "pertaining to attendance and surveillance of commercial motor vehicles," which appears in 49 C.F.R. 395.13(d)(4).

(5) The last sentence in 49 C.F.R. 395.15(b)(3) shall be deleted.

(6)(A) The phrase "special agent of the Federal Motor Carrier Safety Administration (as defined in appendix B to this subchapter)," which appears in 49 C.F.R. 395.5 and 49 C.F.R. 395.15, shall be deleted and replaced by "any authorized representative of the commission, and any member of the Kansas highway patrol or any other law enforcement officer in the state who has been certified in the inspection of motor carriers based on the motor carrier safety assistance program standards."

(B) The phrases "Federal Motor Carrier Safety Administration" and "FMCSA," which appear in 49 C.F.R. 395.1, 49 C.F.R. 395.2, 49 C.F.R. 395.3, 49 C.F.R. 395.5, 49 C.F.R. 395.8, 49 C.F.R. 395.13, and 49 C.F.R. 395.15, shall be deleted and replaced by "commission."

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission's regulations, the references shall

not be applicable to this regulation unless otherwise specifically adopted.

(c) No wrecker or tow truck, as defined by K.S.A. 66-1329 and amendments thereto, with a gross vehicle weight rating or gross combination vehicle weight rating of 26,000 pounds or less shall be subject to this regulation. (Authorized by and implementing K.S.A. 2010 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2010 Supp. 66-1,129; effective, T-82-12-16-03, Jan. 4, 2004; effective, T-82-4-27-04, May 3, 2004; effective, T-82-8-23-04, Aug. 31, 2004; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended, T-82-10-25-05, Nov. 1, 2005; amended Feb. 17, 2006; amended, T-82-3-21-06, March 21, 2006; amended June 30, 2006; amended Oct. 2, 2009; amended Oct. 22, 2010; amended Nov. 14, 2011.)

**82-4-3b. Procedures for transportation workplace drug and alcohol testing programs.** (a) With the following exceptions, 49 C.F.R. Part 40, as in effect on October 1, 2007, is hereby adopted by reference:

(1) The following changes shall be made to 49 C.F.R. 40.1:

(A) In paragraph (a), the phrase "Department of Transportation (DOT) agency" shall be deleted and replaced by "commission."

(B) In paragraph (b), the phrase "DOT agency" shall be deleted and replaced by "commission."

(C) Paragraph (c) shall be deleted.

(2) The following revisions shall be made to 49 C.F.R. 40.3:

(A) The following definition of "approved test" shall be added after the definition of "Alcohol use":

" 'Approved test' means a drug or alcohol test conducted in compliance with this regulation and K.A.R. 82-4-3c."

(B) The following definition of "Custody and control form" shall be added after the definition of "Cancelled test": " 'Custody and control form' (CCF) means a form as described in 49 C.F.R. 40.45."

(C) In the definition of "Employee," the term "DOT agency" shall be deleted and replaced by "Commission." The term "U.S." shall be inserted before the phrase "Department of Health and Human Services."

(D) In the definition of "Employer," the phrase "subject to DOT agency regulations requiring compliance with this part" shall be deleted and replaced by "subject to this regulation and K.A.R. 82-4-3c."

(E) In the definition of "Evidential Breath Testing Device," the phrase "as in effect on July 14, 2004, and hereby adopted by reference," shall appear after the phrase "NHTSA's Conforming Products List (CPL)."

(F) The following revisions shall be made to the definition of "Laboratory":

(i) The words "by DOT" shall be deleted.

(ii) The last sentence shall be deleted.

(G) The definition of "Office of Drug and Alcohol Policy and Compliance" shall be deleted.

(H) The following definition of "motor carrier" shall be added after the definition of "Office of Drug and Alcohol Policy and Compliance (ODAPC)": " 'Motor carrier.' The definition of motor carrier found in 49 C.F.R. 390.5, as adopted by K.A.R. 82-4-3f, shall apply to this section."

(I) In the definition of "Qualification Training," the term "DOT" shall be deleted and replaced by "commission."

(J) In the definition of "Refresher Training," the phrase "DOT agency drug and alcohol testing regulations" shall be deleted and replaced by "K.A.R. 82-4-3c."

(K) The definition of "Secretary" shall be deleted.

(L) The following definition of "special agent or authorized representative" shall be added after the definition of "Shipping container":

" 'Special agent or authorized representative' means an authorized representative of the commission, and members of the Kansas highway patrol or any other law enforcement officers in the state who have been certified in the inspection of motor carriers based on the motor carrier safety assistance program standards."

(M) In the definition of "Substance Abuse Professional," the term "DOT" shall be deleted and replaced by "commission."

(N) The following definition of "unapproved test" shall be added after the definition for "Substituted specimen":

" 'Unapproved test' means a drug or alcohol test not conducted in compliance with this regulation or K.A.R. 82-4-3c."

(3) 49 C.F.R. 40.5 and 49 C.F.R. 40.7 shall be deleted.

(4) The following revisions shall be made to 49 C.F.R. 40.11:

(A) In paragraph (b), the phrase "the DOT

agency regulations" shall be deleted and replaced by "this regulation and K.A.R. 82-4-3c."

(B) Paragraph (c) shall be deleted and replaced by the following:

"All agreements and arrangements, written or unwritten, between and among employers and service agents concerning the implementation of the commission's drug and alcohol testing requirements shall require compliance with all applicable provisions of this regulation and K.A.R. 82-4-3c."

(5) The following revisions shall be made to 49 C.F.R. 40.13:

(A) The following revisions shall be made to paragraphs (a) and (b):

(i) The term "DOT" shall be deleted and replaced by "These approved."

(ii) The term "non-DOT" shall be deleted and replaced by "unapproved."

(B) In paragraph (b), the phrase "a DOT" shall be deleted and replaced by "an approved."

(C) The following revisions shall be made to paragraph (c):

(i) The first instance of the term "DOT" found in the first sentence shall be deleted and replaced by "an approved."

(ii) The phrase "DOT agency regulations" appearing in the first sentence shall be deleted and replaced by "K.A.R. 82-4-3c."

(iii) The phrase "a DOT" found in the second sentence shall be deleted and replaced by "an approved."

(D) The following revisions shall be made to paragraph (d):

(i) The phrase "a DOT" shall be deleted and replaced by "an approved."

(ii) The phrase "DOT agency" shall be deleted and replaced by "commission."

(E) The following revisions shall be made to paragraph (e):

(i) The first two instances of the term "DOT" shall be deleted and replaced by "approved."

(ii) The term "non-DOT" shall be deleted and replaced by "unapproved."

(iii) The last instance of the term "DOT" shall be deleted.

(F) The following revisions shall be made to paragraph (f):

(i) The words "the CCF or the ATF" shall be deleted and replaced by "an approved form."

(ii) The term "non-DOT" shall be deleted and replaced by "unapproved."

(iii) The term "DOT" shall be deleted and replaced by "approved."

(iv) The words "and agencies" shall be deleted.

(v) In the last sentence, the phrase "CCF and ATF" shall be deleted and replaced by "approved forms."

(vi) The term "DOT-mandated" shall be deleted and replaced by "approved."

(6) The following revisions shall be made to 49 C.F.R. 40.15:

(A) In paragraph (a), the term "DOT agency" shall be deleted and replaced by "commission."

(B) The following revisions shall be made to paragraph (c):

(i) The first and second instance of the term "DOT" shall be deleted and replaced by "approved."

(ii) All instances of the phrase "a DOT agency" shall be deleted and replaced by "the commission."

(7) The last sentence of 49 C.F.R. 40.17 shall be deleted.

(8) The following revisions shall be made to 49 C.F.R. 40.21:

(A) In paragraph (a), the phrase "a DOT agency" shall be deleted and replaced by "the commission."

(B) In paragraph (b), the term "concerned DOT agency" shall be deleted and replaced by "commission."

(C) Paragraphs (b)(1), (b)(2), and (b)(3) shall be deleted.

(D) Paragraph (c)(1)(iv) shall be deleted.

(E) The following revisions shall be made to paragraph (d):

(i) The phrase "Administrator of the concerned DOT agency" shall be deleted and replaced by "commission."

(ii) The words "he or she" shall be deleted and replaced by "the commission."

(F) In paragraph (d)(1), the phrase "Administrator, or his or her designee" shall be deleted and replaced by "commission."

(G) The following revisions shall be made to paragraph (d)(2):

(i) The phrase "Administrator, or his or her designee" shall be deleted and replaced by "commission."

(ii) The term "DOT agency" shall be deleted and replaced by "commission."

(H) In paragraph (e), the term "DOT agency" shall be deleted and replaced by "commission."

(9) The following revisions shall be made to 49 C.F.R. 40.25:

(A) In paragraph (b), the term "DOT-regu-

lated" shall be deleted and replaced by "commission-regulated."

(B) In paragraph (b)(4), the term "DOT agency" shall be deleted and replaced by "commission."

(C) The following revisions shall be made to paragraph (b)(5):

(i) The phrase "a DOT" shall be deleted and replaced by "an approved."

(ii) The remaining term "DOT" shall be deleted and replaced by "the commission's."

(D) The following revisions shall be made to paragraph (e):

(i) The phrase "a DOT agency drug and alcohol regulation" shall be deleted and replaced by "this regulation or K.A.R. 82-4-3c or both."

(ii) The remaining term "DOT agency" shall be deleted and replaced by "commission."

(10) 49 C.F.R. 40.26 shall be deleted and replaced by the following:

"Management information system ("MIS") data shall be reported to the commission within 10 days of the commission's request for the information. MIS data shall be reported in a certified form acceptable to the commission. A certified form acceptable to the commission shall include the following information:

"(a) Information regarding the employer, including:

"(1) The name of the employer's business and, if applicable, the name it does business as;

"(2) the company's physical address and, if applicable, e-mail address;

"(3) the printed name and signature of the company's official certifying the MIS data;

"(4) the date the MIS data was certified;

"(5) the name and telephone number of the person preparing the form, if it is different from the person certifying the MIS data;

"(6) the name and telephone number of the C/TPA, if applicable; and

"(7) the employer's motor carrier identification number.

"(b) Information regarding the covered employees, including:

"(1) the total number of safety-sensitive employees in all categories;

"(2) the total number of employee categories;

"(3) the name of the employee category or categories; and

"(4) the total number of employees for each category.

"(c) Information regarding the drug testing data, including:

"(1) The type of test, which includes:

"(A) Pre-employment;

"(B) random;

"(C) post-accident;

"(D) reasonable suspicion or cause;

"(E) return-to-duty; and

"(F) follow-up.

"(2) The number of tests by result, including:

"(A) Total number of test results;

"(B) verified negative results;

"(C) verified positive results for one or more drugs;

"(D) positive for marijuana;

"(E) positive for cocaine;

"(F) positive for PCP;

"(G) positive for opiates;

"(H) positive for amphetamines;

"(I) canceled results; and

"(J) refusal results, including:

"(i) Adulterated;

"(ii) substitutes;

"(iii) shy bladder with no medical explanation; and

"(iv) other refusals to submit to testing.

"(d) Information resulting alcohol testing data, including:

"(1) The type of test, including the same types as listed in paragraph (c)(1) above;

"(2) The number of tests by results, including:

"(A) Total number of screen test results;

"(B) screening tests with results below 0.02;

"(C) Screening tests with results of 0.02 or greater;

"(D) number of confirmation test results;

"(E) confirmation tests with results of 0.02 through 0.039;

"(F) confirmation tests with results of 0.04 or greater;

"(G) canceled results; and

"(H) refusal results, including:

"(i) Shy lung with no medical explanation; and

"(ii) other refusals to submit to testing."

(11) The following changes shall be made to 49 C.F.R. 40.29:

(A) The first sentence shall be deleted and replaced by "Other information regarding the responsibilities of employers can be found in the following sections of 49 C.F.R. Part 40, as adopted by this regulation:".

(B) The word "non-Federal" shall be deleted and replaced by "unapproved."

(C) The term "DOT" shall be deleted and replaced by "approved."

(D) The word "Federal" shall be deleted.

(E) The term "non-DOT" shall be deleted and replaced by "unapproved."

(F) The phrase "Sec. 40.227—Use of non-DOT forms for DOT tests or DOT ATFs for non-DOT tests" shall be deleted.

(12) The following revisions shall be made to 49 C.F.R. 40.31:

(A) In paragraph (a), the term "DOT" shall be deleted and replaced by "approved."

(B) In paragraph (c), the phrase "DOT agency" shall be deleted and replaced by "commission."

(13) The following revisions shall be made to 49 C.F.R. 40.33:

(A) In the first paragraph, the term "DOT" shall be deleted and replaced by "approved."

(B) The following revisions shall be made to paragraph (a):

(i) The words "this part, the current 'DOT Urine Specimen Collection Procedures Guidelines,' and DOT agency" shall be deleted and replaced by "commission."

(ii) The last sentence of paragraph (a) shall be deleted.

(C) In paragraph (c)(2)(i), the term "DOT" shall be deleted and replaced by "approved."

(D) Paragraphs (d), (d)(1), (d)(2), and (d)(3) shall be deleted.

(E) In paragraph (g), the phrase "DOT agency" shall be deleted and replaced by "special agents and authorized."

(14) The first sentence of 49 C.F.R. 40.37 shall be deleted and replaced by "Other information regarding the role and functions of collectors can be found in the following sections of 49 C.F.R. Part 40, as adopted by this regulation:".

(15) In paragraph 49 C.F.R. 40.41(a), the term "a DOT" shall be deleted and replaced by "an approved."

(16) In 49 C.F.R. 40.43(e)(1), the term "DOT agency representatives" shall be deleted and replaced by "special agent or authorized representative."

(17) The following revisions shall be made to 49 C.F.R. 40.45:

(A) Paragraph (a) shall be deleted and replaced by the following:

"(1) A commission-approved CCF form shall be used to document every urine collection required by the approved drug testing program. A commission-approved CCF form shall be a form containing the information listed below. There shall be five copies of the CCF form. Each form shall be labeled as follows:

"(A) 'Copy 1 — Laboratory';

"(B) 'Copy 2 — Medical Review Officer Copy';

"(C) 'Copy 3 — Collector Copy';

"(D) 'Copy 4 — Employer Copy'; and

"(E) 'Copy 5 — Donor Copy.'

"(2) All five copies of the CCF form shall contain the following information:

"(A) The following information on the form may be completed by either the collector or the employee representative:

"(i) Employer information, including the name, address, and identification number issued pursuant to K.A.R. 82-4-8h;

"(ii) the MRO name, address, telephone number, and fax number;

"(iii) the donor's social security or employee identification number;

"(iv) the reason for the testing;

"(v) the tests performed;

"(vi) the collection site address; and

"(vii) the collector's home telephone number and facsimile number;

"(B) The following information on the form shall be completed by the collector:

"(i) an indication of whether the specimen temperature within four minutes of collection was between 90 degrees and 100 degrees Fahrenheit;

"(ii) an indication regarding whether the specimen was single or split, or whether no specimen was provided; and

"(iii) a space for any other remarks the collector shall provide;

"(C) The collector shall certify the following information with his or her signature:

"(i) the collector's name, clearly printed;

"(ii) the date and time the collector released the specimen bottle for delivery to the laboratory; and

"(iii) the name of the delivery service transferring the specimen to the laboratory; and

"(D) The laboratory shall certify the following information by signature:

"(i) the name, printed clearly, of the person signing the certification as the employee of the laboratory receiving the specimen;

"(ii) an indication of whether the specimen bottle seal is intact; and

"(iii) an indication of who at the laboratory the specimen bottle was released to.

"(2) In addition to the information required in

paragraph (a)(2) above, Copy 1 of the CCF shall include the following:

"(A) A specimen bottle seal, marked as 'A,' which shall contain the following information:

"(i) The specimen identification number;

"(ii) a circle in the center of the label which shall indicate which portion of the labels shall be positioned over the cap of the specimen bottle;

"(iii) the date the specimen was collected; and

"(iv) a space for the donor to initial the seal.

"(B) A specimen bottle seal, marked as 'B,' which shall contain the following information:

"(i) The specimen identification number;

"(ii) an indication that this is a split of the specimen bottle marked as 'A';

"(iii) a circle in the center of the label which shall indicate which portion of the labels shall be positioned over the cap of the specimen bottle;

"(iv) the date the specimen was collected; and

"(v) a space for the donor to initial the seal.

"(C) The following information, which shall be completed by the primary laboratory:

"(i) An indication of whether the test was negative or whether it contained evidence of the presence of a specific drug in the urine;

"(ii) a space for any additional remarks;

"(iii) the name of the testing laboratory, if it is a laboratory other than the one listed as having received the specimen according to paragraph (1)(D)(i);

"(iv) the printed name and signature of the scientist certifying the chain of custody and the test results; and

"(v) the date the certification was signed.

"(D) The following information, if split specimen results are tested by a secondary laboratory:

"(i) The secondary laboratory's name and address;

"(ii) an indication of whether the secondary laboratory was able to confirm the primary laboratory's results;

"(iii) if the secondary laboratory was unable to confirm the primary laboratory's results, an indication of why;

"(iv) the printed name and signature of the scientist certifying the chain of custody and the test results; and

"(v) the date the certification was signed.

"(3) In addition to the information required in paragraph (a)(2) above, Copy 2, Copy 3, Copy 4, and Copy 5 shall contain the following:

"(A) The following information shall be provided by the donor:

"(i) The printed name and signature of the donor certifying that the donor provided his or her own urine to the collector, that the specimen was unadultered, that the specimen bottle was sealed with a tamper-evident seal in the donor's presence, and that the information provided on the seals and the CCF is correct;

"(ii) the date the CCF was signed by the donor;

"(iii) the donor's daytime and evening telephone numbers; and

"(iv) the donor's date of birth.

"(B) The medical review officer examining the primary specimen shall indicate whether:

"(i) the test was canceled;

"(ii) the donor refused to test because the sample was adulterated, substituted, or diluted;

"(iii) the test results were negative; or

"(iv) the test results were positive.

"(C) The medical review officer examining the primary specimen shall provide the following information:

"(i) Any remarks in addition to the test results;

"(ii) the printed name and signature of the medical review officer examining the specimen; and

"(iii) the date the medical review officer signed the CCF.

"(D) The medical review officer examining the split specimen shall provide the following information:

"(i) whether the primary medical review officer's test results were confirmed or unconfirmed;

"(ii) If the primary medical review officer's test results were not confirmed, a reason why;

"(iii) the printed name and signature of the medical review officer examining the split specimen; and

"(iv) the date the CCF was signed by the medical review officer examining the split specimen."

(B) The following revisions shall be made to paragraph (b):

(i) In the first sentence, the term "a non-Federal" shall be deleted and replaced by "an unapproved."

(ii) In the first sentence, the words "Federal" and "DOT" shall be deleted.

(iii) In the second sentence, the words "expired Federal" shall be deleted and replaced by "unapproved."

(iv) The third sentence shall be deleted.

(C) Paragraph (c)(3) shall be deleted.

(D) Paragraph (e) shall be deleted.

(18) The following revisions shall be made to 49 C.F.R. 40.47:

(A) The following changes shall be made to paragraph (a):

(i) The last sentence of paragraph (a) shall be deleted.

(ii) The term "non-Federal" shall be deleted and replaced by "unapproved."

(iii) The remaining uses of the term "DOT" shall be deleted and replaced by "approved."

(B) The following changes shall be made to paragraph (b):

(i) The phrase "a non-Federal" shall be deleted and replaced by "an unapproved."

(ii) The term "non-Federal" shall be deleted and replaced by "unapproved."

(iii) The term "a DOT" shall be deleted and replaced by "an approved."

(19) The following revisions shall be made to 49 C.F.R. 40.49:

(A) The term "DOT" shall be deleted and replaced by "approved."

(B) The phrase "as in effect on October 1, 2007, and hereby adopted by reference" shall be added after the phrase "Appendix A of this part."

(20) The following revisions shall be made to 49 C.F.R. 40.61:

(A) In paragraph (b)(1), the phrase "a DOT" shall be deleted and replaced by "an approved."

(B) The following revisions shall be made to paragraph (f)(3):

(i) The phrase "DOT agency authorized" shall be deleted.

(ii) The phrase "required by K.A.R. 82-4-6d, and by 49 C.F.R. 491.45, 391.45, and 391.49, as adopted by K.A.R. 82-4-3g" shall be added after "medical examination."

(21) The following revisions shall be made to 49 C.F.R. 40.63:

(A) Paragraph (a) shall be deleted and replaced by the following: "Complete the appropriate portions of the CCF as set forth in 49 C.F.R. 40.45."

(B) In paragraph (e), the term "(Step 2)" shall be deleted.

(22) The following revisions shall be made to 49 C.F.R. 40.65:

(A) Paragraph (b)(3) shall be deleted and be replaced by the following: "Indicate on the CCF whether the specimen temperature is within the acceptable range."

(B) Paragraph (b)(4) shall be deleted and replaced by the following: "If the specimen temperature is outside the acceptable range, indicate that finding in the space provided on the CCF."

(23) The following changes shall be made to 49 C.F.R. 40.67:

(A) Paragraph (e)(1) shall be deleted and replaced by the following: "Indicate the reason for the directly observed collection the same as for the first collection."

(B) Paragraph (e)(2) shall be deleted and replaced by the following: "Indicate on the CCF that the collection was observed and the reasons why."

(C) In paragraph (f), the term "(Step 2)" shall be deleted.

(24) In 49 C.F.R. 40.69(f), the term "(Step 2)" shall be deleted.

(25) The following revisions shall be made to 49 C.F.R. 40.71:

(A) In paragraph (a), the phrase "DOT agency drug testing regulations" shall be deleted and replaced by "this regulation and K.A.R. 82-4-3c."

(B) Paragraph (b)(1) shall be deleted and replaced by the following: "Indicate on the CCF that this was a split specimen collection."

(C) In paragraph (b)(7), the term "(Step 2)" shall be deleted.

(D) In paragraph (b)(8), the term "a DOT agency regulation" shall be deleted and replaced by "K.A.R. 82-4-6d or 49 C.F.R. 391.41, 391.43, 391.45, or 391.49, as adopted by K.A.R. 82-4-3g."

(26) The following revisions shall be made to 49 C.F.R. 40.73:

(A) In paragraph (a)(1), the terms "(Step 5)" and "(Step 2)" shall be deleted.

(B) In paragraph (a)(2), the term "(Step 4)" shall be deleted.

(C) In paragraph (a)(9), the phrase "applicable DOT agency regulations" shall be deleted and replaced by "the commission."

(27) 49 C.F.R. 40.81(b), (b)(1), (b)(2), (c), and (d) shall be deleted.

(28) The following revisions shall be made to 49 C.F.R. 40.83:

(A) Paragraph (b) shall be deleted.

(B) In paragraph (e), the phrase "in Step 4" shall be deleted.

(C) In paragraph (g), the phrase "a non-Federal form or an expired Federal" shall be deleted and replaced by "an unapproved."

(D) Paragraph (g)(2) shall be deleted.

(29) In 49 C.F.R. 40.85, the first two sentences shall be deleted and replaced by "The urine spec-

imens shall be tested for only the following five drugs:".

(30) 49 C.F.R. 40.91 (e) shall be deleted and replaced by the following: "If a substance appears in a specimen which cannot be identified, complete testing of the specimen for drugs to the extent technically feasible."

(31) In 49 C.F.R. 40.99(b), the phrase "in accordance with HHS requirements" shall be deleted.

(32) In 49 C.F.R. 40.101(b), the words "the Department regards as creating" shall be deleted and replaced by "create."

(33) The following revisions shall be made to 49 C.F.R. 40.103:

(A) In paragraphs (a) and (b), the term "DOT-covered" shall be deleted and replaced by "commission-regulated motor carrier."

(B) In paragraph (c), the term "DOT" shall be deleted and replaced by "approved."

(C) In paragraphs (c) and (c)(1), the phrase "with a substance cited in HHS guidance" shall be deleted.

(34) In 49 C.F.R. 40.105(c), the last two sentences shall be deleted.

(35) The following revisions shall be made to 49 C.F.R. 40.107:

(A) The words "ODAPC, a DOT agency, or a DOT-regulated" shall be deleted and replaced by "a special agent or authorized representative or a commission-regulated."

(B) The remaining term "DOT" shall be deleted and replaced by "approved."

(36) The following revisions shall be made to 49 C.F.R. 40.111:

(A) In paragraph (a), the phrase "as in effect on October 1, 2007, and hereby adopted by reference," shall be added after the term "Appendix B to this part."

(B) In paragraph (b), the phrase "a DOT agency" shall be deleted and replaced by "the commission."

(37) In 49 C.F.R. 40.113, the first sentence shall be deleted and replaced with "Other information concerning laboratories may be found in the following sections of 49 C.F.R. Part 40, as adopted by this regulation:".

(38) The following revisions shall be made to 49 C.F.R. 40.121:

(A) In the first paragraph, the term "DOT" shall be deleted and replaced by "approved."

(B) The following revisions shall be made to paragraph (b)(3):

(i) The first instance of the phrase "the DOT MRO Guidelines, and the DOT agency regulations" shall be deleted and replaced by "K.A.R. 82-4-3c."

(ii) The last sentence shall be deleted.

(C) Paragraph (c)(1)(vi) shall be deleted and replaced by "Provisions of this regulation and K.A.R. 82-4-3c, as well as issues that MROs confront in carrying out their duties under this regulation and K.A.R. 82-4-3c."

(D) In paragraph (c)(2), the term "DOT-mandated" shall be deleted and replaced by "approved."

(E) Paragraphs (c)(3), (c)(3)(i), (c)(3)(ii), (c)(3)(iii), and (d)(3) shall be deleted.

(F) In paragraph (e), the term "DOT agency" shall be deleted and replaced by "special agents and authorized."

(39) The following revisions shall be made to 49 C.F.R. 40.123:

(A) The following revisions shall be made to paragraph (b)(3):

(i) The words "the ODAPC or a relevant DOT agency" shall be deleted and replaced by "the commission."

(ii) The second occurrence of the term "DOT" shall be deleted.

(iii) The remaining occurrences of the term "DOT" shall be deleted and replaced by "the commission."

(B) In paragraph (e), the first parenthetical phrase shall be deleted.

(C) In paragraph (h), the term "other DOT agency regulations" shall be deleted and replaced by "this regulation and K.A.R. 82-4-3c."

(40) The following revisions shall be made to 49 C.F.R. 40.127:

(A) In paragraph (e) the words "place a check mark in the 'Negative' box (Step 6)" shall be deleted and replaced by "indicate whether the results were negative."

(B) In paragraph (g), the words "check the 'Test Cancelled' box (Step 6)" shall be deleted and replaced by "indicate that the test was cancelled."

(C) In paragraph (g)(4), the term "DOT agencies" shall be deleted and replaced by "the commission."

(41) The following revisions shall be made to 49 C.F.R. 40.129:

(A) In paragraph (c), the words "place a check mark in the 'Positive' box (Step 6)" shall be deleted and replaced by "indicate that the test was positive."

(B) In paragraph (d), the words "check the 'test cancelled' box (Step 6)" shall be deleted and replaced by "indicate that the test was cancelled."

(C) The following revisions shall be made to paragraph (f):

(i) The words "check the 'refusal to test because:' box (Step 6)" shall be deleted and replaced by "indicate that the test was refused because it was adulterated or substituted."

(ii) The words "check the 'Adulterated' or 'Substituted' box, as appropriate" shall be deleted.

(42) 49 C.F.R. 40.145 shall be revised as follows:

(A) In paragraph (g)(2)(ii)(A), the term "a DOT" shall be deleted and replaced by "an approved."

(B) In paragraph (g)(2)(ii)(B), the term "DOT agency regulation" shall be deleted and replaced by "commission statute, regulation, or order."

(C) In paragraph (g)(5), the term "ODAPC" shall be deleted and replaced by "the commission."

(43) The following revisions shall be made to 49 C.F.R. 40.151:

(A) In paragraph (a), the term "DOT" shall be deleted.

(B) In paragraph (c), the phrase "DOT agency drug or alcohol regulation" shall be deleted and replaced by "this regulation or K.A.R. 82-4-8c."

(C) In paragraph (e), a period shall be placed after the word "drug," and the remainder of the paragraph shall be deleted.

(44) In 49 C.F.R. 40.155(b), the words "check the 'dilute' box (Step 6)" shall be deleted and replaced by "indicate that the specimen is dilute."

(45) In 49 C.F.R. 40.159(a)(4)(i) and (a)(5)(i), and 49 C.F.R. 40.161(a), the words "Place a check mark in the 'Test Cancelled' box (Step 6)" shall be deleted and replaced by "Indicate that the test was cancelled."

(46) In 49 C.F.R. 40.163(e), the term "DOT" shall be deleted and replaced by "special agent or authorized."

(47) In 49 C.F.R. 40.169, the first sentence shall be deleted and replaced with "Other information concerning the role of MROs and the verification process can be found in the following sections of 49 C.F.R. Part 40, as adopted by this regulation:".

(48) The following revisions shall be made to 49 C.F.R. 40.183:

(A) In paragraph (a), the words "checking the 'Reconfirmed' box or the 'Failed to Reconfirm' box (Step 5(b))" shall be deleted and replaced by "indicating whether the test was reconfirmed."

(B) The following revisions shall be made to paragraph (b):

(i) The words "check the 'Failed to Reconfirm' box" shall be deleted and replaced by "indicate that the attempt to reconfirm failed."

(ii) The term "(Step 5(b))" shall be deleted.

(49) The following revisions shall be made to 49 C.F.R. 40.187:

(A) The following revisions shall be made to paragraphs (b)(2), (c)(2), (d)(3), (e)(3), and (f)(3):

(i) The phrase "Appendix D to this part" shall be deleted and replaced by "paragraph (i)."

(ii) The term "ODAPC" shall be deleted and replaced by "commission."

(B) In paragraph (g), the words "sign and date (Step 7) of" shall be deleted and replaced by "signature and date on."

(C) The following paragraph shall be added after paragraph (h):

"(i) When there is a failure to reconfirm, the MRO shall inform the commission by telefacsimile to (785) 271-3283, or by mail to the transportation division, Kansas corporation commission, 1500 S.W. Arrowhead Road, Topeka, KS 66604. The following format shall be used to provide the information to the commission:

"(1) MRO name, address, phone number, and telefacsimile number;

"(2) collection site name, address, and phone number;

"(3) date of collection;

"(4) specimen identification number;

"(5) laboratory accession number;

"(6) primary specimen laboratory name, address, and telephone number;

"(7) date result reported or certified by primary laboratory;

"(8) split specimen laboratory name, address, and telephone number;

"(9) date split specimen result reported or certified by split specimen laboratory;

"(10) primary specimen results for the primary specimen;

"(11) reason for split specimen failure-to-reconfirm result;

"(12) actions taken by the MRO;

"(13) additional information explaining the reason for cancellation; and

"(14) name of individual submitting the report, if not the MRO."

(50) In 49 C.F.R. 40.189, the first sentence

shall be deleted and replaced with "Other information concerning split specimens can be found in the following sections of 49 C.F.R. Part 40, as adopted by this regulation:".

(51) The following revisions shall be made to 49 C.F.R. 40.191:

(A) In paragraph (d)(1), the term "(Step 2)" shall be deleted.

(B) In paragraph (d)(2), the words "checking the 'refused to test because' box (Step 6)" shall be deleted and replaced by "indicating that the test was refused."

(52) The following revisions shall be made to 49 C.F.R. 40.193:

(A) In paragraph (b)(2), (b)(3), and (b)(4), the term "(Step 2)" shall be deleted.

(B) In paragraph (d)(1)(i), the words "Check 'Test Cancelled' (Step 6)" shall be deleted and replaced by "Indicate that the test was cancelled."

(C) In paragraph (d)(2)(i), the words "Check 'Refusal to test because' (Step 6)" shall be deleted and replaced by "Indicate that the test was refused."

(53) In 49 C.F.R. 40.195(b)(1), the words "Check 'Negative' (Step 6)" shall be deleted and replaced by "Indicate that the results are negative."

(54) The following revisions shall be made to 49 C.F.R. 40.203(d)(3):

(A) The words "a non-Federal form or an expired Federal" shall be deleted and replaced by "an unapproved."

(B) The last two sentences shall be deleted.

(55) The following revisions shall be made to 49 C.F.R. 40.205(b)(2):

(A) In the first sentence, the words "a non-Federal form or an expired Federal" shall be deleted and replaced by "an unapproved."

(B) The first instance of the term "DOT" shall be deleted and replaced by "commission."

(C) In the third sentence, the words "non-Federal forms or expired Federal" shall be deleted and replaced by "unapproved."

(D) The second instance of the term "DOT" shall be deleted and replaced by "approved."

(56) The following revisions shall be made to 49 C.F.R. 40.207:

(A) In paragraphs (a)(1) and (b), the term "DOT" shall be deleted and replaced by "commission."

(B) The following revisions shall be made to paragraph (c):

(i) The term "DOT" shall be deleted and replaced by "approved."

(ii) The term "a non-DOT" shall be deleted and replaced by "an unapproved."

(57) The following revisions shall be made to 49 C.F.R. 40.208:

(A) The following revisions shall be made to paragraph (a):

(i) The term "DOT" shall be deleted and replaced by "commission."

(ii) The word "checked" shall be deleted and replaced by "noted."

(B) Paragraph (c) shall be deleted.

(58) The following revisions shall be made to 49 C.F.R. 40.213:

(A) In the first paragraph, the term "DOT" shall be deleted and replaced by "commission."

(B) In paragraph (a), the words "and the current DOT guidance" and the last sentence of the paragraph shall be deleted.

(C) Paragraph (b)(1) shall be deleted.

(D) Paragraphs (d), (d)(1), (d)(2), and (e) shall be deleted and replaced by the following: "All BAT's and STT's shall, no less frequently than every five years from the date on which they met the requirements of paragraphs (b) and (c), complete refresher training which meets the requirements of paragraphs (b) and (c)."

(E) In paragraph (g), the phrase "DOT agency" shall be deleted and replaced by "special agent and authorized."

(F) In paragraph (h)(2), the term "DOT" shall be deleted and replaced by "commission."

(59) In 49 C.F.R. 40.217, the first sentence shall be deleted and replaced with "Other information on the role of STTs and BATs can be found in the following sections of 49 C.F.R. Part 40, as adopted by this regulation:".

(60) In 49 C.F.R. 221(a), the term "DOT" shall be deleted and replaced by "commission."

(61) In 49 C.F.R. 40.223(a) and (b), the phrase "DOT agency" shall be deleted and replaced by "special agent or authorized."

(62) The following revisions shall be made to 49 C.F.R. 40.225:

(A) Paragraph (a) shall be deleted and replaced by the following:

"(a) (1) A commission-approved alcohol testing form ('ATF') shall be used for every approved alcohol test. There shall be three copies of the ATF form. Each form shall be labeled as follows:

"(A) 'Copy 1 — Original — Forward to the Employer';

"(B) 'Copy 2 — Employee Retains'; and

"(C) 'Copy 3 — Alcohol Technician Retains.'

"(2) All three copies of the ATF form shall contain the following information:

"(A) The top of the form shall be referred to as 'step 1' and shall consist of information completed by the alcohol technician, and shall include:

"(i) The employee's name;

"(ii) the employee's social security number or employee identification number;

"(iii) the employer's name and address;

"(iv) the DER's name and telephone number; and

"(v) whether the test is being done at random, for reasonable suspicion, post-accident, for return to duty, as a follow-up, or for pre-employment.

"(B) The second part of the form shall be referred to as 'step 2' and shall be a dated certification signed by the employee that he or she is about to submit to alcohol testing and that the identifying information on the form is true and correct.

"(C) The third part of the form shall be referred to as 'step 3' and shall consist of information completed by the alcohol technician, including:

"(i) A signed and dated certification that the alcohol technician conducted the alcohol testing on the named employee in compliance with the alcohol testing regulations, that the alcohol technician is certified to conduct such testing, and that the results were properly recorded;

"(ii) an indication of whether the technician is a BAT or STT;

"(iii) an indication of whether a saliva or breath device was used to conduct the test;

"(iv) an indication of whether there was a 15-minute wait;

"(v) the test number;

"(vi) the testing device name;

"(vii) the testing device lot number and expiration date, or serial number;

"(viii) the testing device activation time;

"(ix) the time the testing device was read;

"(x) the result indicated by the testing device;

"(xi) the results of any confirmation test;

"(xii) any additional remarks;

"(xiii) the alcohol technician's company name, address, and telephone number;

"(xiv) the alcohol technician's printed name;

"(xv) the date the alcohol technician signed the form.

"(D) The fourth part of the form shall be referred to as 'step 4' and shall be a signed and dated certification completed by the employee if the test result is 0.02 or higher. The certification shall state that the employee submitted to the alcohol test, and that the test results are accurately recorded on the form. The certification shall further state that the employee understands he or she shall not drive, perform safety-sensitive duties, or operate heavy equipment because the alcohol test result is 0.02 or higher."

(B) In paragraph (b), the term "DOT" shall be deleted and replaced by "approved."

(C) Paragraph (c) shall be deleted.

(63) The following revisions shall be made to 49 C.F.R. 40.227:

(A) In paragraph (a), the term "non-DOT" shall be deleted and replaced by "unapproved."

(B) The term "DOT" as it appears in the first instance in paragraph (a) shall be deleted and replaced by "approved."

(C) In paragraph (a), the last sentence shall be deleted.

(D) In paragraph (b), the term "a non-DOT" shall be deleted and replaced by "an unapproved."

(E) In paragraph (b), the term "a DOT" shall be deleted and replaced by "an approved."

(64) The following changes shall be made to 49 C.F.R. 40.229:

(A) The phrase "adopted in this regulation" shall be added after "conforming products lists (CPL)."

(B) The term "DOT" shall be deleted and replaced by "approved."

(65) In 49 C.F.R. 40.231(a), the last sentence shall be deleted.

(66) The following revisions shall be made to 49 C.F.R. 40.233:

(A) Paragraphs (a), (a)(1), and (a)(2) shall be deleted.

(B) The following changes shall be made to paragraph (c):

(1) In paragraph (c)(2), the words "as in effect on August 13, 1997, and appearing in Volume 62 of the Code of Federal Regulations, beginning at page 43425, and hereby adopted by reference" shall be added after the phrase " 'Calibrating Units for Breath Alcohol Tests.' "

(2) In paragraph (c)(3), the term "DOT" shall be deleted and replaced by "approved."

(67) In 49 C.F.R. 40.241, the phrase "a DOT" shall be deleted and replaced by "an approved."

(68) In 49 C.F.R. 40.251(g), the phrase "DOT agency" shall be deleted and replaced by "commission."

(69) The following revisions shall be made to 49 C.F.R. 40.261:

(A) In paragraphs (a)(1), (a)(3), and (b), the phrase "DOT agency" shall be deleted and replaced by "commission."

(B) The following changes shall be made to paragraph (d):

(1) The phrase "a non-DOT" shall be deleted and replaced by "an unapproved."

(2) The phrase "DOT agency" shall be deleted and replaced by "commission."

(3) The phrase "a DOT" shall be deleted and replaced by "an approved."

(70) The following revisions shall be made to 49 C.F.R. 40.265:

(A) In paragraph (c)(1)(i), the term "DOT" shall be deleted and replaced by "commission."

(B) In paragraph (c)(1)(ii), the phrase "of the appropriate DOT agency regulation" shall be deleted and replaced by "of the applicable commission statutes, regulations, and orders."

(71) In 49 C.F.R. 40.269(c), the term "a non-DOT" shall be deleted and replaced by "an unapproved."

(72) The following revisions shall be made to 49 C.F.R. 40.271(b)(2):

(A) The term "a non-DOT" shall be deleted and replaced by "an unapproved."

(B) The phrase "a valid DOT" shall be deleted and replaced by "an approved."

(C) The remaining term "non-DOT" shall be deleted and replaced by "unapproved."

(D) The remaining term "DOT" shall be deleted and replaced by "approved."

(73)The following revisions shall be made to 49 C.F.R. 40.273:

(A) In paragraph (b), the term "DOT" shall be deleted and replaced by "commission."

(B) The following revisions shall be made to paragraph (d):

(i) The term "DOT" shall be deleted and replaced by "approved."

(ii) The words "a non-DOT" shall be deleted and replaced by "an unapproved."

(74) In paragraph 49 C.F.R. 40.275, the phrase "DOT agency" shall be deleted and replaced by "commission."

(75) The following revisions shall be made to 49 C.F.R. 40.281:

(A) In the first sentence, the term "DOT" shall be deleted and replaced by "commission."

(B) The following revisions shall be made to paragraph (b)(3):

(i) The term "DOT agency" shall be deleted and replaced by "commission."

(ii) The words "and the DOT SAP guidelines" shall be deleted.

(iii) The last sentence shall be deleted.

(C) The following changes shall be made to paragraph (c)(1)(ii):

(i) The phrase "as adopted by K.A.R. 82-4-3b" shall be inserted after "49 C.F.R. Part 40."

(ii) The phrase "DOT agency" shall be deleted and replaced by "commission."

(D) In paragraphs (c)(1)(iii) and (c)(1)(iv), the term "DOT" shall be deleted and replaced by "commission."

(E) Paragraphs (c)(3), (c)(3)(i), (c)(3)(ii), and (c)(3)(iii) shall be deleted.

(F) In paragraph (d)(1), the term "DOT" shall be deleted and replaced by "commission drug and alcohol testing."

(G) In paragraph (e), the phrase "DOT agency" shall be deleted and replaced by "special agent and authorized."

(76) 49 C.F.R. 40.283 shall be deleted.

(77) The following revisions shall be made to 49 C.F.R. 40.285:

(A) The following revisions shall be made to paragraph (a):

(i) The term "DOT" shall be deleted and replaced by "commission."

(ii) The term "DOT agency" shall be deleted and replaced by "commission."

(B) The following revisions shall be made to paragraph (b):

(i) The first instance of the term "DOT" shall be deleted.

(ii) The words "a DOT" shall be deleted and replaced by "an approved."

(iii) The words "DOT agency" shall be deleted and replaced by "commission."

(iv) The last instance of the term "DOT" shall be deleted and replaced by "commission."

(78) In 49 C.F.R. 40.287, the term "DOT" shall be deleted and replaced by "commission."

(79) In 49 C.F.R. 40.289(a) and (b), the term "DOT" shall be deleted and replaced by "commission."

(80) In 49 C.F.R. 40.293, the term "DOT" in the first paragraph and paragraphs (b), (b)(1), (f), and (f)(2) shall be deleted and replaced by "commission."

(81) In 49 C.F.R. 40.295(a), the term "DOT" shall be deleted and replaced by "commission."

(82) In 49 C.F.R. 40.305(c), the term "DOT

agency" shall be deleted and replaced by "commission."

(83) The following revisions shall be made to 49 C.F.R. 40.307:

(A) In paragraph (a), the term "DOT" shall be deleted and replaced by "commission."

(B) In paragraph (c), the term "DOT agency" shall be deleted and replaced by "commission."

(84) The following revisions shall be made to 49 C.F.R. 40.311:

(A) In paragraphs (c)(3), (d)(3), and (e)(3), the term "DOT" shall be deleted and replaced by "commission."

(B) In paragraph (g), the words "DOT agency representatives (e.g., inspectors conducting an audit or safety investigation) and representatives of the NTSB in an accident investigation" shall be deleted and replaced by "special agents and authorized representatives."

(85) In paragraph 49 C.F.R. 40.313, the first sentence shall be deleted and replaced by "Other information on the role of functions of SAPs can be found in the following sections:".

(86) In the first paragraph of 49 C.F.R. 40.321, the term "DOT" shall be deleted and replaced by "commission."

(87) In 49 C.F.R. 40.323(a)(1), the term "DOT" shall be deleted and replaced by "commission."

(88) The following revisions shall be made to 49 C.F.R. 40.327:

(A) In paragraph (a)(1), the term "DOT agency" shall be deleted and replaced by "commission."

(B) The following revisions shall be made to paragraph (b):

(i) The first instance of the term "DOT agency" shall be deleted and replaced by "commission."

(ii) The words "the commission" shall be added before the phrase "a DOT agency."

(89) In 49 C.F.R. 40.329(a), the term "DOT-mandated" shall be deleted and replaced by "commission."

(90) The following revisions shall be made to 49 C.F.R. 40.331:

(A) In paragraph (b), the phrase "DOT agency" shall be deleted and replaced by "special agent or authorized."

(B) In paragraphs (b)(1), (b)(2), and (c)(1), the term "DOT agency" shall be deleted and replaced by "commission."

(C) In paragraph (c), the term "DOT agency representatives" shall be deleted and replaced by "a special agent or authorized representative."

(D) In paragraph (c)(2), the term "DOT agency" shall be deleted and replaced by "commission."

(E) In paragraph (f), the term "ODAPC" shall be deleted and replaced by "the commission."

(91) The following revisions shall be made to 49 C.F.R. 40.333:

(A) In paragraph (b), the parenthetical text shall be deleted.

(B) The following revisions shall be made to paragraph (d):

(i) The term "DOT agency" shall be deleted and replaced by "commission."

(ii) The last sentence shall be deleted.

(C) In paragraph (e), the phrase "DOT agency personnel" shall be deleted and replaced by "a special agent or authorized representative."

(92) 49 C.F.R. 40.341 shall be deleted.

(93) In 49 C.F.R. 40.343, the term "DOT agency" shall be deleted and replaced by "commission."

(94) In 49 C.F.R. 40.345(b), the phrase "to this part" shall be deleted and replaced by "as in effect on October 1, 2007, and hereby incorporated by reference."

(95) The following revisions shall be made to 49 C.F.R. 40.347:

(A) In paragraph (b), the phrase "the DOT agency" shall be deleted and replaced by "commission."

(B) In paragraph (b)(1), the phrase "each DOT agency" shall be deleted and replaced by "the commission."

(C) The following revisions shall be made to paragraph (b)(2):

(i) The term "DOT agency" shall be deleted and replaced by "commission."

(ii) The term "DOT covered" shall be deleted and replaced by "commission-regulated."

(96) The following revisions shall be made to 49 C.F.R. 40.349:

(A) In paragraph (a), the term "DOT" shall be deleted and replaced by "commission."

(B) In paragraph (e), the term "DOT agency" shall be deleted and replaced by "special agent or authorized."

(97) In 49 C.F.R. 40.353(c), the term "DOT agency" shall be deleted and replaced by "commission."

(98) The following revisions shall be made to 49 C.F.R. 40.355:

(A) In the first sentence, the term "DOT" shall be deleted and replaced by "commission."

(B) The following revisions shall be made to paragraph (m):

(i) The term "DOT" shall be deleted and replaced by "commission."

(ii) The last sentence shall be deleted.

(C) The following revisions shall be made to paragraph (o):

(i) The term "DOT agency" shall be deleted and replaced by "commission."

(ii) The term "DOT" shall be deleted and replaced by "commission."

(iii) The word "Department" shall be deleted and replaced by "commission."

(99) 49 C.F.R. 40.361 through 49 C.F.R. 40.413 shall be deleted.

(100) In the title and the first sentence of Appendix H to Part 40, the terms "DOT" and "DOT agency" shall be deleted and replaced by "commission."

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission's regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 2008 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2008 Supp. 66-1,129; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009.)

**82-4-3c. Testing for controlled substances and alcohol use.** (a) With the following exceptions, 49 C.F.R. Part 382, as in effect on October 1, 2007, is hereby adopted by reference:

(1) The following revisions shall be made to 49 C.F.R. 382.103:

(A) In paragraph (a), the phrase "any State" shall be deleted and replaced by "the state of Kansas."

(B) In paragraph (a)(2), the word "or" shall be deleted.

(C) Following paragraph (a)(3), delete the period, add a semicolon, and insert the following: "or (4) the Kansas uniform commercial drivers' license act, found at K.S.A. 8-2,126 et seq."

(D) In paragraph (c), the phrase "Sec. 390.3(f) of this subchapter" shall be deleted and replaced by "49 C.F.R. 390.3(f), as adopted by K.A.R. 82-4-3f."

(E) Paragraph (d)(1) shall be deleted.

(F) Paragraph (d)(2) shall be deleted and replaced by the following: "(2) Operating vehicles exempted from the Kansas uniform commercial drivers' license act by K.S.A. 8-2,127."

(G) 49 C.F.R. 382.103(d)(3) shall be deleted.

(2) In 49 C.F.R. 382.105, the phrase "part 40 of this title" shall be deleted and replaced by "49 C.F.R. Part 40, as adopted by K.A.R. 82-4-3b."

(3) The following revisions shall be made to 49 C.F.R. 382.107:

(A) In the first paragraph, the phrase "Secs. 386.2 and 390.5 of this subchapter, and Sec. 40.3 of this title" shall be deleted and replaced by "49 C.F.R. 390.5, as adopted by K.A.R. 82-4-3f, and 49 C.F.R. 40.3, as adopted by K.A.R. 82-4-3b."

(B) The definition of "commerce" shall be deleted and replaced by the following: " 'Commerce' means any trade, traffic or transportation within the jurisdiction of the state of Kansas, and any trade, traffic and transportation which affects any trade, traffic and transportation within the jurisdiction of the state of Kansas."

(C) The phrase "as adopted by K.A.R. 82-4-30" shall be inserted after the phrase "(49 C.F.R. part 172, subpart F)" in the definition of commercial motor vehicle.

(D) In the definition of "consortium/third party administrator," the phrase "DOT-regulated employers" shall be deleted and replaced by the phrase "Kansas-regulated or USDOT-regulated employers." The phrase "DOT drug and alcohol testing programs" shall be deleted and replaced by "Kansas or USDOT drug and alcohol testing programs."

(E) In the definition of "controlled substances," the phrase "Sec. 40.85 of this title" shall be deleted and replaced by "49 C.F.R. 40.85, as adopted by K.A.R. 82-4-3b."

(F) The definition of "DOT agency" shall be deleted and replaced by the following: " 'USDOT agency' means an agency of the United States department of transportation administering regulations requiring alcohol or drug testing or both in accordance with 49 C.F.R. Part 40, as adopted by K.A.R. 82-4-3b."

(G) The following revisions shall be made to the definition of "employer":

(i) The phrase "DOT agency regulations" shall be deleted and replaced by "Kansas or USDOT agency regulations."

(ii) The phrase "DOT drug and alcohol program requirements" shall be deleted and replaced

by "Kansas or USDOT drug and alcohol program requirements."

(iii) The phrase "DOT agency regulations" shall be deleted and replaced by "Kansas or USDOT agency regulations."

(H) The following revisions shall be made to the definition of "refusal to submit":

(i) The phrase "DOT agency regulations" shall be deleted and replaced by "Kansas and USDOT agency regulations."

(ii) In paragraph (1), the phrase "Sec. 40.61(a) of this title" shall be deleted and replaced by "49 C.F.R. 40.61(a), as adopted by K.A.R. 82-4-3b."

(iii) In paragraphs (2) and (3), the phrase "Sec. 40.63(c) of this title" shall be deleted and replaced by "49 C.F.R. 40.63(c), as adopted by K.A.R. 82-4-3b."

(iv) In paragraph (4), the phrase "Secs. 40.67(l) and 40.69(g) of this title" shall be deleted and replaced by "49 C.F.R. 40.67(l) and 40.69(g), as adopted by K.A.R. 82-4-3b."

(v) In paragraph (5), the phrase "Sec. 40.193(d)(2) of this title" shall be deleted and replaced by "49 C.F.R. 40.193(d)(2), as adopted by K.A.R. 82-4-3b."

(vi) In paragraph (7), the phrase "Sec. 40.193(d) of this title" shall be deleted and replaced by "49 C.F.R. 40.193(d), as adopted by K.A.R. 82-4-3b."

(I) The following revisions shall be made to the definition of "safety-sensitive function":

(i) The phrase "Secs. 392.7 and 392.8 of this subchapter" shall be deleted and replaced by "49 C.F.R. 392.7 and 392.8, as adopted by K.A.R. 82-4-3h."

(ii) The phrase "Sec. 393.76 of this subchapter" shall be deleted and replaced by "49 C.F.R. 393.76, as adopted by K.A.R. 82-4-3i."

(4) 49 C.F.R. 382.109 shall be deleted.

(5) In 49 C.F.R. 382.117, the phrase "49 CFR part 40, Subpart R" shall be deleted and replaced by "49 C.F.R. Part 40, Subpart R, as adopted by K.A.R. 82-4-3b."

(6) The following revisions shall be made to 49 C.F.R. 382.119:

(A) The phrase "Federal Motor Carrier Safety Administration" shall be deleted and replaced by "transportation division of the corporation commission."

(B) The phrase "as adopted by K.A.R. 82-4-3b" shall be inserted after the phrase "49 CFR 40.21."

(C) The last sentence of paragraph (b) shall be deleted and replaced by the following: "The employer shall send a written request, which shall include all of the information required by that section to the Director of the Transportation Division, Kansas Corporation Commission, 1500 S.W. Arrowhead Road, Topeka, KS 66604."

(D) In paragraphs (c) and (d), the phrase "Administrator or the Administrator's designee" shall be deleted and replaced by "director of the transportation division of the Kansas corporation commission."

(E) Paragraph (e) shall be deleted.

(7) In 49 C.F.R. 382.121(a), the phrase "part 40 of this title" shall be deleted and replaced by "49 C.F.R. Part 40, as adopted by K.A.R. 82-4-3b."

(8) The following revisions shall be made to 49 C.F.R. 382.301:

(A) In paragraph (b)(3), the phrase "DOT agency" shall be deleted and replaced by "state or USDOT agency."

(B) In paragraphs (c)(1)(iii) and (c)(2), the phrase "part 40 of this title" shall be deleted and replaced by "49 C.F.R. Part 40, as adopted by K.A.R. 82-4-3b."

(C) In paragraph (d)(4), the phrase "49 CFR Part 40 of this title" shall be deleted and replaced by "49 C.F.R. Part 40, as adopted by K.A.R. 82-4-3b."

(9) The following revisions shall be made to 49 C.F.R. 382.303(h)(3):

(A) The phrase "(as defined in Sec. 571.3 of this title)" shall be deleted.

(B) The phrase "Sec. 177.823 of this title" shall be deleted and replaced by "49 C.F.R. 177.823, as adopted by K.A.R. 82-4-20."

(10) The following revisions shall be made to 49 C.F.R. 382.305:

(A) Paragraphs (c), (d), (e), (f), (g), (h), and (n) shall be deleted.

(B) In paragraph (o), the phrase "DOT agency" shall be deleted and replaced by "USDOT or state agency."

(11) In 49 C.F.R. 382.309, 382.311, and 382.605, the phrase "49 CFR part 40, Subpart O" shall be deleted and replaced by "49 C.F.R. Part 40, Subpart O, as adopted by K.A.R. 82-4-3b."

(12) In 49 C.F.R. 382.503 and 382.601(b)(9), the phrase "part 40, subpart O, of this title" shall be deleted and replaced by "49 C.F.R. Part 40, Subpart O, as adopted by K.A.R. 82-4-3b."

(13) The following revisions shall be made to 49 C.F.R. 382.401:

(A) In paragraph (b)(3), the phrase "part 40 of

this title" shall be deleted and replaced by "49 C.F.R. Part 40, as adopted by K.A.R. 82-4-3b."

(B) In paragraph (c)(2)(iii), the phrase "part 40, subpart G, of this title" shall be deleted and replaced by "49 C.F.R. Part 40, as adopted by K.A.R. 82-4-3b."

(C) In paragraph (c)(5)(iv), the phrase "Sec. 40.213(a)" shall be deleted and replaced by "49 C.F.R. 40.213(a), as adopted by K.A.R. 82-4-3b."

(D) In paragraph (c)(6)(iii), the phrase "Sec. 40.111(a)" shall be deleted and replaced by "49 C.F.R. 40.111(a), as adopted by K.A.R. 82-4-3b."

(E) The following revisions shall be made to paragraph (d):

(i) The phrase "Sec. 390.31 of this subchapter" shall be deleted and replaced by "49 C.F.R. 390.31, as adopted by K.A.R. 82-4-3f."

(ii) The phrase "Federal Motor Carrier Safety Administration" shall be deleted and replaced by "transportation division of the Kansas corporation commission."

(F) Paragraph (e) shall be deleted.

(14) 49 C.F.R. 382.403 shall be revised as follows:

(A) In paragraph (a), the words "the Secretary of Transportation, any DOT agency, or" shall be deleted.

(B) The following changes shall be made to paragraph (b):

(i) The terms "Federal Motor Carrier Safety Administration" and "FMCSA" shall be deleted and replaced by "transportation division of the Kansas corporation commission."

(ii) The phrase "sec. 40.26" shall be deleted and replaced by "49 C.F.R. 40.26, as adopted by K.A.R. 82-4-3b."

(iii) The phrase "part 40" shall be deleted and replaced by "49 C.F.R. Part 40, as adopted by K.A.R. 82-4-3b."

(iv) The term "DOT" shall be deleted and replaced by "Kansas Corporation Commission or the USDOT."

(v) The word "Administrator" shall be deleted and replaced by "Director of the Transportation Division of the Kansas Corporation Commission."

(C) In paragraph (c), the term "FMCSA" shall be deleted and replaced by "Transportation Division of the Kansas Corporation Commission."

(D) In paragraph (d), the phrase "state or" shall be inserted before all occurrences of the term "DOT." The term "DOT" shall be replaced by the term "USDOT."

(15) The following revisions shall be made to 49 C.F.R. 382.405:

(A) In paragraphs (c) and (d), the words "the Secretary of Transportation, any DOT agency, or" shall be deleted.

(B) In paragraph (e), the phrase "National Transportation Safety Board" shall be deleted and replaced by "commission."

(C) In paragraph (g), the phrase "state or" shall be added before the phrase "DOT drug."

(D) In paragraph (g), the phrase "Sec. 40.323(a)(2)" shall be deleted and replaced by "49 C.F.R. 40.323(a)(2), as adopted by K.A.R. 82-4-3b."

(E) In paragraph (h), the phrase "Sec. 40.321(b) of this title" shall be deleted and replaced by "49 C.F.R. 40.321(b), as adopted by K.A.R. 82-4-3b."

(16) In 49 C.F.R. 382.407 and 382.409, the phrase "part 40, Subpart G, of this title" shall be deleted and replaced by "49 C.F.R. 40.321(b), as adopted by K.A.R. 82-4-3b."

(17) In 49 C.F.R. 382.413, the phrase "Sec. 40.25 of this title" shall be deleted and replaced by "49 C.F.R. 40.25, as adopted by K.A.R. 82-4-3b."

(18) The following revisions shall be made to 49 C.F.R. 382.501:

(A) The phrase "state or" shall be added before the phrase "DOT agency."

(B) The phrase "part 390 of this subchapter" shall be deleted and replaced by "49 C.F.R. Part 390, as adopted by K.A.R. 82-4-3f."

(19) 49 C.F.R. 382.507 shall be deleted.

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission's regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 2008 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2008 Supp. 66-1,129; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009.)

**82-4-3d. Safety fitness procedures.** (a) With the following exceptions, 49 C.F.R. Part 385, as in effect on October 1, 2009, is hereby adopted by reference:

(1) In 49 C.F.R. 385.1, paragraphs (a) and (b) shall be deleted.

(2) The following revisions shall be made to 49 C.F.R. 385.3:

(A) In paragraph (1) of the definition of "Reviews," the last sentence shall be deleted.

(B) The definition of "Safety ratings," including paragraphs (1), (2), (3), and (4), shall be deleted.

(3) The first paragraph of 49 C.F.R. 385.5 shall be deleted and replaced by the following: "In cooperation with the FMCSA, special agents and authorized representatives shall conduct reviews in order to gather the information necessary for the FMCSA to issue a safety rating for a motor carrier. Information gathered shall include information necessary to demonstrate that the motor carrier has adequate safety management controls in place which comply with the applicable safety requirements in order to reduce the risks associated with:".

(4) The first paragraph of 49 C.F.R. 385.7 shall be deleted and replaced by the following: "In cooperation with the FMCSA, special agents and authorized representatives shall conduct reviews in order to gather the information necessary for the FMCSA to determine and issue an appropriate safety rating for a motor carrier. Information gathered shall be information the FMCSA may consider in assessing a safety rating, including:".

(5) 49 C.F.R. 385.9 through 49 C.F.R. 385.19 shall be deleted.

(6) 49 C.F.R. 385.101 through 49 C.F.R. 385.119 shall be deleted.

(7) In 49 C.F.R. 385.301(c), the last sentence shall be deleted.

(8) In 49 C.F.R. 385.331, the phrase "K.S.A. 66-1,129a, and K.S.A. 66-1,142b" shall be added after each occurrence of the phrase "49 U.S.C. 521(b)(2)(A)."

(9) In 49 C.F.R. 385.333, the phrase "or the commission in cooperation with the FMCSA" shall be added after each occurrence of the phrase "The FMCSA."

(10) In 49 C.F.R. 385.335, the phrase "FMCSA" shall be deleted and replaced by "the commission."

(11) In 49 C.F.R. 385.337, the phrase "or the commission in cooperation with the FMCSA" shall be added after the phrase "The FMCSA."

(12) The following changes shall be made to 49 C.F.R. 385.402:

(A) The phrase "§171.8 of this title" shall be deleted and replaced by "49 C.F.R. 171.8 as adopted by K.A.R. 82-4-20."

(B) The phrase "§172.101 of this title" shall be deleted and replaced by "49 C.F.R. 172.101 as adopted by K.A.R. 82-4-20."

(C) The term "FMCSA" shall be deleted and replaced by "the commission."

(13) The following shall be inserted after the last sentence in 49 C.F.R. 385.405(b): "All Kansas-based interstate motor carriers and all Kansas intrastate motor carriers transporting hazardous materials are required to obtain a hazardous materials safety permit from the FMCSA and are subject to FMCSA jurisdiction for hazardous materials safety requirements as set forth in 49 C.F.R. 385.401 through 382.423, and in 49 C.F.R. Parts 171, 172, 173, 177, 178 and 180, as adopted by K.A.R. 82-4-20."

(14) 49 C.F.R. 385.407 through 49 C.F.R. 385.411 shall be deleted.

(15) 49 C.F.R. 385.415 through 49 C.F.R. 385.717, including appendix A, shall be deleted.

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission's regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by K.S.A. 2009 Supp. 66-1,112, K.S.A. 66-1,112g, K.S.A. 2009 Supp. 66-1,129; implementing K.S.A. 2009 Supp. 66-1,112, K.S.A. 66-1,112g, K.S.A. 2009 Supp. 66-1,129, and K.S.A. 2009 Supp. 66-1,142a; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Oct. 22, 2010.)

**82-4-3e.** (Authorized by and implementing K.S.A. 2003 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2003 Supp. 66-1,129, as amended by L. 2004, Ch. 152, § 7; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; revoked Oct. 2, 2009.)

**82-4-3f. General motor carrier safety regulations.** (a) With the following exceptions, 49 C.F.R. Part 390, as in effect on October 1, 2009, is hereby adopted by reference:

(1) The following revisions shall be made to 49 C.F.R. 390.3:

(A) In paragraph (a), the phrase "or intrastate" shall be added after the word "interstate."

(B) In paragraph (e)(1), the phrase "all regulations contained in this subchapter" shall be deleted and replaced by "K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20."

(C) In paragraph (e)(2), the phrase "all applicable regulations contained in this subchapter" shall be deleted and replaced by "K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20."

(D) Paragraph (g)(1) shall be deleted and replaced with the following: "(1) 49 C.F.R. Part 385, subparts A and E, as adopted by K.A.R. 82-4-3d, for carriers subject to the requirements of 49 C.F.R. 385.403, as adopted by K.A.R. 82-4-3d."

(E) Paragraph (g)(4) shall be deleted.

(2) The following revisions shall be made to 49 C.F.R. 390.5:

(A) The following definitions shall be deleted:

(i) Conviction;

(ii) driveaway-towaway operation;

(iii) exempt motor carrier;

(iv) hazardous waste;

(v) operator;

(vi) other terms;

(vii) school bus;

(viii) school bus operation;

(ix) secretary;

(x) state; and

(xi) United States.

(B) In the definition of "commercial motor vehicle," the phrase "or intrastate" shall be inserted following the term "interstate."

(C) In the definition of "exempt intracity zone," the following text shall be deleted: "of a municipality or the commercial zone of that municipality described in appendix F to subchapter B of this chapter. The term 'exempt intracity zone' does not include any municipality or commercial zone in the State of Hawaii." The deleted text shall be replaced by the following: "described in section 8 of appendix F to Title 49, Chapter III, Subchapter B, as in effect on October 1, 2007, and hereby adopted by reference."

(D) The definition of "for hire motor carrier" shall be deleted and replaced by the following: "For purposes of this regulation, 'for-hire motor carrier' shall have the same meaning as 'public motor carrier of household goods,' 'public motor carrier of passengers,' or 'public motor carrier of property,' as defined in K.S.A. 66-1,108 and amendments thereto."

(E) The definition of "gross combination weight rating (GCWR)" shall be deleted and replaced by the following: "'Gross combination weight rating (GCWR)' shall have the same meaning as defined in K.S.A. 66-1,108 and amendments thereto."

(F) The definition of "gross vehicle weight rating (GVWR)" shall be deleted and replaced by the following: "'Gross vehicle weight rating (GVWR)' shall have the same meaning as defined in K.S.A. 66-1,108 and amendments thereto."

(G) In the definition of "Hazardous material," the phrase "United States" shall be inserted immediately before the phrase "Secretary of Transportation."

(H) The following changes shall be made in the definition of "hazardous substance":

(i) Both instances of the phrase "Section 172.101" shall be deleted and replaced by "49 C.F.R. 172.101."

(ii) The first instance of the phrase "of this title" shall be deleted and replaced by "as adopted by K.A.R. 82-4-20."

(iii) The phrase "Section 171.8 of this title" shall be deleted and replaced by "49 C.F.R. 171.8, as adopted by K.A.R. 82-4-20."

(I) The definition of "highway" shall be deleted and replaced by the following: "'Highway' shall have the same meaning as 'public highway,' as defined by K.S.A. 66-1,108 and amendments thereto."

(J) The definition of "motor carrier" shall be deleted and replaced by the following: "'Motor carrier' shall have the same meaning as defined in K.S.A. 66-1,108 and amendments thereto."

(K) The definition of "motor vehicle" shall be deleted and replaced by the following: "'Motor vehicle' shall have the same meaning as defined in K.S.A. 66-1,108 and amendments thereto."

(L) The definition of "out of service order" shall be deleted.

(M) The definition of "person" shall be deleted and replaced by the following: "'Person' shall have the same meaning as defined in K.S.A. 66-1,108 and amendments thereto."

(N) The following revisions shall be made to the definition of "principal place of business":

(i) The phrase "parts 382, 387, 390, 391, 395, 396, and 397 of this subchapter" shall be deleted and replaced by "K.A.R. 82-4-3a, K.A.R. 82-4-3c, K.A.R. 82-4-3f, K.A.R. 82-4-3g, K.A.R. 82-4-3j, K.A.R. 82-4-3k, and K.A.R. 82-4-3n."

(ii) The first instance of the term "Federal" shall be deleted.

(iii) The phrase "of the Federal Motor Carrier Safety Administration" shall be deleted.

(O) The following sentence shall be inserted before the definition of "radar detector": "'Private motor carrier of passengers' shall have the same

meaning as defined in K.S.A. 66-1,108 and amendments thereto."

(P) The definition of "Special agent" shall be deleted and replaced by the following: "Special agent or authorized representative means an authorized representative of the commission, and members of the highway patrol or any other law enforcement officers in the state who have been certified in the inspection of motor carriers based on the motor carrier safety assistance program standards."

(3) 49 C.F.R. 390.7 and 49 C.F.R. 390.9 shall be deleted.

(4) In 49 C.F.R. 390.11, the phrase "part 325 of subchapter A or in this subchapter" shall be deleted and replaced by "K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20."

(5) In 49 C.F.R. 390.13, the phrase "violate the rules of this chapter" shall be deleted and replaced by "operate in Kansas in a manner which violates any order, decision, or regulation of the commission."

(6) The following revisions shall be made to 49 C.F.R. 390.15:

(A) In paragraph (a)(1), the phrase "of the Federal Motor Carrier Safety Administration, an authorized State or local enforcement agency representative or authorized third party representative" shall be deleted.

(B) In paragraph (b)(1), the phrase "Section 390.5 of this chapter" shall be deleted and replaced by "49 C.F.R. 390.5, as adopted by K.A.R. 82-4-3f."

(7) The following revisions shall be made to 49 C.F.R. 390.19:

(A) In paragraph (a)(1), the phrase "interstate commerce" shall be deleted and replaced by "Kansas."

(B) In paragraph (a)(2), the phrase "as adopted by K.A.R. 82-4-3d," shall be inserted following "49 C.F.R. part 385, subpart E." The phrase "of this chapter" shall be deleted.

(C) Paragraph (b) shall be deleted and replaced by the following: "The Form MCS-150 shall contain the following information:

"(1) The USDOT number assigned to the carrier;

"(2) the legal name of the motor carrier;

"(3) the trade or 'doing business as' name of the motor carrier, if applicable;

"(4) the street address of the motor carrier, including city, state, and zip code;

"(5) the mailing address of the motor carrier, including city, state, and zip code;

"(6) the motor carrier's principal telephone number and facsimile number;

"(7) whether the motor carrier conducts intrastate only carriage of hazardous materials or intrastate carriage of non-hazardous materials;

"(8) the motor carrier's mileage, rounded to the nearest 10,000, for the last calendar year;

"(9) the type of operations the motor carrier conducts;

"(10) the classification of cargo that the motor carrier transports;

"(11) the hazardous materials transported by the motor carrier;

"(12) the type of equipment owned or leased or both for transporting property or passengers;

"(13) the number of drivers that operate within a 100-mile radius of the carrier's principal place of business;

"(14) the number of drivers that operate outside a 100-mile radius of the carrier's principal place of business;

"(15) the number of drivers with commercial drivers' licenses;

"(16) the total number of drivers; and

"(17) for Kansas-based, intrastate carriers, a signed and dated statement with the signatory's printed name and title, certifying that the signatory is familiar with the commission's safety regulations and that the information contained in the report is accurate."

(D) In paragraph (d), the term "agency's" shall be deleted and replaced by "FMCSA's." The following sentence shall be inserted after the last sentence in paragraph (d): "Kansas-based motor carriers may file the completed Form MCS-150 online at fmcsa.dot.gov or with the Kansas Corporation Commission at 1500 S.W. Arrowhead Road, Topeka, Kansas 66604."

(E) In paragraph (g), the words "the penalties prescribed in 49 U.S.C. 521(b)(2)(B)" shall be deleted and replaced by "civil penalties as provided in K.S.A. 66-1,142b."

(F) Paragraph (h) shall be deleted.

(G) Paragraph (i) shall be deleted and replaced by the following: "Kansas-based motor carriers that register vehicles with the Commission and the Kansas Trucking Connection (www.truckingks.org) are exempt from the requirements of this section, provided the carriers file all required information with the Commission and update the MCS-150 information annually."

(8) The following revisions shall be made to 49 C.F.R. 390.21:

(A) In paragraph (a), the words "subject to subchapter B of this chapter must" shall be deleted and replaced by "required to be marked pursuant to K.A.R. 82-4-8h shall."

(B) Paragraph (e)(2)(iii)(C) shall be deleted and replaced by the following: "A statement that the lessor cooperates with all relevant special agents and authorized representatives to provide the identity of customers who operate the rental commercial motor vehicles; and."

(C) The last sentence of paragraph (e)(2)(iv) shall be deleted.

(D) In paragraph (g)(1), the phrase "§390.5" shall be deleted and replaced by "49 C.F.R. 390.5."

(9) The following changes shall be made to 49 C.F.R. 390.23:

(A) In paragraphs (a), (a)(1)(B), and (a)(2)(B), the phrase "Parts 390 through 399 of this chapter" shall be deleted and replaced by "K.A.R. 82-4-3a, and K.A.R. 82-4-3f through K.A.R. 82-4-3o."

(B) In paragraph (b), both instances of the phrase "parts 390 through 399 of this chapter" shall be deleted and replaced by "K.A.R. 82-4-3a, and K.A.R. 82-4-3f through K.A.R. 82-4-3o."

(C) In paragraph (c)(1), the phrase "Secs. 395.3(a) and 395.5(a) of this chapter" shall be deleted and replaced by "49 C.F.R. 395.3(a) and 49 C.F.R. 395.5(a), as adopted by K.A.R. 82-4-3c."

(10) 49 C.F.R. 390.27 shall be deleted.

(11) The following revisions shall be made to 49 C.F.R. 390.29:

(A) In paragraph (a), the phrase "this subchapter" shall be deleted and replaced by "K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20."

(B) The following revisions shall be made to paragraph (b):

(i) The phrase "of the Federal Motor Carrier Safety Administration" shall be deleted.

(ii) The word "Federal" appearing in the last sentence shall be deleted.

(12) In 49 C.F.R. 390.33, the phrase "this subchapter and part 325 of subchapter A" shall be deleted and replaced by "K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20."

(13) The following revisions shall be made to 49 C.F.R. 390.35:

(A) In paragraph (a), the phrase "by part 325 of subchapter A or this subchapter" shall be deleted and replaced by "K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20."

(B) In paragraphs (b) and (c), the phrase "this subchapter or part 325 of subchapter A" shall be deleted and replaced by "K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20."

(14) 49 C.F.R. 390.37 shall be deleted.

(15) In 49 C.F.R. 390.40(j), the phrase "as defined in § 386.72(b)(1) of this chapter" shall be deleted and replaced with "as defined in K.A.R. 82-4-3o."

(16) The following revisions shall be made to 49 C.F.R. 390.42:

(A) In paragraph (a), the phrase "listed in §392.7(b) of this subchapter" shall be deleted and replaced by "specified in K.A.R. 82-4-3h."

(B) In paragraph (b), the phrase "in §396.11(a)(2) of this chapter" shall be deleted and replaced by "required by K.A.R. 82-4-3j."

(17) The following revisions shall be made to 49 C.F.R. 390.44:

(A) The following revisions shall be made to paragraph (a):

(i) The phrase "listed in §392.7(b) of this subchapter" shall be deleted and replaced by "specified in K.A.R. 82-4-3h."

(ii) The phrase "pursuant to §392.7(b)" shall be deleted and replaced by "K.A.R. 82-4-3h."

(B) The following revisions shall be made to paragraph (b):

(i) The phrase "listed in §392.7(b) of this subchapter" shall be deleted and replaced by "adopted and specified in K.A.R. 82-4-3h."

(ii) The phrase "with §392.7(b)" shall be deleted and replaced by "with K.A.R. 82-4-3h."

(C) The following revisions shall be made to paragraph (c):

(i) The term "FMCSA" shall be deleted and replaced by "the commission."

(ii) The phrase "under 49 U.S.C. 31151 or the implementing regulations in this subchapter regarding interchange of intermodal equipment by contacting the appropriate FMCSA Field Office" shall be deleted and replaced by "adopted in this subchapter by filing a written complaint with the commission by: fax — 785-271-3124; email: trucking_complaint_questions @kcc.ks.gov; or by mail addressed to: 1500 SW Arrowhead Rd, Topeka, KS 66604-3124. The commission may also be contacted by phone number: 785.271.3145, select option one."

(18) 49 C.F.R. 390.46 shall be deleted.

(b) Whenever the federal regulations adopted

in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission's regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 2010 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2010 Supp. 66-1,129; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Oct. 8, 2010; amended Nov. 14, 2011.)

**82-4-3g. Qualifications of drivers.** (a) With the following exceptions, 49 C.F.R. Part 391, as in effect on October 1, 2009, is hereby adopted by reference:

(1) In 49 C.F.R. 391.2(c), the phrase "Sec. 390.5" shall be deleted and replaced by "49 C.F.R. 390.5, as adopted by K.A.R. 82-4-3f."

(2) 49 C.F.R. 391.11(b)(1) shall apply only to commercial motor vehicle operations in interstate commerce.

(3) In 49 C.F.R. 391.13, the phrase "Sec. 392.9(a) and Sec. 393.9 of this subchapter" shall be deleted and replaced by "49 C.F.R. 392.9(a), as adopted by K.A.R. 82-4-3h, and 49 C.F.R. 393.9, as adopted by K.A.R. 82-4-3i."

(4) The following revisions shall be made to 49 C.F.R. 391.15:

(A) In paragraphs (c)(1)(i) and (c)(2)(iii), the phrase "Sec. 395.2 of this subchapter" shall be deleted and replaced by "49 C.F.R. 395.2(a), as adopted by K.A.R. 82-4-3a."

(B) In paragraph (c)(2)(i)(C), the phrase "Sec. 392.5(a)(2)" shall be deleted and replaced by "49 C.F.R. 392.5(a)(2), as adopted by K.A.R. 82-4-3h."

(C) In paragraphs (c)(2)(ii) and (iii), the phrase "as adopted by K.A.R. 82-4-3h(b)" shall be added after the phrase "21 C.F.R. 1308.11 Schedule I."

(5) In 49 C.F.R. 391.21(b)(11), the phrase "as defined by Part 383 of this subchapter" shall be deleted.

(6) The following changes shall be made to 49 C.F.R. 391.23:

(A) In paragraph (a)(2), (h)(i)(1) and (h)(iii)(2), the term "U.S." shall be inserted before the phrase "Department of Transportation." The phrase "or commission" shall be inserted after the phrase "Department of Transportation."

(B) Paragraph (c)(3) shall be deleted and replaced by the following: "Prospective employers shall submit a report noting any failure of a previous employer to respond to an inquiry into a driver's safety performance history to the commission.

"(A) Reports shall be addressed to the Director, Transportation Division, Kansas Corporation Commission, 1500 SW Arrowhead Road, Topeka, KS 66604.

"(B) Reports shall be submitted to the commission within 90 days after the inquiry was submitted to the previous employer.

"(C) Reports must be signed by the prospective employer submitting the report and must include the following information:

"(i) The name, address, and telephone number of the person who files the report;

"(ii) The name and address of the previous employer who has failed to respond to the inquiry into a driver's safety performance history;

"(iii) A concise but complete statement of the facts, including the date the inquiry was sent to the previous employer, the method by which the inquiry was sent, and the dates of any follow-up communications with the previous employer."

(C) In paragraphs (c)(4), (e), and (g)(1), the term "U.S." shall be inserted before the term "DOT" and the phrase "or commission" shall be inserted after the term "DOT."

(D) In paragraph (d)(2), the phrase "Sec. 390.15(b)(1) of this chapter" shall be deleted and replaced by "49 C.F.R. 390.15(b)(1), as adopted by K.A.R. 82-4-3f."

(E) In paragraph (d)(2)(i), the phrase "Sec. 390.5 of this chapter" shall be deleted and replaced by "49 C.F.R. 390.5, as adopted by K.A.R. 82-4-3f."

(F) In paragraph (d)(2)(ii), the phrase "Sec. 390.15(b)(2)" shall be deleted and replaced by "49 C.F.R. 390.15(b)(2), as adopted by K.A.R. 82-4-3f."

(G) In paragraph (e), the phrase ", as adopted by K.A.R. 82-4-3b" shall be added at the end of the last sentence.

(H) In paragraph (e)(1), the phrase "part 382 of this subchapter" shall be deleted and replaced by "49 C.F.R. part 382, as adopted by K.A.R. 82-4-3c." The phrase ", as adopted by K.A.R. 82-4-3b" shall be inserted at the end of the last sentence.

(I) In paragraph (e)(2), the phrase "Sec. 382.605 of this subpart" shall be deleted and replaced by "49 C.F.R. 382.605, as adopted by K.A.R. 82-4-3c." The phrase "part 40, subpart 0"

shall be deleted and replaced by "40.281 through 49 C.F.R. 40.313, as adopted by K.A.R. 82-4-3b."

(J) In paragraph (f), the term "Sec. 40.321(b)" shall be deleted and replaced by "49 C.F.R. 40.321(b), as adopted by K.A.R. 82-4-3b."

(K) In paragraph (j)(6), the following changes shall be made:

(i) In the first sentence, the comma following the phrase "safety performance information" shall be deleted, and the following text shall be inserted at the end of the first sentence: "if the previous employer is an interstate motor carrier, the driver may submit a complaint."

(ii) The term "Sec. 386.12" shall be deleted and replaced with "49 C.F.R. 386.12."

(iii) The following sentence shall be inserted at the end of the paragraph: "If the motor carrier is a Kansas-based interstate motor carrier, or an intrastate motor carrier, the driver may submit such report in writing to Director, Transportation Division, Kansas Corporation Commission, 1500 SW Arrowhead Road, Topeka, KS 66604."

(7) In 49 C.F.R. 391.25(b)(1), the phrase "Federal Motor Carrier Safety Regulations in this subchapter or hazardous materials regulations (49 CFR chapter 1, subchapter C)" shall be deleted and replaced by "commission motor carrier safety regulations as adopted by K.A.R. 82-4-20."

(8) The following revisions shall be made to 49 C.F.R. 391.27:

(A) In paragraph (c), the words "be prescribed by the motor carrier. The following form may be used to comply with this section" shall be deleted and replaced by "read substantially as follows."

(B) Paragraph (e) shall be deleted.

(9) In 49 C.F.R. 391.33(a)(1), the phrase "Sec. 383.5 of this subchapter" shall be deleted and replaced by "K.S.A. 8-234b."

(10) The following revisions shall be made to 49 C.F.R. 391.41:

(A) The paragraph that appears between paragraphs (a) and (b) shall be deleted.

(B) In paragraph (b)(11), the clause "when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5 1951" shall be deleted.

(C) In paragraph (b)(12)(i), the phrase "as adopted by K.A.R. 82-4-3h" shall be added after the phrase "21 C.F.R. 1308.11 Schedule I."

(11) The following changes shall be made to 49 C.F.R. 391.43:

(A) In paragraph (a), the phrase "licensed medical examiner as defined in Sec. 390.5 of this subchapter" shall be deleted and replaced by "licensed medical practitioner, as defined by K.A.R. 82-4-1."

(B) In paragraph (b), the phrase "licensed optometrist" shall be deleted and replaced by "licensed medical practitioner, as defined by K.A.R. 82-4-1."

(C) The last sentence of paragraph (f) shall be deleted.

(D) In the portion titled "Extremities" in paragraph (f), the words "Field Service Center of the FMCSA, for the State in which the driver has legal residence" shall be deleted and replaced by "commission."

(E) The last sentence of paragraph (h) shall be deleted.

(F) The editorial note found after paragraph (h) shall be deleted.

(12) The following revisions shall be made to 49 C.F.R. 391.47:

(A) Paragraph (b)(8) shall be deleted.

(B) In paragraph (b)(9), the words "or intrastate" shall be inserted following the word "interstate."

(C) In paragraphs (c) and (d), the phrase "Director, Office of the Bus and Truck Standards and Operations (MC-PSD)" shall be deleted and replaced by the phrase "director of the commission's transportation division."

(D) The last two sentences of paragraph (e) shall be deleted and replaced by the following sentence: "Petitions shall be filed in accordance with K.A.R. 82-1-225 and K.S.A. 77-601 et seq."

(E) In paragraph (f), the first two occurrences of the phrase "Director, Office of the Bus and Truck Standards and Operations (MC-PSD)" shall be deleted and replaced by the phrase "director of the commission's transportation division." The clause "or until the Director, Office of Bus and Truck Standards and Operations (MC-PSD) orders otherwise" shall be deleted.

(13) The following revisions shall be made to 49 C.F.R. 391.49:

(A) The phrase "Division Administrator, FMCSA" in paragraph (a) and the phrase "State Director, FMCSA" in paragraphs (g), (h), (j)(1), and (k) shall be deleted and replaced by "director of the commission's transportation division."

(B) The remainder of paragraph (b)(2) after "The application must be addressed to" shall be deleted and replaced by ": Director of the Transportation Division, Kansas Corporation Commis-

sion, 1500 S.W. Arrowhead Road, Topeka, KS 66604."

(C) In paragraph (b)(3), the words "field service center, FMCSA, for the state in which the driver has legal residence" shall be deleted and replaced by "director of the commission's transportation division at the address provided in paragraph (b)(2)."

(D) Paragraph (c)(2)(i) shall be deleted.

(E) The phrase "Medical Program Specialist, FMCSA service center" in paragraph (e)(1), the words "Medical Program Specialist, FMCSA for the State in which the carrier's principal place of business is located" in paragraph (e)(1)(i), and the words "Medical Program Specialist, FMCSA service center, for the State in which the driver has legal residence" in paragraph (e)(1)(ii) shall be deleted and replaced by "director of the transportation division of the commission."

(F) In paragraph (i), the words between "submitted to the" and "The SPE certificate renewal application" shall be deleted and replaced by "director of the transportation division of the commission."

(G) The following revisions shall be made to paragraph (j)(2):

(i) The words "State Director, FMCSA, for the State where the driver applicant has legal residence" shall be deleted and replaced by "director of the transportation division of the commission."

(ii) The phrase "the following form" shall be deleted and replaced by "a form substantially similar to the following."

(iii) The phrase "subchapter B of the Federal Motor Carrier Safety Regulations" shall be deleted and replaced by the phrase "as adopted by K.A.R. 82-4-3g."

(iv) The term "FMCSRs" shall be deleted and replaced by "commission's regulations regarding motor carrier safety."

(14) The following revisions shall be made to 49 C.F.R. 391.51(b)(8):

(A) The phrase "Field Administrator, Division Administrator, or State Director" shall be deleted and replaced by "the director of the transportation division of the commission."

(B) The phrase "or under K.A.R. 82-4-6d" shall be added at the end of the paragraph.

(15) In 49 C.F.R. 391.55, the clause ", which are hereby adopted by reference" shall be inserted at the end of paragraph (b)(1).

(16) The following revisions shall be made to 49 C.F.R. 391.62:

(A) In paragraph (c), the phrase ", as adopted by K.A.R. 82-4-3f" shall be added after the phrase "49 C.F.R. 390.5."

(B) In paragraph (d), the phrase "under regulations issued by the Secretary under 49 U.S.C. chapter 51" shall be deleted and replaced by "under the regulations adopted by K.A.R. 82-4-20."

(C) In paragraph (e)(1), the phrase "Federal Motor Carrier Safety Regulations" shall be deleted and replaced by "commission's motor carrier regulations found in Article 4."

(17) 49 C.F.R. 391.64 shall be revised as follows:

(A) In paragraph (a)(2)(iii), the phrase "an authorized agent of the FMCSA" shall be deleted and replaced by "the director of the transportation division of the commission."

(B) In paragraphs (a)(2)(v) and (b)(3), the phrase "duly authorized federal, state or local enforcement official" shall be deleted and replaced by the phrase "any authorized representative of the commission, and any member of the Kansas highway patrol or any other law enforcement officer in the state who has been certified in the inspection of motor carriers based on the motor carrier safety assistance program standards."

(18) The form set out in 49 C.F.R. 391.65 shall be revised as follows:

(A) The phrase "as adopted by K.A.R. 82-4-3f" shall be added after the phrase "Sec. 390.5."

(B) The phrase "Federal Motor Carrier Safety Regulations" shall be deleted and replaced by the phrase "as adopted by K.A.R. 82-4-3g."

(19) 49 C.F.R. 391.67 shall be deleted.

(20) In 49 C.F.R. 391.68(a), "(b)(1)" shall be deleted.

(21) In 49 C.F.R. 391.69, the phrase "Sec. 390.5 of this subchapter" shall be deleted and replaced by "49 C.F.R. 390.5, as adopted by K.A.R. 82-4-3f." The term "(business)" shall be deleted.

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission's regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by K.S.A. 2010 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2010 Supp. 66-1,129; implementing K.S.A. 2010 Supp. 66-1,112, K.S.A. 66-1,112g, K.S.A. 2010 Supp. 66-1,129; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Nov. 14, 2011.)

**82-4-3h. Driving of commercial motor vehicles.** (a) With the following exceptions, 49 C.F.R. Part 392, as in effect on October 1, 2007, is hereby adopted by reference:

(1) In 49 C.F.R. 392.2, the words after the word "jurisdiction," including the last sentence of this section, shall be deleted and replaced by "of the state of Kansas."

(2) 49 C.F.R. 392.4 shall be revised as follows:

(A) Paragraph (a)(1) shall be deleted and replaced by the following: "(1) Any substance listed in schedule I of 21 C.F.R. 1308.11, which is hereby adopted by reference as in effect on April 1, 2007."

(B) In paragraph (c), the phrase "Sec. 382.107 of this subchapter" shall be deleted and replaced by "49 C.F.R. 382.107, as adopted by K.A.R. 82-4-3c."

(3) 49 C.F.R. 392.5 shall be revised as follows:

(A) In paragraph (a)(1), the phrase "Sec. 382.107 of this subchapter" shall be deleted and replaced by "49 C.F.R. 382.107, as adopted by K.A.R. 82-4-3c."

(B) In paragraph (a)(3), the phrase "and hereby adopted by reference as in effect on July 1, 2008" shall be added after the phrase "26 U.S.C. 5052(a)."

(C) In paragraph (a)(3), the phrase "section 5002(a)(8), of such Code" shall be deleted and replaced by "26 U.S.C. 5002(a)(8), hereby adopted by reference as in effect on July 1, 2008."

(D) In paragraph (d)(2), a period shall be placed after the phrase "affirmation of the order"; the remainder of the paragraph shall be deleted.

(E) Paragraph (e) shall be deleted and replaced by the following: "(e) Any driver who is subject to an out of service order may petition for reconsideration of that order in accordance with K.A.R. 82-1-235 and the provisions of the act for judicial review and civil enforcement of agency actions, found at K.S.A. 77-601 et seq."

(4) In 49 C.F.R. 392.8, the phrase "Sec. 393.95 of this subchapter" shall be deleted and replaced by "49 C.F.R. 393.95, as adopted by K.A.R. 82-4-3i."

(5) In 49 C.F.R. 392.9, the phrase "Secs. 393.100 through 393.136 of this subchapter" shall be deleted and replaced by "49 C.F.R. 393.100 through 393.136, as adopted by K.A.R. 82-4-3i."

(6) 49 C.F.R. 392.9a(b) shall be deleted.

(7) 49 C.F.R. 392.10 shall be revised as follows:

(A) In paragraph (a)(4), the phrase "Parts 107 through 180 of this title" shall be deleted and replaced by "49 C.F.R. 107.105, 107.502, and Parts 171, 172, 173, 177, 178, and 180, as adopted by K.A.R. 82-4-20."

(B) In paragraph (a)(5), the phrase "Sec. 173.120 of this title" shall be deleted and replaced by "49 C.F.R. 173.120, as adopted by K.A.R. 82-4-20."

(C) In paragraph (a)(6), the phrase "subpart B of part 107 of this title" shall be deleted and replaced by "49 C.F.R. 107.105, as adopted by K.A.R. 82-4-20."

(D) In paragraph (b)(1), the phrase "Sec. 390.5 of this chapter" shall be deleted and replaced by "49 C.F.R. 390.5, as adopted by K.A.R. 82-4-3f."

(8)The phrase "Sec 393.95 of this subchapter " in 49 C.F.R. 392.22(b) shall be deleted and replaced by "49 C.F.R. 393.95, as adopted by K.A.R. 82-4-3i."

(9) In 49 C.F.R. 393.33, the phrase "subpart B of part 393 of this title" shall be deleted and replaced by "49 C.F.R. 393.9 through 393.33, as adopted by K.A.R. 82-4-3i."

(10) The following revisions shall be made to 49 C.F.R. 392.51:

(A) In paragraph (b), the phrase "as adopted by K.A.R. 82-4-20" shall be inserted after the phrase "Parts 171, 172, 173, and 178."

(B) In paragraph (b), the phrase "hereby incorporated by reference as in effect on July 1, 2008" shall be inserted after the phrase "29 CFR 1910.106."

(11) 49 C.F.R. 392.62 shall be revised as follows:

(A) In paragraph (a), the phrase "Sec. 393.90 of this subchapter" shall be deleted and replaced by "49 C.F.R. 393.90, as adopted by K.A.R. 82-4-3i."

(B) In paragraph (b), the phrase "Sec. 393.91 of this subchapter" shall be deleted and replaced by "49 C.F.R. 393.91, as adopted by K.A.R. 82-4-3i."

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission's regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 2008 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2008 Supp. 66-1,129; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009.)

**82-4-3i. Parts and accessories necessary**

**for safe operation.** (a) With the following exceptions, 49 C.F.R. Part 393, as in effect on October 1, 2009, is hereby adopted by reference:

(1) The following revisions shall be made to 49 C.F.R. 393.5:

(A) The following definition shall be added after the definition of "curb weight": "DOT C-2, DOT C-3, and DOT C-4. These terms shall be defined by figure 29, found in 49 C.F.R. 571.108 as in effect on October 1, 2009, and figure 29 is hereby adopted by reference."

(B) In the definition of "low chassis vehicle," the phrase "of Sec. 571.224 in effect on the date of manufacture, or a subsequent edition" shall be deleted and replaced by "found in S5.1.1, S5.1.2, and S5.1.3 of 49 C.F.R. 571.224, as in effect on October 1, 2009, and hereby adopted by reference."

(C) The definition of "manufactured home" shall be deleted and replaced by the following: "Manufactured home means a structure as defined by K.S.A. 58-4202(a), as in effect April 21, 2005 and amendments thereto, and hereby adopted by reference. The term shall also include structures that meet the requirements of K.S.A. 58-4202(a) except the size requirements. These structures shall be considered manufactured homes when the manufacturer files with the transportation division a certification that it intends that these structures shall be considered manufactured homes. The manufacturer shall also certify that, if at any time it manufactures structures it does not intend to be manufactured homes, it shall identify those structures by a permanent serial number placed on the structure during the first stage of production and that the series of serial numbers for such structures shall be distinguishable on the structures and in its records from the series of serial numbers used for manufactured homes."

(D) The following definition shall be added after the definition of "manufactured home": "Optically combined. This term refers to two or more lights that share the same body and have one lens totally or partially in common."

(E) The definition for "reflective material" shall be deleted.

(F) In the definition of "special purpose vehicle," the phrase "of Sec. 571.224 (paragraphs S5.1.1 through S5.1.3), in effect on the date of manufacture or a subsequent edition" shall be deleted and replaced by "found in S5.1.1, S5.1.2, and S5.1.3 of 49 C.F.R. 571.224, as adopted by reference above."

(2) 49 C.F.R. 393.7 shall be deleted.

(3) The following revisions shall be made to 49 C.F.R. 393.13:

(A) In paragraph (a), the phrase "Sec. 390.5 of this subchapter" shall be deleted and replaced by "49 C.F.R. 390.5, as adopted by K.A.R. 82-4-3f." The last two sentences of paragraph (a) shall be deleted.

(B) Paragraph (b) shall be deleted and replaced by the following: "(b) Retroreflective sheeting and reflex reflectors. Unless otherwise preempted by federal law, motor carriers shall retrofit their trailers with a conspicuity system that meets the following requirements:

"(1) Conspicuity systems. Each trailer not exempted from the commission's safety regulations found in Article 4 of these regulations shall be equipped with either retroreflective sheeting that meets the requirements of paragraph (B), reflex reflectors that meet the requirements of paragraph (C), or a combination of retroreflective sheeting and reflex reflectors that meets the requirements of paragraph (D).

"(2) Retroreflective sheeting.

"(A) Construction. Retroreflective sheeting shall consist of a smooth, flat, transparent exterior film with retroreflective elements embedded or suspended beneath the film so as to form a nonexposed retroreflective optical system.

"(B) Performance requirements. Retroreflective sheeting shall meet the minimum photometric performance requirements specified in Figure 29 as found in 49 C.F.R. 571.108, and adopted by reference above.

"(C) Sheeting pattern. Retroreflective sheeting shall be applied in a pattern of alternating white and red color segments to the sides and rear of each trailer, and to the rear of each truck tractor, and in white to the upper rear corners of each trailer and truck tractor as specified in this paragraph, and, as appropriate, as shown in figures 30-1 through 30-4, or figure 31 found in 49 C.F.R. 571.108. Figures 30-1 through 30-4 and figure 31, as found in 49 C.F.R. 571.108 and as in effect on October 1, 2009, are hereby adopted by reference.

"(D) Sheeting length. Except for a segment that is trimmed to clear obstructions or lengthened to provide red sheeting near red lamps, each white or red segment shall have a length of 300 mm plus or minus 150 mm. Neither white nor red sheeting

shall represent more than two-thirds of the aggregate of any continuous strip marking the width of a trailer, or any continuous or broken strip marking its length.

"(E) Sheeting width. Retroreflective sheeting shall have a width of not less than 50 mm for grade DOT-C2 sheeting, 75 mm for grade DOT-C3 sheeting, or 100 mm for grade DOT-C4 sheeting.

"(F) Sheeting retroreflection. The coefficients for retroreflection of each segment of red or white sheeting shall not be less than the minimum values specified in Figure 29 as adopted above for grades DOT-C2, DOT-C3, and DOT-C4.

"(G) Location. Retroreflective sheeting shall be applied to each trailer and truck tractor as specified in paragraphs (c) and (d) below, but need not be applied to discontinuous surfaces such as outside ribs, stake post pickets on platform trailers, and external protruding beams, or to items of equipment such as door hinge and lamp bodies on trailers and body joints, stiffening beads, drip rails and rolled surfaces on truck tractors. The edge of white sheeting shall not be located closer than 75 mm to the edge of the luminous lens area of any red or amber lamp that is required by K.A.R. 82-4-3i. The edge of red sheeting shall not be located closer than 75 mm to the edge of the luminous lens area of any amber lamp that is required by K.A.R. 82-4-3i.

"(H) Certification. In order to demonstrate that the retroreflective sheeting meets the standards of paragraphs (B)(i) and (ii), the letters DOT-C2, DOT-C3, or DOT-C4, as appropriate, shall appear at least once on the exposed surface of each white or red segment of reflective sheeting, and at least once every 300 mm on the retroreflective sheeting that is white only. The characters shall not be less than 3 mm high, and shall be permanently stamped, etched, molded, or printed in indelible ink.

"(3) Reflex Reflectors. Each trailer or truck tractor to which paragraph (b)(2)(C) applies that does not conform with either paragraph (B) or paragraph (D) shall be equipped with reflex reflectors as set forth in this paragraph.

"(A) Visibility of reflector by color.

"(i) Red reflex reflector. Each red reflex reflector shall provide, at an observation angle of 0.2 degree, not less than 33 millicandelas per lux at any light entrance angle between 30 degrees left and 30 degrees right, including an entrance angle of 0 degree, and not less than 75 millicandelas per lux at any light entrance angle between 45 degrees left and 45 degrees right.

"(ii) White reflex reflector. Each white reflex reflector shall also provide at an observation angle of 0.2 degree, not less than 1,250 millicandelas per lux at any light angle of 0.2 degree, not less than 1,250 millicandelas per lux at any light entrance angle between 30 degrees left and 30 degrees right, including an entrance angle of 0 degree, and not less than 33 millicandelas per lux at any light entrance angle between 45 degrees left and 45 degrees right. A white reflex reflector complying with this paragraph when tested in a horizontal orientation may be installed in all orientations specified for rear upper locations in paragraphs (viii) element 2, and (x), element 2 above if, when tested in a vertical orientation, it provides an observation angle of 0.2 degree not less than 1,680 millicandelas per lux at a light entrance angle of 0 degree, not less than 1,120 millicandelas per lux at any light entrance angle from 10 degrees down to 10 degrees up, and not less than 560 millicandelas per lux at any light entrance angle from 20 degrees right to 20 degrees left.

"(B) Certification. In order to demonstrate that the retroreflective sheeting meets the standards of K.A.R. 82-4-3i, the letters DOT-C shall appear on the exposed surface of each reflex reflector. The letters shall not be less than 3 mm high, and shall be permanently stamped, etched, molded, or printed in indelible ink.

"(4) Combination of sheeting and reflectors. Each trailer to which paragraph (b)(1) applies may use a combination of retroreflective materials as long as they are located as specified by paragraphs (c) and (d) below."

(4) In 49 C.F.R. 393.17(c)(1), the phrase "under Sec. 392.30" shall be deleted.

(5) The following revisions shall be made to 49 C.F.R. 393.26: in paragraph (d)(4), the phrase "Sec. 177.823 of this title" shall be deleted and replaced by "49 C.F.R. 177.823, as adopted by K.A.R. 82-4-20."

(6) In 49 C.F.R. 393.45, the phrase "and hereby adopted by reference" shall be added following "49 C.F.R. 517.106" in paragraph (a).

(7) The note following 49 C.F.R. 393.51 (b) shall be deleted.

(8) 49 C.F.R. 393.67(c)(3) shall be deleted and replaced by "Threads. At least four full threads must be in engagement in each fitting."

(9) The following revisions shall be made to 49 C.F.R. 393.71:

(A) Paragraph (h)(8) and the related footnote shall be deleted.

(B) In paragraph (h)(9), the phrase "requirements of the Federal Motor Carrier Safety Administration" shall be deleted and replaced by "appropriate requirements."

(C) In paragraph (m)(8), the phrase "requirements of the Federal Motor Carrier Safety Administration" shall be deleted and replaced by "appropriate requirements."

(10) The following revisions shall be made to 49 C.F.R. 393.75:

(A) In paragraphs (g)(1) and (g)(2), the clause "that are labeled pursuant to 24 C.F.R. 3282.362(c)(2)(i)" shall be deleted and replaced by "built."

(B) In paragraph (g)(1), the phrase "Or, in the absence of such a marking, more than 18 percent over the load rating specified in any of the publications of any of the organizations listed in FMVSS No. 119 (49 CFR 571.119, S5.1(b))" shall be deleted.

(C) In paragraph (g)(2), the phrase "or, in the absence of such a marking, the load rating specified in any of the publications of any of the organizations listed in FMVSS No. 119 (49 CFR 571.119, S5.1(b))" shall be deleted.

(11) In 49 C.F.R. 393.77(15)(i), the phrase "Sec. 177.834(1) of this title" shall be deleted and replaced by "49 C.F.R. 177.834(a) as adopted by K.A.R. 82-4-20."

(12) In 49 C.F.R. 393.90, the phrase "of the Federal Motor Carrier Safety Administration's regulations" shall be deleted.

(13) In 49 C.F.R. 393.94, paragraph (c)(4) shall be deleted and replaced by the following: "Set the sound level meter to the A-weighting network, 'fast' meter response."

(14) In 49 C.F.R. 393.95, in paragraph (f)(1) the clause "that conform to the requirements of Federal Motor Vehicle Safety Standard No. 125, Sec. 571.125 of this title" shall be deleted.

(15) 49 C.F.R. 393.104(e), the related table, and the related footnotes shall be deleted.

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission's regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 2010 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2010 Supp. 66-1,129; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Nov. 14, 2011.)

**82-4-3j. Inspection, repair, and maintenance.** (a) With the following exceptions, 49 C.F.R. Part 396, as in effect on October 1, 2007, is hereby adopted by reference:

(1) In 49 C.F.R. 396.3(a)(1), the phrase "part 393 of this subchapter" shall be deleted and replaced by "49 C.F.R. Part 393, as adopted by K.A.R. 82-4-3i."

(2) The following revisions shall be made to 49 C.F.R. 396.9:

(A) In paragraph (a), the phrase "Every special agent of the FMCSA (as defined in appendix B to this subchapter)" shall be deleted and replaced by "Any authorized representative of the commission, and any member of the Kansas highway patrol or any other law enforcement officer in the state who has been certified in the inspection of motor carriers based on the motor carrier safety assistance program standards."

(B) In paragraph (b), the sentence after "Prescribed inspection report" shall be deleted and replaced by the following sentence: "Motor vehicle inspections conducted by authorized personnel as described in paragraph (a) shall be made on forms approved by the commission."

(C) In paragraph (c)(1), the term " 'Out of Service Vehicle' sticker" shall mean "a form approved by the commission, as described in K.A.R. 82-4-3l(a)(6)(C)."

(D) In paragraph (c)(2), the term "Vehicle Examination Report" shall mean the form described in K.A.R. 82-4-3l(a)(6)(B).

(E) In paragraph (d)(3)(ii), the phrase "issuing agency" shall be deleted and replaced by "transportation division of the commission."

(3) The following revisions shall be made to 49 C.F.R. 396.17:

(A) In paragraph (a), the phrase "of this subchapter" shall be deleted and replaced by "as in effect on October 1, 2007, which is hereby adopted by reference."

(B) The "Note" appearing between paragraphs (a) and (b) shall be deleted.

(C) In paragraph (h), the words "penalty provisions provided by 49 U.S.C. 521(b)" shall be deleted and replaced by "civil penalties provided by K.S.A. 66-1,142b, K.S.A. 66-1,142c, and other applicable penalties."

(4) The following revisions shall be made to 49 C.F.R. 396.19(a)(1):

(A) The phrase "as adopted by K.A.R. 82-4-3i" shall be added after "49 C.F.R. Part 393."

(B) The phrase "as adopted by K.A.R. 82-4-3i" shall be added after the phrase "and appendix G." The phrase "of this subchapter" shall be deleted.

(5) In 49 C.F.R. 396.21(b)(2) and (3), the word "Federal" shall be deleted.

(6) The following revisions shall be made to 49 C.F.R. 396.23:

(A) In paragraph (b)(1), the phrase "by the Administrator" shall be deleted.

(B) In paragraph (b)(2), the term "FMCSA" shall be deleted and replaced by "transportation division of the Kansas corporation commission."

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission's regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 2008 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2008 Supp. 66- 1,129; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009.)

**82-4-3k. Transportation of hazardous materials; driving and parking rules.** (a) With the following exceptions, 49 C.F.R. Part 397, as in effect on October 1, 2007, is hereby adopted by reference:

(1) In 49 C.F.R. 397.1(a), the phrase "of this title" shall be deleted and replaced by "as adopted by K.A.R. 82-4-20."

(2) In 49 C.F.R. 397.2, the phrase "the rules in parts 390 through 397, inclusive, of this subchapter" shall be deleted and replaced by "K.A.R. 82-4-3f through K.A.R. 82-4-3k." The phrase "of this title" shall be deleted and replaced by "as adopted by K.A.R. 82-4-20."

(3) In 49 C.F.R. 397.3, the term "Department of Transportation" shall be deleted and replaced by "commission."

(4) In 49 C.F.R. 397.5 (a), the phrase "as defined by 49 C.F.R. 172.101 and adopted by K.A.R. 82-4-20" shall be added after "(explosive) material."

(5) In 49 C.F.R. 397.7(a), the phrase "as defined by 49 C.F.R. 172.101 and adopted by K.A.R. 82-4-20" shall be added after the words "Division 1.1, 1.2, or 1.3 materials."

(6) The following revisions shall be made to 49 C.F.R. 397.13:

(A) In paragraph (a), the phrase "as defined by 49 C.F.R. 172.101 and adopted by K.A.R. 82-4-20" shall be added after the words "Division 2.1, Class 3, Divisions 4.1 and 4.2."

(B) In paragraph (b), the phrase "of this title" shall be deleted and replaced by "as adopted by K.A.R. 82-4-20."

(7) The following revisions shall be made to 49 C.F.R. 397.19:

(A) In paragraph (a), the phrase "as defined by 49 C.F.R. 172.101 and adopted by K.A.R. 82-4-20" shall be added after the words "(explosive) materials."

(B) In paragraph (c)(2), the phrase "of this title" shall be deleted and replaced by "as adopted by K.A.R. 82-4-20."

(8) The following revisions shall be made to 49 C.F.R. 397.65:

(A) The definitions of "Administrator," "FMCSA," "Motor carrier," and "Motor vehicle" shall be deleted.

(B) In the definition of "Indian tribe," the phrase "as in effect on January 7, 2003, which is hereby adopted by reference" shall be added after "25 U.S.C. 450b."

(C) In the definition of "NRHM," the phrase "as adopted by K.A.R. 82-4-20" shall be added after "49 CFR 172.504."

(D) In the definition of "Radioactive material," the phrase "as adopted by K.A.R. 82-4-20" shall be added after "49 CFR 173.403."

(9) The following changes shall be made to 49 C.F.R. 397.67:

(A) In paragraph (b), the phrase "as adopted by K.A.R. 82-4-20" shall be added after "49 CFR 177.823."

(B) In paragraph (d), the phrase "as adopted by K.A.R. 82-4-20" shall be added after "49 CFR 173.50 and 173.53 respectively."

(10) In 49 C.F.R. 397.69, paragraph (b) shall be deleted.

(11) The following revisions shall be made to 49 C.F.R. 397.71:

(A) In paragraph (b), the word "Federal" shall be deleted.

(B) Paragraph (b)(1)(ii) and the related footnote shall be deleted.

(C) Paragraph (b)(5) shall be deleted.

(12) The following revisions shall be made to 49 C.F.R. 397.73:

(A) Paragraph (a) and its related footnote shall

be deleted and replaced by the following: "Information on NRHM routing designations shall be made available to the public by the States and Indian tribes in the form of maps, lists, road signs, or a combination thereof. If road signs are used, those signs and their placements must comply with all applicable laws."

(B) Paragraph (b) shall be deleted and replaced by the following: "Each state or Indian tribe, through its routing agency, shall provide information identifying all NRHM routing designations which exist within their jurisdiction to the director of the transportation division, Kansas corporation commission, 1500 S.W. Arrowhead Road, Topeka, KS 66604. Information on any changes or new NRHM routing designations shall be furnished within 60 days after establishment to the director."

(13) The following revisions shall be made to 49 C.F.R. 397.75:

(A) Unless otherwise noted in this subsection, the word "Administrator" shall be deleted and replaced by "commission."

(B) Paragraph (b)(1) shall be deleted and replaced by the following: "Be submitted to the director of the transportation division, Kansas corporation commission, 1500 S.W. Arrowhead Road, Topeka, KS 66604."

(C) In paragraph (b)(7), the word "Federal" shall be deleted.

(D) In paragraph (c)(2), the word "Federal" shall be deleted and replaced by "Kansas."

(E) In paragraph (g), the last sentence shall be deleted.

(14) 49 C.F.R. 397.77 shall be deleted.

(15) The following revisions shall be made to 49 C.F.R. 397.101:

(A) In paragraph (a), the phrase "as adopted by K.A.R. 82-4-20" shall be added after "49 CFR 172.403" and after "49 CFR part 172."

(B) In paragraph (b), the phrase "as adopted by K.A.R. 82-4-20" shall be added after "49 CFR 173.403(1)."

(C) In paragraph (b)(2), the phrase "as adopted by K.A.R. 82-4-20" shall be added after "49 CFR 173.403(l) and (y)."

(D) Paragraph (g) shall be deleted and replaced by the following: "Unless otherwise preempted, each motor carrier who accepts for transportation on a highway route a controlled quantity of Class 7 (radioactive) material, as defined by 49 C.F.R. 173.401(l), as adopted by K.A.R. 82-4-20, shall provide the following information to the director within 90 days following acceptance of the package:".

(E) In paragraph (g)(3), the phrase "as adopted by K.A.R. 82-4-20" shall be added after "49 CFR 172.202 and 172.203."

(16) The following revisions shall be made to 49 C.F.R. 397.103:

(A) In paragraph (a), the words " 'Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials,' or an equivalent" shall be deleted and replaced by "a."

(B) Paragraph (c)(1) shall be deleted and replaced by the following: "The state gives written notice to the director."

(C) In paragraph (c)(2), the term "FMCSA" shall be deleted and replaced by "director."

(D) Paragraph (d) shall be deleted and replaced by the following: "A list of state-designated preferred routes shall be available from the director upon request."

(17) Subpart E of 49 C.F.R. Part 397 shall be deleted.

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission's regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 2008 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2008 Supp. 66-1,129; effective T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009.)

**82-4-31. Transportation of migrant workers.** (a) With the following exceptions, 49 C.F.R. Part 398, as in effect on October 1, 2007, is hereby adopted by reference:

(1) The following revisions shall be made to 49 C.F.R. 398.1:

(A) The following revisions shall be made to 49 C.F.R. 398.1(a):

(i) A period shall be placed after the word "agriculture."

(ii) The remainder of the paragraph shall be deleted and replaced by the following: "For the purposes of 49 C.F.R. Part 398 only, the definition of 'agriculture' found in 29 U.S.C. 203(f), as in effect on January 3, 2007, is hereby adopted by reference. For the purposes of 49 C.F.R. Part 398 only, the definition of 'employment in agriculture' shall be the same as the definition of 'agricultural

labor' found in 26 U.S.C. 3121(g), as in effect on January 7, 2003, which is hereby adopted by reference."

(B) In paragraph (b), the words "person, including any 'contract carrier by motor vehicle', but not including any 'common carrier by motor vehicle', who or which transports in interstate or foreign commerce" shall be deleted and replaced by "motor carrier transporting."

(C) In paragraph (d), the definition of "motor vehicle" shall be deleted.

(2) The following revisions shall be made to 49 C.F.R. 398.2:

(A) In paragraph (a), the phrase "in interstate commerce, as defined in 49 C.F.R. 390.5" shall be deleted and replaced by "within the state of Kansas."

(B) In paragraph (b)(2), the phrase "in interstate commerce, must comply with the applicable requirements of 49 CFR parts 385, 390, 391, 392, 393, 395, and 396" shall be deleted and replaced by "must comply with the applicable requirements of 49 C.F.R. Part 385, as adopted by K.A.R. 82-4-3d, 49 C.F.R. Part 390, as adopted by K.A.R. 82-4-3f, 49 C.F.R. Part 391, as adopted by K.A.R. 82-4-3g, 49 C.F.R. Part 392, as adopted by K.A.R. 82-4-3h, 49 C.F.R. Part 393, as adopted by K.A.R. 82-4-3i, 49 C.F.R. Part 395, as adopted by K.A.R. 82-4-3a, and 49 C.F.R. Part 396, as adopted by K.A.R. 82-4-3j."

(3) In 49 C.F.R. 398.3(b)(9), the phrase "of the Federal Motor Carrier Safety Regulations of the Federal Motor Carrier Safety Administration" shall be deleted.

(4) The following revisions shall be made to 49 C.F.R. 398.4:

(A) In paragraph (b), the words "jurisdiction in which it is being operated, unless such laws, ordinances and regulations are at variance with specific regulations of this Administration which impose a greater affirmative obligation or restraint" shall be deleted and replaced by "state of Kansas."

(B) In paragraph (k), the phrase "part 393 of this subchapter" shall be deleted and replaced by "49 C.F.R. Part 393, as adopted by K.A.R. 82-4-3i."

(5) The following revisions shall be made to 49 C.F.R. 398.5:

(A) In paragraph (b), the phrase "part 393 of this subchapter" shall be deleted and replaced by "49 C.F.R. Part 393, as adopted by K.A.R. 82-4-3i."

(B) In paragraph (c), the phrase "part 393 of this subchapter, except Sec. 393.44 of this subchapter" shall be deleted and replaced by "49 C.F.R. Part 393, as adopted by K.A.R. 82-4-3i."

(6) The following revisions shall be made to 49 C.F.R. 398.8:

(A) In paragraph (a), the phrase "Special Agents of the Federal Motor Carrier Safety Administration, as detailed in appendix B of chapter III of this title" shall be deleted and replaced by "any authorized representative of the commission, and any member of the Kansas highway patrol or any other law enforcement officer in the state who has been certified in the inspection of motor carriers based on the motor carrier safety assistance program standards."

(B) Paragraph (b) shall be deleted and replaced by the following: "(b) Prescribed inspection report. A compliance report form approved by the commission shall be used to record findings from motor vehicles selected for final inspection by any authorized representative of the commission, and any member of the Kansas highway patrol or any other law enforcement officer in the state who has been certified in the inspection of motor carriers based on the motor carrier safety assistance program standards. A compliance report form approved by the commission shall contain the following information:

"(1) The name, MCID number, and address of the motor carrier;

"(2) information regarding the inspection location;

"(3) the date of the inspection;

"(4) the name, birth date, license number, and employment status of the driver;

"(5) whether hazardous materials were being transported, and if so, what type;

"(6) shipping information regarding the commodity transported;

"(7) identification of the vehicle used;

"(8) brake adjustment information;

"(9) identification of the alleged violations;

"(10) information regarding the authority under which the vehicle could be put out of service for alleged violations discovered during the inspection;

"(11) information regarding the individual who prepares the inspection report; and

"(12) a statement to be signed by the motor carrier that the violations have been corrected."

(C) In paragraph (c)(1), the last sentence shall be deleted and replaced by the following: "A form approved by the commission shall be used to mark

vehicles as 'out of service.' An out of service form approved by the commission shall contain the following information:

"(i) A statement that the motor vehicle has been declared out of service;

"(ii) a statement that the out of service marking may be removed only under the conditions outlined in the out of service order or the accompanying vehicle inspection report;

"(iii) a statement that operation of the vehicle prior to making the required repairs will subject the motor carrier to civil penalties;

"(iv) the number and dates of the inspection; and

"(v) a place for the signature of the authorized individual making the inspection."

(D) The following revisions shall be made to paragraph (c)(2):

(i) The phrase "on Form MCS 63" shall be deleted and replaced by "on a form approved by the commission for driver-equipment compliance reporting."

(ii) The phrase "Sec. 393.52" shall be deleted and replaced by "49 C.F.R. 393.52, as adopted by K.A.R. 82-4-3i."

(E) In paragraph (c)(3), the phrase "on Form MCS 63" shall be deleted and replaced by "on a form approved by the commission for driver-equipment compliance reporting."

(F) Paragraph (c)(4) shall be deleted and replaced by the following: "The person or persons completing the repairs required by the out of service notice shall complete a form to certify repairs approved by the commission, which shall include the person's name and the name of the person's shop or garage as well as the date and time the repairs were completed. If the driver completes the required repairs, then the driver shall complete the same form."

(G) In paragraph (d)(1), the phrase "MCS Form 63" shall be deleted and replaced by "on a form approved by the commission for driver-equipment compliance reporting."

(H) In paragraph (d)(1), the phrase "Federal Motor Carrier Safety Regulations" shall be deleted and replaced by the phrase "commission's regulations."

(I) In paragraph (d)(2), the phrase " 'Motor Carrier Certification of Action Taken' on Form MCS 63" and the phrase "Form MCS 63" shall be deleted and replaced by "form approved by the commission for driver-equipment reporting."

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission's regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 2008 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2008 Supp. 66-1,129; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009.)

**82-4-3m. Employee safety and health standards.** (a) With the following exceptions, 49 C.F.R. Part 399, as in effect on October 1, 2007, is hereby adopted by reference:

(1) 49 C.F.R. 399.201 shall be deleted.

(2) In 49 C.F.R. 399.205, the definition of "person" shall be deleted.

(3) In 49 C.F.R. 399.209, paragraph (b) shall be deleted.

(4) Appendices A through F shall be deleted.

(5) In appendix G, all text following standards 1 through 13, which begins with the heading "Comparison of Appendix G, and the new North American Uniform Driver-Vehicle Inspection Procedure (North American Commercial Vehicle Critical Safety Inspection Items and Out-Of-Service Criteria)," shall be deleted.

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission's regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 2008 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2008 Supp. 66-1,129; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009.)

**82-4-3n. Minimum levels of financial responsibility for motor carriers.** (a) With the following exceptions, 49 C.F.R. Part 387, as in effect on October 1, 2009, is hereby adopted by reference:

(1) In 49 C.F.R. 387.3, paragraph (a), the phrase "for-hire" shall be deleted and replaced by "public."

(2) The following revisions shall be made to 49 C.F.R. 387.5:

(A) The term "for-hire" in the definition of "for-hire carriage" shall be deleted and replaced by "public."

(B) The definition of "motor carrier" shall be deleted.

(3) The following revisions shall be made to 49 C.F.R. 387.7:

(A) Paragraph 49 C.F.R. 387.7(b)(3) shall be deleted.

(B) The following revisions shall be made to paragraph (d)(3):

(i) The phrase "§387.309" shall be deleted and replaced by "49 C.F.R. 387.309."

(ii) The phrase "part 385" shall be deleted and replaced by "49 C.F.R. 385."

(C) In paragraph (g), the term "United States" shall be deleted and replaced by "state of Kansas."

(4) In 49 C.F.R. 387.9, the term "for-hire" shall be deleted and replaced by "public" in the "schedule of limits—public liability."

(5) The following revisions shall be made to 49 C.F.R. 387.11:

(A) In paragraph (b), the words "any State in which the motor carrier operates" shall be deleted and replaced by "the state of Kansas."

(B) In paragraph (c), the words "any State in which the motor carrier operates" shall be deleted and replaced by "the state of Kansas."

(6) In 49 C.F.R. 387.15, the definition of "motor vehicle" shall be deleted in illustration I.

(7) 49 C.F.R. 387.17 shall be deleted.

(8) In 49 C.F.R. 387.25, the term "for-hire" shall be deleted and replaced by "public."

(9) The following revisions shall be made to 49 C.F.R. 387.29:

(A) In the definition of "for-hire carriage," the term "for-hire" shall be deleted and replaced by "public."

(B) The definition of "motor carrier" shall be deleted.

(C) In the definition of "seating capacity," the phrase "(measured in accordance with SEA Standards J1100(a))" shall be deleted.

(10) The following revisions shall be made to 49 C.F.R. 387.31:

(A) In paragraph (f), the phrase "within the United States" shall be deleted and replaced by "in the state of Kansas."

(B) In paragraph (g), the phrase "the United States" shall be deleted and replaced by "the state of Kansas."

(11) In 49 C.F.R. 387.33, the term "for hire" shall be deleted and replaced by "public" in the schedule of limits.

(12) The following revisions shall be made to 49 C.F.R. 387.35:

(A) In paragraph (b), the words "in any State in which the motor carrier operates" shall be deleted and replaced by "in the state of Kansas."

(B) In paragraph (c), the words "in any State in which the motor carrier operates" shall be deleted and replaced by "in the state of Kansas."

(13) 49 C.F.R. 387.41 shall be deleted.

(14) The following revisions shall be made to 49 C.F.R. 387.301:

(A) The following revisions shall be made to paragraph (a)(1):

(i) The phrase "§387.303" shall be deleted and replaced by "49 C.F.R. 387.303."

(ii) The phrase "§387.303" shall be deleted and replaced by "49 C.F.R. 387.303."

(iii) In each instance, the phrase "§387.303(b)(2)" shall be deleted and replaced by "49 C.F.R. 387.303(b)(2)."

(B) In paragraph (a)(2), the phrase "§387.303(b)(2)" shall be deleted and replaced by "49 C.F.R. 387.303(b)(2)."

(C) In paragraph (b), the phrase "§387.303(b)(2)" shall be deleted and replaced by "49 C.F.R. 387.303(b)(2)."

(15) The following revisions shall be made to 49 C.F.R. 387.303:

(A) In paragraph (b)(1), the phrase "§387.301(a)(1)" shall be deleted and replaced by "49 C.F.R. 387.301(a)(1)."

(B) In paragraph (b)(2), the phrase "§387.301(a)(1)" shall be deleted and replaced by "49 C.F.R. 387.301(a)(1)."

(C) Paragraph (b)(4) shall be deleted.

(16) 49 C.F.R. 387.307 through 49 C.F.R. 387.323 shall be deleted.

(17) The following revisions shall be made to 49 C.F.R. 387.403:

(A) In paragraph (a), the phrase "§387.405" shall be deleted and replaced by "49 C.F.R. 387.405."

(B) In paragraph (b), the phrase "§387.405" shall be deleted and replaced by "49 C.F.R. 387.405."

(18) In 49 C.F.R. 387.407(a), the phrase "§387.405" shall be deleted and replaced by "49 C.F.R. 387.405."

(19) 49 C.F.R. 387.409 through 49 C.F.R. 387.419 shall be deleted.

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are

not already adopted by reference in article 4 of the commission's regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 2009 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2009 Supp. 66-1,128, and K.S.A. 2009 Supp. 66-1,129; effective Oct. 22, 2010.)

**82-4-3o. Imminent hazard.** (a) With the following exceptions, 49 C.F.R. Part 386, Subpart F, as in effect on October 1, 2009, is hereby adopted by reference:

(1) 49 C.F.R. 386.71 shall be deleted.

(2) The following revisions shall be made to 49 C.F.R 386.72:

(A) In paragraph (a), the first sentence shall be deleted and replaced by the following sentence: "Whenever it is determined that an imminent hazard exists as a result of the transportation by motor vehicle of a particular hazardous material, the director of the commission's transportation division may request an emergency suspension order from the commission for the purposes of suspending or restricting the transportation by motor vehicle of the hazardous material or for such other order as is necessary to eliminate or mitigate the imminent hazard."

(B) In paragraph (b)(1), the phrase "the Director of the Office of Enforcement and Compliance or a Division Administrator, or his or her delegate" shall be deleted and replaced by "the commission."

(C) In paragraph (b)(1)(i), the phrase "as provided by 49 U.S.C. 521(b)(5)" shall be deleted and replaced by "in the state of Kansas."

(D) In paragraph (b)(1)(ii), the phrase "49 U.S.C. 521(b)(5) and" shall be deleted.

(E) In paragraph (b)(4), the words "in accordance with 5 U.S.C. 544, except that such review shall occur" shall be deleted.

(F) In paragraph (b)(4), the words "as provided by section 213(b) of the Motor Carrier Safety Act of 1984 (49 U.S.C. 521 (b)(5))" shall be deleted.

(3) 49 C.F.R. 386.72(b)(6) shall be deleted.

(b) Whenever the federal regulations adopted in this regulation refer to portions of the federal regulations or other operating standards that are not already adopted by reference in article 4 of the commission's regulations, the references shall not be applicable to this regulation unless otherwise specifically adopted. (Authorized by and implementing K.S.A. 2009 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2009 Supp. 66-1,129; effective Oct. 22, 2010.)

**82-4-6a. Minimum requirements of drivers.** Each motor carrier and driver shall comply with the following:

(a) The motor carrier regulations established by the federal department of transportation and the federal motor carrier safety administration (FMCSA), as adopted by the commission in this article;

(b) the state traffic laws and regulations of the Kansas department of revenue pertaining to driver's licenses as established in the Kansas driver's license act, K.S.A. 8-222 et seq. and amendments thereto;

(c) the uniform act regulating traffic and the size, weight, and load of vehicles as established in K.S.A. 8-1901 et seq. and amendments thereto; and

(d) the regulations issued by the commission pertaining to the driving of commercial motor vehicles as adopted in K.A.R. 82-4-3h. (Authorized by and implementing K.S.A. 2009 Supp. 66-1,108a, 66-1,108b, and 66-1,129; effective May 1, 1981; amended Sept. 16, 1991; amended Oct. 22, 2010.)

**82-4-6d. Waiver of physical requirements.** (a) Any person failing to meet the requirements of K.A.R. 82-4-3g may be permitted to drive a vehicle, other than a vehicle transporting passengers, if the director finds that the granting of a waiver is consistent with highway safety and the public interest.

(b) The application for a waiver shall meet these requirements:

(1) The application shall be submitted jointly by the person seeking the waiver and by the motor carrier wishing to employ the person as a driver.

(2) The application shall be accompanied by the following:

(A) A copy of the driver applicant's motor vehicle driving record. Any changes to this record occurring after submission of the application shall be immediately forwarded to the commission;

(B) reports of medical examinations, administered by a licensed medical practitioner, that are satisfactory to the director; and

(C) letters of recommendation from at least two licensed medical practitioners, written on their personalized or institutional letterhead and meeting the following requirements:

(i) The reports and letters of recommendation shall indicate the opinions of the licensed medical practitioners regarding the ability of the driver to safely operate a commercial motor vehicle of the type to be driven;

(ii) letters of recommendation regarding vision impairments shall be provided by a licensed ophthalmologist or optometrist who treated the driver applicant;

(iii) letters of recommendation regarding limb impairment or amputation shall include a medical summary conducted by a board of qualified, or board-certified, physiatrists or orthopedic surgeons, preferably associated with a rehabilitation center; and

(iv) letters of recommendation shall include a description of any prosthetic or orthopedic devices worn by the driver applicant.

(3) The application shall contain a description that is satisfactory to the director of the type, size, and special equipment of the vehicle or vehicles to be driven, the general area and type of roads to be traversed, the distances and time period contemplated, the nature of the commodities to be transported and the method of loading and securing them, and the experience of the applicant in driving vehicles of the type to be driven.

(A) If the applicant motor carrier is a corporation, the application shall be signed by a corporation officer and the driver applicant.

(B) If the applicant motor carrier is a limited liability company, the application shall be signed by a company officer and the driver applicant.

(C) If the applicant motor carrier is a limited liability partnership, the application shall be signed by at least one of the members of the partnership and the driver applicant.

(D) If the applicant motor carrier is a partnership, the application shall be signed by at least one of the members of the partnership and the driver applicant.

(E) If the applicant motor carrier is a sole proprietorship, the application shall be signed by the proprietor and the driver applicant.

(4) The application shall specify that both the person and the carrier will file periodic reports as required with the director. These reports shall contain complete and truthful information regarding the extent of the person's driving activity, any accidents in which the person was involved, and all suspensions or convictions in which the person is or has been involved.

(5) By completing the application, both the driver applicant and the motor carrier applicant shall be deemed to agree that upon grant of the waiver, they will fulfill all conditions of the waiver.

(c) Each driver applicant shall complete a skill performance evaluation administered by a commission driver waiver program manager or a commission special investigator. The driver and motor carrier applicants shall secure the vehicle and provide the necessary insurance for the skill performance evaluation. The skill performance evaluation may be waived if the driver applicant has otherwise met the regulatory requirements of 49 C.F.R. 391.49 as adopted in K.A.R. 82-4-3g.

(d) If the application is approved, a driver medical waiver card signed by the director and accompanied by a letter acknowledging approval shall be issued by the commission. While on duty, the driver medical waiver card shall be in the driver's possession. The motor carrier shall retain the accompanying letter in its files at its principal place of business during the period the driver is in the motor carrier's employment. The motor carrier shall retain this letter for 12 months after the termination of the driver's employment.

(e) If the application is denied, an order setting forth an explanation for the denial and specifying the procedure for appeal of the decision shall be issued by the commission.

(f) The waiver shall not exceed two years and may be renewable upon submission and approval of a new application.

(g) All intrastate vision waiver recipients shall be subject to the following conditions:

(1) Each driver shall be physically examined every year by the following individuals:

(A) A licensed ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard specified in 49 C.F.R. 391.41(b)(10) as adopted in K.A.R. 82-4-3g; and

(B) a licensed medical practitioner who attests that the individual is otherwise physically qualified under the standards specified in 49 C.F.R. 391.41 as adopted in K.A.R. 82-4-3g.

(2) Each driver shall provide a copy of the ophthalmologist's or optometrist's report to the medical practitioner at the time of the annual medical examination.

(3) Each driver shall provide the motor carrier with a copy of the annual medical reports for retention in the motor carrier's driver qualification files.

(4) Each driver shall provide a copy of the annual medical reports to the commission.

(h) The waiver may be revoked by the director after the applicant has been given notice of the proposed revocation and has been given a reasonable opportunity to show cause, if any, why the revocation should not be made.

(i) Each motor carrier and driver shall notify the director within 72 hours upon any conviction of a moving violation or any revocation or suspension of driving privileges.

(j) Written notice shall be given to the director when any of the following occurs:

(1) A driver ceases employment with the "original employer" with whom the waiver was first granted.

(2) A change occurs in employment duties or functions.

(3) A change occurs in the driver's medical condition.

(k) Written notice shall be given by both the motor carrier and the driver within 10 days of any change in employment, duties, or functions, except in cases of termination of employment. Notice of termination of employment shall be given by both the motor carrier and the driver within 72 hours of termination.

(l) A waiver shall become void upon termination of employment from the motor carrier joint-applicant.

(m) Each application for renewal of waiver shall be submitted at least 60 days before the expiration date of the existing waiver. (Authorized by and implementing K.S.A. 2010 Supp. 66-1,129; effective May 1, 1981; amended Sept. 16, 1991; amended May 10, 1993; amended Oct. 3, 1994; amended Jan. 30, 1995; amended Jan. 4, 1999; amended July 14, 2000; amended Nov. 14, 2011.)

**82-4-8a. Accessories and equipment.** Each motor vehicle that meets the definition of commercial motor vehicle shall be equipped with a fire extinguisher.

(a)(1) Each motor vehicle shall be equipped with a fire extinguisher that is properly filled and is readily accessible.

(2) The fire extinguisher shall be securely mounted on the vehicle.

(3) The fire extinguisher shall be designed, constructed, and maintained to permit visual determination of whether it is fully charged.

(4) The extinguisher shall have an extinguishing agent that does not need protection from freezing. Each extinguishing agent shall meet the requirements of the toxicity provisions of the environmental protection agency's significant new alternatives policy (SNAP) regulations under 40 C.F.R. Part 82, subpart G, as adopted by K.A.R. 82-4-3i.

(5) The fire extinguisher shall be labeled or marked with its underwriters laboratories rating.

(6) The fire extinguisher shall be kept in good operating condition, shall be located in an accessible place on each motor vehicle or tank vehicle, and shall be housed in a weathertight enclosure.

(b)(1) Each motor vehicle that is not used to transport hazardous materials shall be equipped with either a fire extinguisher having a rating of at least five B:C or two fire extinguishers, each of which has a rating of at least four B:C.

(2) Each motor vehicle that is used to transport hazardous materials shall be equipped with a fire extinguisher having a rating of at least 10 B:C.

(3) Each cargo tank vehicle requiring flammable liquid placards shall be provided with at least one approved handheld fire extinguisher, whether a dry chemical or carbon dioxide type, having a rating of at least 20 B:C. Two approved handheld fire extinguishers, either a dry chemical or carbon dioxide type, having a rating of at least 10 B:C for each extinguisher, may be used in lieu of one 20 B:C rated extinguisher.

(c) The requirements of this regulation shall not apply to a driveaway or towaway operation. (Authorized by and implementing K.S.A. 2010 Supp. 66-1,129; effective May 1, 1981; amended May 1, 1984; amended April 30, 1990; amended May 10, 1993; amended July 14, 2000; amended Nov. 14, 2011.)

**82-4-8h. Marking of commercial motor vehicles.** On and after January 1, 2001, each Kansas-based motor carrier shall obtain a USDOT number that meets the requirements for the motor carrier identification report and markings of commercial motor vehicles established under 49 C.F.R. 390.21, as adopted by K.A.R. 82-4-3f. (Authorized by and implementing K.S.A. 2009 Supp. 66-1,112 and 66-1,129; effective July 14, 2000; amended Oct. 22, 2010.)

**82-4-20. Transportation of hazardous materials by motor vehicles.** (a) The federal regulations adopted by reference in this regulation shall govern the transportation of hazardous materials in Kansas in commerce to the extent that the regulations pertain to the transportation of hazardous materials by commercial motor vehicle.

(b) The following federal regulations, as in ef-

fect on October 1, 2009, are hereby adopted by reference:

(1) 49 C.F.R. 107.105, 107.107, 107.502, and 107.503;

(2) 49 C.F.R. Part 171, except 171.1(a), 171.1(b), and 171.6;

(3) 49 C.F.R. Part 172, except 172.1, 172.701, and 172.822;

(4) 49 C.F.R. Part 173, except 173.10, 173.27, and 173.31;

(5) 49 C.F.R. Part 177;

(6) 49 C.F.R. Part 178; and

(7) 49 C.F.R. Part 180.

(c) When used in any provision adopted from 49 C.F.R. Parts 171, 173, 177, 178, and 180, the following substitutions shall be made unless otherwise specified:

(1) The terms "administrator," "associate administrator," and "regional administrator" shall be replaced with "director as defined in K.A.R. 82-4-1."

(2) The term "commercial motor vehicle" shall be replaced with "commercial motor vehicle as defined in K.A.R. 82-4-1."

(3) The term "competent authority" shall mean "the Kansas corporation commission or any other Kansas agency or federal agency that is responsible, under its law for the control or regulation of some aspect of hazardous materials transportation."

(5) The terms "DOT" and "department" shall be replaced with "commission as defined in K.A.R. 82-4-1."

(6) The term "the United States" shall be replaced with "the state of Kansas."

(d) Carriers transporting hazardous materials in intrastate commerce shall be subject to the packaging provisions as provided in K.S.A. 66-1,129b, and amendments thereto.

(e) Whenever the adopted federal hazardous materials regulations refer to portions of the federal hazardous materials regulations that are not included under subsection (a), those references shall not be applicable to this regulation. (Authorized by K.S.A. 2010 Supp. 66-1,112, K.S.A. 66-1,112g, K.S.A. 2010 Supp. 66-1,129, and K.S.A. 66-1,129b; implementing K.S.A. 2010 Supp. 66-1,112, K.S.A. 2010 Supp. 66-1,129, and K.S.A. 66-1,129b; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1984; amended May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended April 30, 1990; amended Sept. 16, 1991; amended July 6, 1992; amended May 10, 1993; amended Oct. 3, 1994; amended Jan. 30, 1995; amended Jan. 4, 1999; amended July 14, 2000; amended Jan. 31, 2003; amended Oct. 2, 2009; amended Nov. 14, 2011.)

**82-4-21. Requiring insurance.** The following types of carriers shall not operate a motor vehicle, trailer, or semitrailer for the transportation of persons or property within the provisions of the motor carrier law of this state until an insurance policy is filed in compliance with K.S.A. 66-1,128 and amendments thereto, and in accordance with the commission's regulations:

(a) Public motor carriers of property, household goods, or passengers; and

(b) private motor carriers of property or household goods. (Authorized by K.S.A. 2009 Supp. 66-1,112, K.S.A. 66-1,112g; implementing K.S.A. 2009 Supp. 66-1,128; effective Jan. 1, 1971; amended May 1, 1981; amended, T-85-48, Dec. 19, 1984; amended May 1, 1985; amended Jan. 4, 1999; amended Jan. 31, 2003; amended Oct. 22, 2010.)

**82-4-22. Intrastate insurance requirements.** (a) (1) Before the commission issues a certificate, permit, or license to an applicant, the following types of applicant carriers shall obtain and keep in force a public liability and property damage insurance policy pursuant to K.S.A. 66-1,128, and amendments thereto:

(A) Public motor carriers of property, household goods, or passengers; and

(B) private motor carriers of property or household goods.

(2) Each applicant shall submit proof of the required policy by filing the uniform standard insurance form as required by K.A.R. 82-4-24a. This policy shall be issued by an insurance company or association meeting the requirements of K.S.A. 66-1,128, and amendments thereto.

(3) The insurance policy shall bind the obligors to pay compensation for the following:

(A) Injuries or death to persons, except injury to the insured's employees while engaged in the course of their employment; and

(B) loss of, or damage to, property of others, not including property usually designated as cargo, resulting from the negligent operation of the carrier.

(4) Each carrier shall file proof of insurance in amounts not less than those required in K.S.A. 66-1,128, and amendments thereto. In special cases and for good cause shown, a carrier may be

required by order of the commission to file insurance in additional amounts.

(b) Each public motor carrier of property and household goods that conducts intrastate business shall keep in force a cargo insurance policy in a minimum amount of $3,000. The motor carrier shall submit proof of the required policy by filing the uniform standard insurance form established in 49 C.F.R. Part 387 and adopted in K.A.R. 82-4-3n. This policy shall be issued by an insurance company or association meeting the requirements of K.S.A. 66-1,128, and amendments thereto.

(c) If a motor carrier is unable to provide the uniform standard insurance form required in subsection (a) or (b), the original or a certified copy of the policy with all endorsements attached may be temporarily accepted by the commission for 30 days. The motor carrier shall then file the form required in subsection (a) or (b) within the 30-day period.

(d) Before the expiration date or cancellation date of an insurance policy filed in compliance with the law and the regulations of the commission, either the motor carrier shall file with the commission a new policy for the vehicle, or the vehicle shall immediately be withdrawn from service and notification of the action shall be given to the commission.

(e) Operation by a motor carrier without compliance with this regulation shall result in emergency proceedings pursuant to K.S.A. 77-536, and amendments thereto, to suspend the certificate, permit, or license issued to the carrier. Each emergency order to cancel the certificate, permit, or license issued to the carrier shall be followed by a notice of the agency action and an opportunity for a hearing on the matter, pursuant to K.S.A. 77-536 and amendments thereto. (Authorized by K.S.A. 2009 Supp. 66-1,112, K.S.A. 66-1,112g; implementing K.S.A. 2009 Supp. 66-1,128; effective Jan. 1, 1971; modified, L. 1981, ch. 424, May 1, 1981; amended May 1, 1983; amended, T-85-48, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended Oct. 3, 1994; amended Jan. 4, 1999; amended, T-82-7-26-02, July 26, 2002; amended Oct. 18, 2002; amended Oct. 22, 2010.)

**82-4-23. General intrastate requirements.** (a) Each insurance policy shall be written in the full and correct name of the individual, partnership, limited liability partnership, limited liability company, or corporation to whom the certificate, permit, or license has been issued, and in case of a partnership, all partners shall be named.

(b) Each policy filed with the commission shall be deemed the property of the commission and shall not be returnable.

(c) Cancellation notices and expiration notices shall be filed in duplicate with the commission on the uniform notice of cancellation of motor carrier insurance policies, form K, or in compliance with K.A.R. 82-4-24a. The original copy shall be retained by the commission, and the duplicate copy shall be stamped with the date it is received and returned to the insurance company for its files.

(d) A policy that has been accepted by the commission under this article may be replaced by filing a new policy. If the commission determines that the replacement policy is acceptable, then the earlier-filed policy shall no longer be considered the effective policy.

(e) All public liability and property damage insurance policies filed with the commission and motor carriers registered pursuant to K.A.R. 82-4-3n shall fulfill the insurance requirements of K.S.A. 66-1,128, and amendments thereto, and the regulations adopted by the commission.

(f) Each policy of insurance filed with the commission for approval shall be in amounts not less than the minimum of liability required under K.S.A. 66-1,128 and amendments thereto. (Authorized by K.S.A. 2009 Supp. 66-1,112, K.S.A. 66-1,112g; implementing K.S.A. 2009 Supp. 66-1,128; effective Jan. 1, 1971; amended May 1, 1981; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000; amended Jan. 31, 2003; amended Oct. 22, 2010.)

**82-4-24a. Standard insurance forms.** (a) Each motor carrier shall use the uniform standard insurance forms established under 49 C.F.R. Part 387, as adopted by K.A.R. 82-4-3n.

(b) The uniform motor carrier bodily injury and property damage liability certificate of insurance shall be form E for intrastate regulated and interstate exempt motor carriers.

(c) The uniform motor carrier cargo certificate of insurance shall be form H for intrastate common carriers.

(d) Forms BMC 91 and BMC 91X shall be required for interstate regulated motor carriers in accordance with K.A.R. 82-4-3n.

(e) The uniform notice of cancellation of motor carrier insurance policies shall be form K. (Au-

thorized by K.S.A. 2009 Supp. 66-1,112, K.S.A. 66-1,112g; implementing K.S.A. 2009 Supp. 66-1,128; effective May 1, 1981; amended May 1, 1984; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000; amended Oct. 22, 2010.)

**82-4-26. General requirements for certificates, permits, and licenses.** (a) Except as otherwise specifically requested by the commission or its staff, each application for a certificate, permit, or license by a partnership shall be accompanied by a copy of the articles of partnership, if in writing. If the articles of partnership are not in writing, a statement of the partnership agreement shall accompany the application. Each limited liability partnership shall provide a copy of its partnership agreement. Each corporation applying for a certificate, permit, or license shall provide a copy of the articles of incorporation. Each limited liability company shall provide a copy of its articles of organization.

(b) In order to demonstrate that each applicant is fit, willing, and able to serve, the applicant shall attend an educational seminar on motor carrier operations conducted by the commission, in compliance with both of the following requirements:

(1) The person attending the seminar shall be the employee of the applicant responsible for the applicant's safety functions.

(2) The person responsible for the applicant's safety functions shall submit written verification on a form provided by the commission to verify that person's attendance at the seminar. (Authorized by K.S.A. 2009 Supp. 66-1,112, K.S.A. 66-1,112g; implementing K.S.A. 2009 Supp. 66-1,116, 66-1,117; effective Jan. 1, 1971; amended May 1, 1981; amended Jan. 4, 1999; amended Jan. 31, 2003; amended Oct. 22, 2010.)

**82-4-26a. Certain private motor carriers exempt from obtaining commission authority.** (a) A private motor carrier engaged in the occasional transportation of personal property that is not for compensation and is not in the furtherance of a commercial enterprise shall not be required to apply for a certificate, permit, or license.

(b) An interstate private motor carrier shall not be required to perform any of the following to enter the state of Kansas if that private motor carrier is exempt from safety regulations pursuant to 49 C.F.R. 390.23 and 49 C.F.R. 390.25 as adopted by K.A.R. 82-4-3f:

(1) Obtain commission authority under K.A.R. 82-4-29;

(2) carry a registration receipt pursuant to K.A.R. 82-4-30a(c); or

(3) obtain a permit and pay the special clearance fee required by K.A.R. 82-4-42(b). (Authorized by K.S.A. 66-1,112g; implementing K.S.A. 2009 Supp. 66-1,116 and K.S.A. 2009 Supp. 66-1,117; effective, T-82-10-25-01, Oct. 25, 2001; effective Dec. 28, 2001; amended Jan. 31, 2003; amended Oct. 22, 2010.)

**82-4-27. Applications for certificates of convenience and necessity and certificates of public service.** (a) Each application for a certificate of convenience and necessity or a certificate of public service shall be typewritten or printed on forms furnished by the commission. An original and two copies shall be filed and shall contain the following information:

(1) The address of the applicant's principal office or place of business and the applicant's residential address;

(2) a list of each motor vehicle, by make, year, and vehicle identification number (VIN), to be used by the applicant. If buses are to be used, the seating capacity of each bus shall be included;

(3) the commodity or commodities listed on form MCS-150 that the applicant intends to transport;

(4) a current balance sheet and income statement reflecting the most recent 12 months of data available or pro forma statement of the applicant; and

(5) evidence of compliance with the requirements of K.A.R. 82-4-26(b).

(b) If the commission deems a hearing necessary in order to evaluate an application for a certificate of public service, the applicant shall file testimony that details how the applicant is fit, knowledgeable of, and in compliance with all applicable safety regulations. (Authorized by K.S.A. 2009 Supp. 66-1,112 and 66-1,117; implementing K.S.A. 2009 Supp. 66-1,117 and 66-1,139; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1984; amended May 1, 1987; amended Sept. 16, 1991; amended Oct. 3, 1994; amended Jan. 4, 1999; amended Jan. 31, 2003; amended Oct. 22, 2010.)

**82-4-27a. Applications for transfer of certificates of convenience and necessity and**

**certificates of public service.** (a) A certificate of convenience and necessity or a certificate of public service issued to common motor carriers under the provisions of K.S.A. 66-1,114 and K.S.A. 66-1,114b, and amendments thereto, shall not be assigned or transferred without the consent of the commission. The terms and provisions of any certificate may reasonably be altered, restricted, or modified by the commission, or restrictions may be imposed by the commission on any transfers when the public interest may be best served.

(b) An application for the commission's approval of the transfer of the common carrier certificate shall be completed by both transferor and transferee and filed on forms prescribed by the commission. Each applicant shall file an original and two copies of the application with the commission. The application shall contain a certified or sworn contract entered into by the parties that shall meet the following criteria:

(1) Is filed as an exhibit with the application;

(2) sets out in full the agreement between the parties; and

(3) details all transferred items including equipment, property, goodwill, assumption of debt, covenants not to compete, and any other items relevant to the financial stability of the parties.

(c) The transferor or present owner of the certificate shall file a sworn statement containing the following information:

(1) The name and address of the present owner of the certificate;

(2) the date the certificate was obtained;

(3) the reason for the transfer;

(4) an indication of whether the transferor is currently under citation or suspension by the commission;

(5) an indication of whether all ad valorem taxes have been paid to the state of Kansas, or a statement that clearly indicates which party shall be responsible for filing any delinquent rendition statement and who shall be responsible for paying any outstanding ad valorem tax obligation; and

(6) a statement that the vehicle maintenance records, driver qualification files, driver logs, and bills of lading of the transferor for the three years before the date of the transfer will be in the transferee's possession upon conclusion of the transfer.

(d) The transferee of the certificate shall file a sworn statement containing the following information:

(1) The name and address of the transferee according to one of the following:

(A) If the transferee is a corporation, the application shall designate the state in which the articles of incorporation were issued and shall provide the name and address of all officers;

(B) if the transferee is a limited liability company, the applicant shall designate the state in which the articles of organization were issued, provide the name and address of each officer, and provide a copy of the statement of foreign qualification;

(C) if the transferee is a limited liability partnership, the applicant shall designate the state in which the statement of qualification was issued, provide the name and address of each partner, and provide a copy of the limited liability partnership's statement of qualification; or

(D) if the transferee is an individual, partnership, or association, the application shall indicate the names and addresses of all parties owning an interest in the transferee and the percentage each owns;

(2) a financial statement showing in detail the financial ability and responsibility of the transferee;

(3) a statement specifying the amount the transferee borrowed or otherwise obtained to make the purchase of the items detailed in subsection (b) and specifying all details regarding the transactions;

(4) a sworn statement from the transferee that the vehicle maintenance records, driver qualification files, driver logs, and bills of lading of the transferor will be in the transferee's possession for three years from the date of the transfer. The transferee shall accept all responsibility for the books and records and shall have them available at any time for inspection by the commission or the commission's employees; and

(5) if the transferee is not currently a motor carrier holding authority from the commission, evidence of compliance with K.A.R. 82-4-26(b). (Authorized by K.S.A. 2009 Supp. 66-1,112 and 66-1,117; implementing K.S.A. 2009 Supp. 66-1,117 and K.S.A. 66-1,118; modified, L. 1981, ch. 424, May 1, 1981; amended May 1, 1983; amended May 1, 1987; amended Sept. 16, 1991; amended May 10, 1993; amended Oct. 3, 1994; amended Jan. 4, 1999; amended Jan. 31, 2003; amended Oct. 22, 2010.)

**82-4-27c. Applications for transfer for**

**purposes of change in the form of a business organization.** (a) An application to transfer a certificate of convenience and necessity or a certificate of public service issued to a common motor carrier shall be considered by the commission without a hearing, pursuant to K.S.A. 66-1,115a and amendments thereto, if the transfer is required because of any change in the form of business organization, including the following:

(1) Incorporation of the limited liability company, sole proprietorship, limited liability partnership, or partnership holding the certificate or permit to be transferred;

(2) the dissolution of the corporation holding the certificate or permit and the formation of a limited liability company, partnership, limited liability partnership, or sole proprietorship by the entities comprising the former corporation;

(3) the dissolution of the limited liability company holding the certificate or permit and the formation of a partnership, limited liability partnership, or sole proprietorship by the entities comprising the former limited liability company;

(4) the dissolution of the limited liability partnership holding the certificate or permit and the formation of a limited liability company, partnership, or sole proprietorship by the entities comprising the former limited liability partnership; or

(5) the dissolution of the partnership holding the certificate or permit and formation of a sole proprietorship by a former partner.

(b) The application for transfer shall contain all applicable information required by K.A.R. 82-4-27a and a signed affidavit from the transferor stating both of the following:

(1) That the transfer is for any of the following:

(A) The incorporation of the present limited liability company, sole proprietorship, partnership, or limited liability partnership;

(B) the dissolution of a corporation to form a limited liability company, partnership, limited liability partnership, or sole proprietorship;

(C) the dissolution of a limited liability company to form a partnership, limited liability partnership, or sole proprietorship;

(D) the dissolution of a limited liability partnership to form a limited liability company, partnership, or sole proprietorship;

(E) the dissolution of partnership to form a sole proprietorship; or

(F) any other change in the form of business; and

(2) that the management, operations, and equipment of the transferee will be the same as that of the transferor. (Authorized by K.S.A. 2009 Supp. 66-1,112, 66-1,117; implementing K.S.A. 2009 Supp. 66-1,112, 66-1,114, 66-1,115, 66-1,115a, K.S.A. 66-1,117; effective May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended Sept. 16, 1991; amended July 6, 1992; amended Jan. 4, 1999; amended July 14, 2000; amended Oct. 22, 2010.)

**82-4-27e. Application to merge or consolidate intrastate common authority; application to acquire control or management of an intrastate common motor carrier operation.** (a) All individuals, partnerships, limited liability companies, limited liability partnerships, and corporations who intend to merge, consolidate, or acquire control or management of a motor carrier operation that possesses common interstate authority as well as intrastate authority, or possesses intrastate authority, shall first apply to the commission for authority to do so. The merger, consolidation, or acquisition may be accomplished by means including stock acquisition by a new motor carrier, new owner, or new majority stockholder; transfer of a partnership interest; or a conditional sales contract.

(b) Each entity who has received approval or exemption from the relevant federal agency to make any transaction described in subsection (a) shall send a copy of that approval or exemption to the commission and provide the information specified in subsection (d) on the required application.

(c) Each entity that desires to make any transaction described in subsection (a) and has not received approval or exemption of the relevant federal authority shall provide the information specified in subsections (d) and (e) and comply with the requirements of subsection (f).

(d) Each applicant shall file an original and two copies of the application with the commission. The application shall contain the following information:

(1) The background of the transaction, including the names of the entities involved, their addresses, the reasons for the transaction, and items to be retained, including equipment, property, and any other item relevant to the transaction; and

(2) a signed affidavit stating whether or not all ad valorem taxes have been paid to the state of

Kansas and who shall be responsible for paying any outstanding ad valorem tax obligation.

(e) Those applicants who have not received approval or exemption from the relevant federal agency shall also provide the following information:

(1) With respect to a partnership transaction, the percentage of the partnership being transferred and the percentage of each partner as a result of the transaction;

(2) with respect to a stock transaction, the total number of shares outstanding, the total number of shares being transferred and to whom, and the total number of shares any transferee held before the stock transaction; and

(3) unless preempted by federal law, evidence of compliance by the acquiring party or transferee with K.A.R. 82-4-26(b).

(f) Any application filed under this regulation may be granted without hearing if no protests are lodged and the commission does not require further information to make a determination on the application. (Authorized by K.S.A. 2009 Supp. 66-1,112; implementing K.S.A. 2009 Supp. 66-1,114, 66-1,114b, and K.S.A. 66-1,118; effective May 1, 1986; amended July 6, 1992; amended Jan. 4, 1999; amended July 14, 2000; amended Jan. 31, 2003; amended Oct. 22, 2010.)

**82-4-28.** (Authorized by K.S.A. 2001 Supp. 66-1,112a, 66-1,117; implementing K.S.A. 2001 Supp. 66-1,112b, 66-1,115, 66-1,117, and 66-1,139; effective Jan. 1, 1971; amended May 1, 1981; amended Oct. 3, 1994; amended Jan. 4, 1999; amended Jan. 31, 2003; revoked Oct. 22, 2010.)

**82-4-28a.** (Authorized by K.S.A. 2001 Supp. 66-1,112a, 66-1,117; implementing K.S.A. 66-1,112c, K.S.A. 2001 Supp. 66-1,117; effective May 1, 1981; amended Jan. 4, 1999; amended Jan. 31, 2003; revoked Oct. 22, 2010.)

**82-4-28b.** (Authorized by and implementing K.S.A. 1997 Supp. 66-1,112; effective May 1, 1983; amended Jan. 4, 1999; revoked Oct. 22, 2010.)

**82-4-30a. Applications for interstate registration.** (a) (1) For the purposes of this regulation, "base state" shall have the meaning assigned to "base-state" in 49 U.S.C. 14504a(a)(2), as adopted in paragraph (a)(2) of this regulation.

(2) 49 U.S.C. 14504a(a)(2), as in effect on October 16, 2008, is hereby adopted by reference.

(3) Each interstate motor carrier designating Kansas as the carrier's base state and operating in interstate commerce over the highways of this state under authority issued by the relevant federal agency shall file the uniform application for registration issued by the relevant federal agency. The carrier shall file this application for registration with the transportation division of the state corporation commission.

(b) Each interstate motor carrier designating Kansas as the carrier's base state shall pay a fee to the state corporation commission. This fee shall be in accordance with the fee schedule in 49 C.F.R 367.30, as in effect on April 27, 2010 and hereby adopted by reference.

(c) An interstate regulated motor carrier shall not operate in interstate commerce over the highways of this state unless the carrier is registered in the carrier's base state pursuant to 49 U.S.C. 14504a(a)(2). (Authorized by K.S.A. 2009 Supp. 66-1,112; implementing K.S.A. 2009 Supp. 66-1,108b, 66-1,116 and 66-1,139; modified, L. 1981, ch. 424, May 1, 1981; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000; amended Jan. 31, 2003; amended, T-82-10-8-07, Oct. 8, 2007; amended, T-82-12-10-07, Dec. 10, 2007; amended July 18, 2008; amended, T-82-5-12-10, May 12, 2010; amended Oct. 8, 2010.)

**82-4-31.** (Authorized by K.S.A. 1999 Supp. 66-1,112 and 66-1,112a; implementing K.S.A. 1999 Supp. 66-1,112, 66-1,112a, and 66-1a01; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1984; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000; revoked Oct. 22, 2010.)

**82-4-32. Completing motor carrier applications.** (a) Each applicant filing an application for an intrastate common carrier certificate, interstate license, or private carrier permit shall provide the commission with all information required to complete the application within 30 days of the original filing date. Any application that is not completed within 30 days of the original filing date may be dismissed without further notice, at the discretion of the commission.

(b) All information required to complete a filing for a certificate of convenience and necessity, certificate of public service, or a private carrier permit shall be provided to the commission within 90 days of the date of application, or within 30 days after the date of the hearing if the application requires a hearing. If the required information is

not provided within the applicable time period, the application may be dismissed by the commission without further notice.

(c) Required application fees shall not be refunded if the application is dismissed by the applicant or the commission.

(d) Fees may be remitted by personal check, cash, certified check, money order, or electronic transfer of funds. (Authorized by K.S.A. 2009 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2009 Supp. 66-1,117; implementing K.S.A. 2009 Supp. 66-1,117; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1987; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000; amended Jan. 31, 2003; amended Oct. 22, 2010.)

**82-4-33. Service of process.** (a) An applicant for a certificate, permit, or license who is not a resident of Kansas shall not be granted a certificate, permit, or license until the applicant designates an agent who is a resident of the state of Kansas to be a process agent for and on behalf of the applicant.

(b) Each interstate regulated carrier shall provide and maintain the name of the carrier's agent for service of process with the carrier's registration state, pursuant to 49 C.F.R. Part 367, as adopted by K.A.R. 82-4-30a.

(c) This regulation shall not apply to private carrier applicants. This regulation shall not be construed to relieve motor carriers from the obligation to comply with K.S.A 60-305a, and amendments thereto. (Authorized by K.S.A. 2009 Supp. 66-1,112; implementing K.S.A. 2009 Supp. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1985; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000; amended Oct. 22, 2010.)

**82-4-35. Preserving certificates or permits.** (a) All intrastate motor carriers and drivers of vehicles registered under certificates or permits shall, at all times, carry on every vehicle operated under the certificate or permit an authority card, issued by the commission, that specifies the operating authority granted by the commission under the certificate or permit.

(b) Copies of certificate or permits issued by the commission shall be carefully preserved by the holders. (Authorized by K.S.A. 2009 Supp. 66-1,112, K.S.A. 66-1,112g; implementing K.S.A. 2009 Supp. 66-1,112, K.S.A. 66-1,112g, K.S.A. 2009 Supp. 66-1,139; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1984; amended May 1, 1987; amended Jan. 31, 2003; amended Oct. 22, 2010.)

**82-4-35a. Inspections of motor carrier documents.** The following documents shall be made available upon request for inspection by any duly authorized representative of the commission, the state highway patrol, or other law enforcement officers:

(a) Registration receipts;

(b) authority cards;

(c) driver logs;

(d) bills of lading or shipping receipts;

(e) waybills;

(f) freight bills;

(g) run tickets, or equivalent documents, and orders;

(h) cab cards;

(i) fuel receipts;

(j) toll road receipts; and

(k) any other documents that would indicate compliance with hours of service requirements. (Authorized by K.S.A. 2009 Supp. 66-1,112 and K.S.A. 66-1,112g; implementing K.S.A. 2009 Supp. 66-1,112, K.S.A. 66-1,112g, 66-1,131, and K.S.A. 2009 Supp. 66-1,139; effective May 1, 1987; amended May 10, 1993; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000; amended Oct. 22, 2010.)

**82-4-37.** (Authorized by K.S.A. 1999 Supp. 66-1,112, 66-1,112a, K.S.A. 66-1,112g; implementing K.S.A. 1999 Supp. 66-1,112, 66-1,112a, K.S.A. 66-1,112g, K.S.A. 1999 Supp. 66-1,139; effective Jan. 1, 1971; amended May 1, 1981; amended May 10, 1993; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000; revoked Oct. 22, 2010.)

**82-4-40. Passengers on property-carrying vehicles.** A certificate, permit, or license authorizing transportation of property shall not authorize the transportation of persons. A motor carrier operating solely as a carrier of property shall not transport passengers or permit passengers to be transported with or without compensation. The owner of the property being transported, or the owner's lawful agent, may be carried in the same vehicle that is transporting the owner's property. (Authorized by K.S.A. 2009 Supp. 66-1,112, K.S.A. 66-1,112g; implementing K.S.A. 66-1,108, K.S.A. 2009 Supp. 66-1,112,

K.S.A. 66-1,112g; effective Jan. 1, 1971; amended May 1, 1981; amended Oct. 22, 2010.)

**82-4-42. Emergency and occasional equipment.** (a) Holders of certificates, permits, and licenses who have motor vehicles registered with the commission and who have complied with all lawful requirements may in case of emergency be authorized by the commission by fax, internet communication, or otherwise, to operate additional equipment or special equipment in substitution of regular registered equipment. Any motor carrier authorized to operate in intrastate commerce may perform either of the following:

(1) Transfer Kansas operating authority from regularly registered equipment to temporary or new equipment online. Regular registered equipment for which special equipment is being substituted shall not be operated at the same time that the special equipment is being operated; or

(2) add the special equipment to the motor carrier's profile and submit payment of the registration fee. The registration fee for the additional or special equipment shall be $10.00 for each truck or truck-tractor.

(b) If a seasonal emergency occurs, a motor carrier may obtain authorization to operate additional or special equipment according to any of the following:

(1) A 30-day temporary wire or letter of authority authorizing the use of additional or special equipment may be issued.

(2) The motor carrier may transfer registration from regularly registered equipment as described in paragraphs (a)(1) and (a)(2).

(3) The motor carrier may apply for Kansas permits online.

(c) Each motor carrier conducting point-to-point intrastate operations in Kansas shall have obtained appropriate commission operating authority pursuant to K.S.A. 66-1,114 and K.S.A. 66-1,115, and amendments thereto. A carrier registered to conduct both intrastate and interstate operations shall not be required to register equipment as specified in subsections (a) and (b). (Authorized by K.S.A. 2009 Supp. 66-1,112, K.S.A. 66-1,112g, K.S.A. 2009 Supp. 66-1,140; implementing K.S.A. 2009 Supp. 66-1,140; effective Jan. 1, 1971; amended May 1, 1981; amended Oct. 3, 1994; amended Jan. 4, 1999; amended July 14, 2000; amended Oct. 22, 2010.)

**82-4-48. Bills of lading, waybills, and freight bills.** (a) Each common motor carrier of household goods electing to be governed by K.A.R. 82-4-48a, K.S.A. 66-304, and K.S.A. 84-7-101 through K.S.A. 84-7-603, and amendments thereto, shall issue a bill of lading for household goods tendered for intrastate commerce.

(b) Each common motor carrier transporting property, other than household goods, and electing to be governed by K.A.R. 82-4-48a, K.S.A. 66-304, and K.S.A. 84-7-101 through K.S.A. 84-7-603, and amendments thereto, shall issue a bill of lading for property tendered for intrastate commerce.

(c) Each bill of lading shall include the following:

(1) The name and address of the motor carrier;

(2) the name and address of the consignor and consignee;

(3) the date of shipment;

(4) the origin and destination of the shipment;

(5) the signature of the motor carrier or its agent;

(6) a description of the shipment, including the number of packages, or the weight or volume;

(7) a released value clause as prescribed in K.S.A. 84-7-309, and amendments thereto, printed on the front of the document, if applicable; and

(8) on request of the shipper, a written or electronic copy of the rate, classification, rules, and practices upon which any rate applicable to a shipment, or agreed to between the shipper and the carrier, is based. The copy provided by the carrier shall clearly state the dates of applicability of the rate, classification, rules, or practices.

(d) Bills of lading, waybills, and freight bills may be included on one form.

(e) Each transporter of crude petroleum oil, sediment oil, water, or brine shall require its drivers to possess a run ticket or equivalent documents as specified in K.A.R. 82-3-127.

(f) The documents required in subsections (a), (b), and (e) shall be held available upon request for inspection by any authorized representative of the commission, the state highway patrol, or other law enforcement officers.

(g) The bill of lading, waybill, freight bill, run ticket, or equivalent documents as specified in K.A.R. 82-3-127 shall be retained by the transporter for at least three years from the date of shipment. (Authorized by and implementing K.S.A. 2009 Supp. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; amended, T-83-45, Dec.

8, 1982; modified, L. 1983, ch. 362, May 1, 1983; amended Jan. 4, 1999; amended Oct. 22, 2010.)

**82-4-48a. Motor carriers of property other than household goods carriers electing to be subject to uniform bills of lading and antitrust immunity regulations.** (a) Any intrastate common and contract motor carrier of property, other than household goods carriers, may elect to be subject to regulations related to any of the following:

(1) Uniform cargo liability rules for property being transported pursuant to K.S.A. 66-304, and amendments thereto, and K.A.R. 82-4-48 through K.A.R. 82-4-85;

(2) uniform bills of lading or receipts for property being transported pursuant to K.S.A. 66-304 and amendments thereto, K.A.R. 82-4-48, and K.S.A. 84-7-101 through 84-7-603 and amendments thereto; or

(3) antitrust immunity for joint line rates or routes, classification, and mileage guides, pursuant to K.A.R. 82-4-68 through K.A.R. 82-4-85.

(b) All motor carriers electing to be subject to an existing commission regulation dealing with one or more of the subjects specified in subsection (a) shall file written notice with the commission. The written notice filed with the commission shall specify the commission regulations that apply and provide one-day notice of adoption. If the motor carrier elects to opt out of any prior commission regulation listed in subsection (a), the motor carrier shall file written notice with the commission providing 30-day notice of abrogation. (Authorized by and implementing K.S.A. 2009 Supp. 66-1,112, K.S.A. 66-1,112g; effective Jan. 4, 1999; amended Oct. 22, 2010.)

**82-4-53. Common motor carrier rates and charges.** (a) Common motor carriers of property or passengers that are engaged in intrastate commerce in Kansas shall maintain on file with the commission a copy of the tariff publications applicable to their lines between points in Kansas. The carriers shall keep open for public inspection, at their principal offices and locations at which they have employed exclusive agents, all intrastate tariff publications applicable to their lines from or to their stations.

(b) Each change to a tariff publication shall be made subject to 30-day notice to the public and the commission, unless otherwise authorized by the commission. Tariff publications of motor carriers effecting changes resulting in increases in charges, either directly or by means of any change in the regulation or practice affecting a charge or value of service, may be filed on one-day notice to the commission and the public. Applicants granted new authority may file tariffs to be effective on one-day notice. Transferees may adopt the existing tariffs of transferors to be effective on one-day notice.

(c) Tariff publication, except general rate increases, shall not go into effect without prior approval of the commission. The publications shall be subject to protest and suspension. All publications shall be accompanied by a full and complete statement citing the reasons and justifications for the changes.

(d) General rate increases shall be made only by filing an application and after approval of the commission by written order.

(e) Protests of tariff publications shall be considered only if received by the commission at least 12 days before the published effective date of publications. Pursuant to protest or on the commission's own motion without protest, postponement of an effective date may be ordered by the commission to permit the matter to be properly investigated. Unless otherwise ordered by the commission, publication shall become effective as filed. Publications shall not be postponed to exceed 90 days.

(f) All tariff publications shall be made in compliance with the commission's regulations governing the publication and filing of common motor carrier rates and charges. (Authorized by K.S.A. 2009 Supp. 66-1,112; implementing K.S.A. 66-117, K.S.A. 2009 Supp. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; amended Jan. 4, 1999; amended Oct. 22, 2010.)

**82-4-54. Tariff publication to become effective on less than 30-day notice.** (a) Departure from the commission's requirement in K.A.R. 82-4-53(b) that tariff publications become effective on 30-day notice may be permitted by the commission, if good and sufficient cause is shown to convince the commission that publication should be made on short notice.

(b) The applicant shall provide all related facts or circumstances that could aid the commission in determining if the request is justified. If permission to establish provisions on less than the required notice is sought, the applicant shall state why the proposed provisions could not have been established upon 30-day notice.

(c) Permission to allow a tariff to become effective on less than 30-day notice shall be granted in cases for which good cause is shown. The desire to meet tariff publications of a competing carrier that has been filed on 30-day notice or one-day notice may be considered a factor for permitting publication on short notice. (Authorized by K.S.A. 66-1,218 and K.S.A. 2009 Supp. 66-1,112; implementing K.S.A. 66-1,218 and K.S.A. 2009 Supp. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1987; amended Jan. 4, 1999; amended Oct. 22, 2010.)

**82-4-55. Procedure for filing a request for postponement of tariff publications.** (a) Each protested tariff publication sought to be postponed shall be identified by making reference to the name of the publishing carrier or agent, to the motor carrier's K.C.C. tariff number, and to the specific items or particular provisions protested. The protest shall state the grounds, indicate in what respect the protested tariff publication is considered unlawful, and state what the protestant offers as a substitution. Each protest shall be addressed to the commission. A protest shall not include a request that it also be considered as a formal complaint. If a protestant desires to proceed further against a tariff publication that is not postponed or that has been postponed and the postponement vacated, a separate, later, formal complaint or petition shall be filed.

(b) Protests against, and requests for, postponement of tariff publications filed under this regulation shall not be considered unless made in writing and filed with the commission in Topeka, Kansas. The original and five copies of each request for postponement shall be filed with the commission at least 12 days before the effective date of the tariff publication, unless the protested publication was filed on less than 30-day notice under the authority of this commission, in which event the protests shall be filed at the earliest possible date. In an emergency, protests submitted by fax shall be acceptable if they fully comply with subsection (a) and copies are simultaneously faxed by protestants to the respondent carriers or their publishing agents. An original and five copies of the fax shall simultaneously be mailed by the protestants to the commission in Topeka.

(c) An original and five copies of each protest or reply filed under this regulation shall be filed with the commission no later than 10 days after the publication of the tariff, and one copy of the protest shall simultaneously be served upon the publishing carrier or agent and upon other known interested parties.

(d) Each order instituting an investigation shall be served by the commission upon respondents. If the respondent fails to comply with any requirements or time period specified in the order, the respondent shall be deemed to be in default and to have waived any further hearing. The investigation may then be decided without further proceedings. (Authorized by K.S.A. 2009 Supp. 66-1,112; implementing K.S.A. 66-117 and K.S.A. 2009 Supp. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; amended Jan. 4, 1999; amended Oct. 22, 2010.)

**82-4-56a. Common motor carrier tariffs.** (a) Each tariff shall be typewritten, printed, or reproduced by other similar, durable process, upon paper of good quality, 8 by 11 or 8½ by 11 inches in size.

(b) The title page shall show the following information:

(1) In the upper right-hand corner, the K.C.C. number of the tariff and, immediately below that, the K.C.C. number of the tariff canceled, if any. The first tariff issued by each carrier shall be numbered "K.C.C. no. 1"; succeeding tariffs shall be numbered consecutively. This information may be shown elsewhere on the page or on the second page of the tariff, if it applies to interstate as well as intrastate traffic;

(2) the name of the carrier, individual, or organization issuing the tariff;

(3) the names of the participating carriers or a reference to the page in the tariff containing that information;

(4) if the tariff is a passenger or household goods tariff, the tariff names' class rates, commodity rates, mileages, rules, one-way fares, round-trip fares, excursion fares, and appropriate designation, if the tariff applies to local traffic, joint traffic, or both;

(5) the territories or points between which the tariff applies, briefly stated;

(6) specific references to the classification and to publications containing any exceptions to the classification governing the rates named in the tariff;

(7) the issued and effective dates;

(8) the commission's motor carrier identification number assigned; and

(9) the name, title, and complete address of the party issuing the tariff.

(c) The requirements of subsection (a) shall be observed in the construction of circulars and other governing tariff publications. Tariff supplements shall be numbered consecutively, beginning with the number one, and shall show the K.C.C. number of the publication amended, the number of any previous supplements or tariffs canceled, and numbers of the supplements containing all changes from the original publication. This information shall appear in the upper right-hand corner of the supplement unless the supplement applies to interstate as well as intrastate traffic, in which case the information may be shown elsewhere on the title page or on the second page.

(d) All household goods tariffs shall contain the following information:

(1) In clear and explicit language, all terms, additional charges, and privileges applicable in connection with the rates and charges named in the tariff, or specific reference to publications naming these terms, additional charges, and privileges;

(2) any exceptions to the application of rates and charges named in the tariff;

(3) a full explanation of reference marks and technical abbreviations used in the tariff;

(4) rates in cents or dollars and cents per 100 pounds or per ton of 2,000 pounds or other definite measure; and

(5) the method by which the distance rates shall be determined. Specific point-to-point rates shall be published whenever practicable.

(e) All passenger tariffs shall show the following information:

(1) Adult fares, definitely and specifically stated in cents or in dollars and cents, per passenger, together with the names of the stations or the stopping places for which the fares apply, arranged in a simple and systematic manner; and

(2) the identification of terms, agreements, or other documentation that is applicable or contains specific reference to the publications in which the fares will be found. (Authorized by K.S.A. 2009 Supp. 66-1,112; implementing K.S.A. 66-117, K.S.A. 2009 Supp. 66-1,112; effective May 1, 1981; amended Jan. 4, 1999; amended Oct. 22, 2010.)

**82-4-57. Powers of attorney and concurrences.** (a) A common carrier desiring to give a power of attorney to an agent to issue and file tariffs and supplements for the carrier shall file notice of this intention on a form approved by the commission.

(b) If a common carrier desires to concur in tariffs issued and filed by another carrier or by its agent, a concurrence in substantially the same form as that prescribed by the USDOT for use in similar instances, with references to the interstate tariffs, shall be issued in favor of the issuing carrier.

(c) The original of all powers of attorney and concurrences shall be filed with the commission, and a duplicate of the original shall be sent to the agent or carrier on whose behalf the document is issued.

(d) If a common carrier wishes to revoke a power of attorney or concurrence, a notice shall be filed with the commission, the carrier's agent or agents, and any other carrier affected by the revocation. The notice shall be filed at least 30 days before the effective date. (Authorized by K.S.A. 2009 Supp. 66-1,112; implementing K.S.A. 2009 Supp. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1984; amended Jan. 4, 1999; amended July 14, 2000; amended Oct. 22, 2010.)

**82-4-58. Suspension or modification of tariff regulations.** Upon written application and a showing of good cause, common carrier tariff regulations may be suspended or modified by the commission to cover unusual instances. (Authorized by K.S.A. 2009 Supp. 66-1,112; implementing K.S.A. 2009 Supp. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; amended Oct. 22, 2010.)

**82-4-62.** (Authorized by K.S.A. 1997 Supp. 66-1,112; effective Jan. 1, 1971; amended Jan. 4, 1999; revoked Oct. 22, 2010.)

**82-4-63. Contested and uncontested motor carrier hearings.** An application for a common carrier certificate of convenience and necessity, certificate of public service, or abandonment of a common carrier certificate shall be considered as contested if either protestants or intervenors, or both, appear at the hearing held on the application and present testimony or evidence in support of their contentions, present a question or questions of law, or cross-examine the applicant's witnesses with regard to the application. If neither protestants nor intervenors appear and offer testimony or evidence in support of their con-

tentions, raise a question of law, or cross-examine the applicant's witnesses with reference to any pending application, the application shall be considered as uncontested. (Authorized by K.S.A. 66-106, K.S.A. 2009 Supp. 61,112; implementing K.S.A. 66-106, K.S.A. 2009 Supp. 66-1,114, 66-1,115 and 66-1,119; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1987; amended Jan. 4, 1999; amended Oct. 22, 2010.)

**82-4-65. Protestants.** Each protest against the granting of a permit, certificate, extension, abandonment, or transfer shall be considered as follows:

(a) Any interested person who believes that the public will be adversely affected by a proposed application may file a written protest. The protest shall identify the name and address of the protestant and the title and docket number of the proceeding. The protest shall include specific allegations as to how the applicant is not fit, willing, and able, or fit, knowledgeable, and in compliance with the commission safety regulations, to perform these services or how the proposed services are otherwise inconsistent with the public convenience and necessity.

(b) If the protestant opposes only a portion of the proposed application, the protestant shall state with specificity the objectionable portion.

(c) The protest shall be filed in triplicate with the commission within 10 days after publication of the notice in the Kansas Register. Failure to file a timely protest shall preclude the interested person from appearing as a protestant.

(d) Each protestant shall serve the protest upon the applicant at the same time or before the protestant files the protest with the commission. The protest shall not be served on the applicant by the commission.

(e) To secure consideration of a protest, the protestant, intervenor, or a designated representative, as defined in K.A.R. 82-4-63, shall offer evidence or a statement or shall participate in the hearing. (Authorized by K.S.A. 2009 Supp. 66-1,112; implementing K.S.A. 2009 Supp. 66-1,114; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended Jan. 4, 1999; amended Oct. 22, 2010.)

**82-4-77. Right of independent action.** (a) An organization shall not interfere with each of that organization's carrier's right to independent action. That organization shall not change or cancel any rate established by independent action other than a general increase or broad rate restructuring. However, changes in the rates may be effected, with the written consent of the carrier or carriers that initiated the independent action, for the purpose of tariff simplification, removal of discrimination, or elimination of obsolete items.

(b) Collective adjustments pursuant to K.S.A. 66-1,112, and amendments thereto, shall not cancel rate or rule differentials or differences in rates or rules existing as a result of any independent action taken previously, unless the proponent and any other participant in that independent action desires to eliminate the rate differential or application and notifies the organization in writing of its consent.

(c) Independent action shall mean any action taken by a common carrier member of an organization to perform any of the following:

(1) Establish a rate to be published in the appropriate rate tariff or cancel a rate for that carrier's account;

(2) instruct the organization publishing the rate tariff that the existing rate or rates, whether established by independent action or collective action, proposed to be changed or cancelled be retained for that carrier's account and published in the appropriate tariff; or

(3) publish for the common carrier's account, in the appropriate tariff, a rate established by the independent action of another carrier. This definition shall apply regardless of the manner in which the carrier joins in the rate, if the rate published for the joining carrier's account is the same as the rate established by the other carrier under independent action. (Authorized by and implementing K.S.A. 2009 Supp. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983; amended Oct. 22, 2010.)

## Article 11.—NATURAL GAS PIPELINE SAFETY

**82-11-4. Transportation of natural and other gas by pipeline; minimum safety standards.** The federal rules and regulations titled "transportation of natural and other gas by pipeline: minimum federal safety standards," 49 C.F.R. Part 192, including appendices B, C, D, and E, as in effect on October 1, 2010, with the exception of portions that include jurisdiction beyond the state of Kansas, including off-shore pipelines, the outer continental shelf, and states other

than Kansas, are adopted by reference with the following exceptions, deletions, additions, and modifications:

(a) 49 C.F.R. 192.7(b) shall be deleted and replaced by the following: "(b) Any incorporated document shall be available for inspection at the gas pipeline safety section's Topeka, Kansas office. All incorporated materials are also available for inspection in the Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, S.E., Washington, D.C., 20590-0001 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or access the following website: http://www.archives.gov/federal_register/code_of_federal _regulations/ibr_locations.html. These materials have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. In addition, the incorporated materials are available from the respective organizations listed in paragraph (c)(1) of this section."

(b) 49 C.F.R. 192.181(a) shall be deleted and replaced by the following: "(a) Each high-pressure distribution system shall have valves spaced to reduce the time to shut down a section of main in an emergency. Each operator shall specify in its operation and maintenance manual the criteria as to how valve locations are determined using, as a minimum, the considerations of operating pressure, the size of the mains, and the local physical conditions. The emergency manual shall include instructions on where operating personnel can find maps and other means of locating emergency valves during an emergency. Each area of residential development constructed after May 1, 1989 shall be provided with at least one valve to isolate it from other areas."

(c) 49 C.F.R. 192.199(e) shall be deleted and replaced by the following: "(e) Have discharge stacks, vents, or outlet ports designed to prevent accumulation of water, ice, or snow, located where gas can be discharged into the atmosphere without undue hazard. At town border stations and district regulator settings, the gas shall be discharged upward at a minimum height of six feet from the ground or past the overhang of any adjacent building, whichever is greater."

(d) 49 C.F.R. 192.199(h) shall be deleted and replaced by the following: "(h) Except for a valve that will isolate the system under protection from its source of pressure, shall be designed to prevent unauthorized access to or operation of any stop valve that will make the pressure relief valve or pressure limiting device inoperative including:

"(1) valves that would bypass the pressure regulator or relief devices; and

"(2) shut-off valves in regulator control lines that, if operated, would cause the regulator to be inoperative."

(e) The following shall be added to 49 C.F.R. 192.199: "(i) At town border stations and district regulator settings, this section shall require pressure relief or pressure limiting devices regardless of installation date."

(f) 49 C.F.R. 192.307 shall be deleted and replaced by the following: "Inspection of materials. Each length of pipe and each other component shall be visually inspected at the site of installation to ensure that it has not sustained any visually determinable damage that could impair its serviceability. Except for short sections of pipe with external coating applied after installation, each coated length of pipe shall be checked for defects in the coating using an instrument that is calibrated according to manufacturer's specifications prior to lowering the pipe into the ditch."

(g) The following subsection shall be added to 49 C.F.R. 192.317: "(d) Each aboveground pipeline shall be placed underground, with the following exceptions:

"(1) Regulator station piping;

"(2) bridge crossings;

"(3) aerial crossings or spans;

"(4) short segments of piping for valves intentionally brought above the ground, including risers, piping at compressor, processing or treating facilities, block gate settings, sectionalizing valves and district regulator sites;

"(5) distribution mains specifically designed to be above the ground and have the approval of the landowner to provide service to commercial customers from the aboveground main and associated service line or lines; or

"(6) pipelines in class 1 locations that were in natural gas service before May 1, 1989."

(h) The following shall be added to 49 C.F.R. 192.317: "(e) Each pipeline constructed after May 1, 1989, shall be placed under ground, with the following exceptions:

"(1) Regulator station piping;

"(2) bridge crossings;

"(3) aerial crossings or spans;

"(4) short segments of piping for valves intentionally brought above ground, including risers,

piping at compressor, processing or treating facilities, block gate settings, sectionalizing valves and district regulator sites; or

"(5) distribution mains specifically designed to be above ground and have the approval of the landowner to provide service to commercial customers from the aboveground main and associated service line or lines."

(i) 49 C.F.R. 192.453 shall be deleted and replaced by the following: "(a) The corrosion control procedures required by 49 C.F.R. 192.605(b)(2), including those for the design, installation, operation, and maintenance of cathodic protection systems, must be carried out by, or under the direction of, a person qualified in pipeline corrosion control methods.

"(b) Any unprotected steel service or yard line found to have active corrosion shall be either provided with cathodic protection and monitored annually as required by K.A.R. 82-11-4 (m) or replaced. In areas where there is no active corrosion, each operator shall, at intervals not exceeding three years, reevaluate these pipelines.

"(c) In lieu of conducting electrical surveys on unprotected steel service lines and yard lines, each operator may implement one of the following options:

"(1) Conduct annual leakage surveys at intervals not exceeding 15 months, but at least once each calendar year, on all unprotected steel service lines and yard lines and initiate a program to apply cathodic protection for all unprotected steel service lines and yard lines; or

"(2) conduct annual leakage surveys at intervals not exceeding 15 months, but at least once each calendar year, on all unprotected steel service lines and yard lines and initiate a preventative maintenance program for replacement of service and yard lines. The preventative maintenance program to be used in conjunction with the annual leak survey of unprotected steel service and yard lines shall include the following:

"(A) After the annual leakage survey of all unprotected steel service and yard lines is completed, the operator shall prepare a summary listing of the leak survey results.

"(B) The summary listing shall include the number of leaks found and the number of lines replaced in a defined area.

"(C) An operator's replacement program for all service or yard lines in the defined area shall be initiated no later than when the sum of the number of unprotected steel service or yard lines with existing or repaired corrosion leaks and the number of unprotected steel service or yard lines already replaced due to corrosion equals 25% or more of the unprotected steel service or yard lines installed within that defined area.

"(D) The replacement program, once initiated for a defined area, shall be completed by an operator within 18 months.

"(E) Operators, at their option, may have separate preventative maintenance programs for service lines and yard lines but must consistently follow their selection.

"(d) For a city of the third class, or a city having a population of 2,000 or less, which is an operator of a natural gas distribution system, a replacement program for unprotected steel yard lines may comply with paragraph (c)(2)(D) of this section or include the following requirements in their replacement plan:

"(1) Perform leakage surveys at six month intervals;

"(2) Notify all customers in the defined area with a written recommendation that all unprotected steel yard lines should be scheduled for replacement; and

"(3) Replace all unprotected steel yard lines in the defined area that exhibit active corrosion."

(j) 49 C.F.R. 192.455(a) shall be deleted and replaced by the following: "(a) Except as provided in paragraphs (c) and (f) of this section, each buried, submerged pipeline, or exposed pipeline, installed after July 31, 1971, shall be protected against external corrosion by various methods, including the following:

"(1) An external protective coating meeting the requirements of 49 C.F.R. 192.461; and

"(2) A cathodic protection system designed to protect the pipeline in accordance with this subpart, installed and placed in operation within one year after completion of construction."

(k) 49 C.F.R. 192.455(b) shall be deleted.

(l) 49 C.F.R. 192.457(b) shall be deleted and replaced by the following: "(b) Except for cast iron or ductile iron pipelines, each of the following buried, exposed or submerged pipelines installed before August 1, 1971, shall be cathodically protected in accordance with this subpart in areas in which active corrosion is found:

"(1) Bare or ineffectively coated transmission lines;

"(2) bare or coated pipes at compressor, regulator, and measuring stations; and

"(3) bare or coated distribution lines."

(m) 49 C.F.R. 192.465(a) shall be deleted and replaced by the following: "Each pipeline that is under cathodic protection shall be tested at least once each calendar year, but in intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of 192.463. If tests at those intervals are impractical for separately protected short sections of mains or transmission lines not in excess of 100 feet, or separately protected service lines, these pipelines may be surveyed on a sampling basis. At least one-third of the separately protected short sections, distributed over the entire system, shall be surveyed each calendar year, with a different one-third checked each subsequent year, so that the entire system is tested in each three-year period."

(n) 49 C.F.R. 192.465(d) shall be deleted and replaced by the following: "(d) Each operator shall begin corrective measures within 30 days, or more promptly if necessary, on any deficiencies indicated by the monitoring."

(o) 49 C.F.R. 192.465(e) shall be deleted and replaced by the following: "(e) After the initial evaluation required by 49 C.F.R. 192.455 (b) and K.A.R. 82-11-4(l), each operator shall, at least every three calendar years at intervals not exceeding 39 months, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator shall determine the areas of active corrosion by electrical survey, where practical."

(p) The following shall be added to 49 C.F.R. 192.465: "(f) It shall be considered practical to conduct electrical surveys in all areas, except the following:

"(1) Where the pipe lies under wall-to-wall pavement;

"(2) where the pipe is in a common trench with other utilities;

"(3) in areas with stray current; or

"(4) in areas where the pipeline is under pavement, regardless of depth, and more than two feet away from an unpaved area.

"(g) Where an electrical survey is impractical as listed in paragraph (f) of this section, the operator shall conduct leakage surveys using leak detection equipment in accordance with K.A.R. 82-11-4(dd) and evaluate for areas of active corrosion. The evaluation for active corrosion shall include review and analysis of leak repair records, corrosion monitoring records, exposed pipe inspection records, and the analysis of the pipeline environment.

"(h) for unprotected steel transmission lines and mains, a repair/replacement program shall be established based upon the number of leaks in a defined area.

(q) 49 C.F.R. 192.491(a) shall be deleted and replaced by the following: "(a) For as long as the pipeline remains in service, each operator shall maintain records and maps to show the locations of all cathodically protected piping, cathodic protection facilities other than unrecorded galvanic anodes installed before August 1, 1971, and neighboring structures bonded to the cathodic protection system."

(r) 49 C.F.R. 192.491(b) shall be deleted.

(s) 49 C.F.R. 192.509(b) shall be deleted and replaced by the following: "(b) Each steel main that is to be operated at less than 1 p.s.i.g. shall be tested to at least 10 p.s.i.g. and each main to be operated at or above 1 p.s.i.g. shall be tested to at least 100 p.s.i.g."

(t) The following shall be added to 49 C.F.R. 192.517(a): "(8) Test date. (9) Description of facilities being tested."

(u) 49 C.F.R. 192.517(b) shall be deleted and replaced by the following: "For any pipeline installed after May 1, 1989, each operator shall make, and retain for the useful life of the pipeline, a record of each test performed under §§ 192.509, 192.511 and 192.513."

(v) 49 C.F.R. 192.553(a)(1) shall be deleted and replaced by the following: "(1) At the end of each incremental increase, the pressure shall be held constant while the entire segment of pipeline that is affected is checked for leaks. This leak survey by flame ionization shall be conducted within eight hours after the stabilization of each incremental pressure increase provided in the uprating procedure. If the operator elects to not conduct the leak survey within the specified time frame because of nightfall or other circumstance, the pressure increment in the line shall be reduced that day with repetition of that particular increment during the next day that the uprating procedure is continued."

(w) 49 C.F.R. 192.603(b) shall be deleted and replaced by the following: "(b) Each operator shall establish a written operating and maintenance plan meeting the requirements of this part and keep records necessary to administer the plan. This plan and future revisions shall be submitted to the gas pipeline safety section."

(x) The following shall be added to 49 C.F.R. 192.603:

"(d) Each operator shall have regulator and relief valve test, maintenance and capacity calculation records in its possession whether the town border station is owned by the operator or by a wholesale supplier, if the supplier's relief valve capacity is utilized to provide protection for the operator's system.

"(e) Each operator shall be responsible for ensuring that all work completed by its consultants and contractors complies with this part."

(y) The following shall be added to 49 C.F.R. 192.605(b):

"(13) Classifying underground leaks according to K.A.R. 82-11-4(bb).

"(14) Performing leakage surveys of underground pipelines.

"(15) Identifying conditions which will require patrols of a distribution system at intervals shorter than the maximum intervals listed in K.A.R. 82-11-4 (cc)."

(z) 49 C.F.R. 192.617 shall be deleted and replaced by the following: "Investigation of failures. (a) Each operator shall establish procedures for analyzing accidents and failures, including:

"(1) The maintenance of records that contain information for each failure including the type of pipe and the reason for failure.

"(2) The selection of samples of the failed facility or equipment for laboratory examination, where appropriate, for the purpose of determining the causes of the failure and minimizing the possibility of recurrence.

"(b) Each operator shall investigate each accident and failure."

(aa) 49 C.F.R. 192.625(f) shall be deleted and replaced by the following:

"(f) Each operator shall assure the proper concentration of odorant and shall maintain records of these samplings for at least two years in accordance with this section. Proper concentration of odorant shall be assured by conducting periodic sampling of combustible gases as follows:

"(1) Conduct monthly odorometer sampling of combustible gases at selected points in the system; and

"(2) conduct sniff tests during each service call where access to a source of gas in the ambient air is readily available.

"(g) Operators of master meter systems may comply with this requirement by the following:

"(1) Receiving written verification from their gas source that the gas has the proper concentration of odorant; and

"(2) Conducting periodic sniff tests at the extremities of the system to confirm that the gas contains odorant."

(bb) 49 C.F.R. 192.703 shall be deleted and replaced by the following: "General. (a) No person shall operate a segment of pipeline unless it is maintained in accordance with this subpart.

"(b) Odorometers and leak detection equipment shall be calibrated according to manufacturer's specifications. Leak detection equipment shall be tested monthly with a calibration gas of known hydrocarbon concentration, except if equipment is not used, then testing with calibration gas shall be performed prior to the next use.

"(c) Each segment of pipeline that becomes unsafe shall be replaced, repaired or removed from service within five days of the operator being notified of the existence of the unsafe condition. Minimum requirements for response to each class of leak are as follows:

"(1) A class 1 leak requires immediate repair or continuous action until the conditions are no longer hazardous. After conditions are no longer hazardous, a class 1 leak shall be replaced, repaired, or removed from service within five days of the operator being notified of its existence.

"(2) A class 2 leak shall be repaired within six months after detection. Under adverse soil conditions, a class 2 leak shall be monitored weekly to ensure that the leak will not represent a probable hazard and that it reasonably can be expected to remain nonhazardous.

"(3) A class 3 leak shall be rechecked at least every six months and repaired or replaced within 30 months.

"(d) Each operator shall inspect and classify all reports of gas leaks within two hours of notification.

"(e) Each underground leak shall be classified using the operator's underground leak classification procedure as follows:

"(1) A class 1 leak means a leak that represents an existing or probable hazard to persons or property, and requires immediate repair or continuous action until the conditions are no longer hazardous. This class of leak may include the following conditions:

"(A) Any leak which, in the judgment of operating personnel at the scene, is regarded as an immediate hazard;

"(B) any leak in which escaping gas has ignited;

"(C) any indication that gas has migrated into or under a building, or into a tunnel;

"(D) any percentage reading gas in air at the outside wall of a building, or where gas would likely migrate to an outside wall of a building;

"(E) any reading of 4% gas in air, or greater, in a confined space;

"(F) any reading of 4% gas in air, or greater, in a small substructure from which gas would likely migrate to the outside wall of a building; or

"(G) any leak that can be seen, heard, or felt, and which is in a location that may endanger the general public or property.

"(2) A class 2 leak means a leak that is nonhazardous at the time of detection, but justifies scheduled repair based on probable future hazard. This class of leak may include the following conditions:

"(A) any reading of 2% gas in air, or greater, under a sidewalk in a wall-to-wall paved area that does not qualify as a class 1 leak;

"(B) any reading of 5% gas in air, or greater, under a street in a wall-to-wall paved area that has significant gas migration and does not qualify as a class 1 leak;

"(C) any reading less than 4% gas in air in a small substructure from which gas would likely migrate creating a probable future hazard;

"(D) any reading between 1% gas in air and 4% gas in air in a confined space;

"(E) any reading on a pipeline operating at 30% SMYS, or greater, in a class 3 or 4 location, which does not qualify as a class 1 leak;

"(F) any reading of 4% gas in air, or greater, in a gas associated substructure; or

"(G) any leak which, in the judgment of operating personnel at the scene, is of significant magnitude to justify scheduled repair.

"(3) A class 3 leak means a leak that is nonhazardous at the time of detection and can reasonably be expected to remain nonhazardous. This class of leak may include the following conditions:

"(A) any reading of less than 4% gas in air in a small gas associated substructure;

"(B) any reading under a street in areas without wall-to-wall paving where it is unlikely the gas could migrate to the outside wall of a building; or

"(C) any reading of less than 1% gas in air in a confined space."

(cc) 49 C.F.R. 192.721(a) shall be deleted and replaced by the following two paragraphs: "(a) The frequency with which mains are patrolled shall be determined by the severity of the conditions which could cause failure or leakage, and the consequent hazards to public safety. Intervals between patrols shall not be longer than those prescribed in the following table:

**Maximum Intervals Between Patrols**

| Location of Line | Mains in places or on structures where anticipated physical movement or external loading could cause failure or leakage | Mains at all other locations |
|---|---|---|
| Inside business districts | 4½ months, but at least four times each calendar year | 7½ months, but at least twice each calendar year |
| Outside business districts | 7½ months, but at least twice each calendar year | 18 months, but at least once each calendar year |

"(b) Service lines and yard lines shall be patrolled at least once every three calendar years at intervals not exceeding 42 months."

(dd) 49 C.F.R. 192.723 shall be deleted and replaced by the following:

"Distribution systems: leak surveys and procedures.

"(a) Each operator of a distribution system shall conduct periodic leakage surveys using leak detection equipment in accordance with this section. The leak detection equipment used for this survey shall utilize a continuously sampling technology.

"(b) The type and scope of the leakage control program shall be determined by the nature of the operations and the local conditions. A leakage survey using leak detection equipment shall be conducted on all distribution mains and shall meet the following minimum requirements:

"(1) In business districts, a leakage survey shall include tests of the atmosphere in gas, electric, telephone, sewer and water system manholes, at cracks in pavement and sidewalks, and at other locations providing an opportunity for finding gas leaks. This survey shall be conducted at intervals on the distribution mains within the business district as frequently as necessary with the maximum interval between surveys not exceeding 15 months, but at least once each calendar year.

"(2) A leakage survey with leak detection equipment shall be conducted on the distribution mains outside the business areas. The survey shall be made as frequently as necessary, but it shall meet the following minimum requirements:

"i. Cathodically unprotected steel mains and ductile iron mains located in class 2, 3, and 4 areas

shall be surveyed at least once each calendar year at intervals not exceeding 15 months.

"ii. Cathodically unprotected steel mains and ductile iron mains located in class 1 areas, cathodically protected bare steel mains, cast iron mains, and mains constructed of PVC plastic shall be surveyed at least once every three calendar years at intervals not exceeding 39 months.

"iii. Cathodically protected externally coated steel mains and mains constructed of polyethylene plastic shall be surveyed at least once every five calendar years at intervals not exceeding 63 months.

"(3) Operators in existence on January 1, 2007 must be in compliance with paragraph (b)(2) of this section no later than June 1, 2010. Prior to compliance with subparagraphs (b)(2)(i) and (b)(2)(ii) of this section, a leakage survey with leak detection equipment of the distribution system shall be conducted outside business districts as frequently as necessary, but it shall be performed at least once every 3 calendar years at intervals not exceeding 39 months.

"(c) Except for the service lines and yard lines described in paragraph (d) of this section, a leakage survey using leak detection equipment shall be conducted for all service lines and yard lines as follows:

"(1) In business districts, this survey shall be conducted as frequently as necessary with the maximum interval between surveys not exceeding 15 months, but at least once each calendar year.

"(2) Outside business districts, the survey shall be made as frequently as necessary, but it shall meet the following minimum requirements:

"i. Cathodically unprotected steel service or yard lines and service or yard lines constructed of PVC plastic, cast iron, or copper shall be surveyed at least once each calendar year at intervals not exceeding 15 months.

"ii. Cathodically protected bare steel service or yard lines shall be surveyed at least once every three years at intervals not exceeding 39 months.

"iii. Cathodically protected externally coated steel service or yard lines and service or yard lines constructed of polyethylene plastic shall be surveyed at least once every five calendar years at intervals not exceeding 63 months.

"(d) For yard lines more than 300 feet in length and operating at a pressure less than 10 p.s.i.g., only the portion within 300 feet of a habitable dwelling must be leak surveyed in accordance with these regulations.

"(e) Each operator's operations and maintenance manual shall state that company-designated employees are to be trained in and conduct vegetation leak surveys where vegetation is suitable to such analysis.

"(f) Each leakage survey record shall be kept for at least six years."

(ee) The following shall be added to 49 C.F.R. 192.755: "(c) Each operator with cast iron piping shall institute all of the following for the purposes of evaluation and replacement of cast iron pipelines:

"(1) Each time a leak in the body of a cast iron pipe is discovered, collect a coupon from the joint of pipe that is leaking within five feet of the leak site.

"(2) Conduct laboratory analysis on all coupons to determine the percentage of graphitization. Using the following equation:

$$\text{Percent of Graphitization} = \frac{\text{(Maximum Depth of Graphitization)}}{\text{(Wall Thickness)}} \times 100$$

"(3) Replace at least one city block (approximately 500 feet) within 120 days of the operator's discovery of a leak in cast iron pipe due to external corrosion or each time the laboratory analysis of a coupon shows graphitization equal to or greater than the following:

| Diameter | Percent Graphitization |
|---|---|
| 2.0 inch | 25% |
| 3.0 inch and 4.0 inch | 60% |
| 6.0 inch and 8.0 inch | 75% |
| 10.0 inch or greater | 90% |

"(4) Submit coupons for analysis within 30 days of collection. Retain all sampling records for the life of the facility, but not less than five years.

"(5) For each operator with cast iron piping that is 3 inches or less in nominal diameter, have a replacement program that will remove all cast iron piping with nominal diameter of 3 inches and smaller from natural gas service by January 1, 2013."

(ff) 49 C.F.R. 192.801(b)(3) shall be deleted and replaced by the following: "(3) Is performed as requirement of K.A.R. 82-11-4; and." (Authorized by and implementing K.S.A. 66-1,150; effective, T-82-10-28-88, Oct. 28, 1988; effective, T-

82-2-25-89, Feb. 25, 1989; revoked, T-82-3-31-89, April 30, 1989; effective May 1, 1989; amended April 16, 1990; amended March 12, 1999; amended July 7, 2003; amended Jan. 25, 2008; amended June 26, 2009; amended Aug. 5, 2011.)

**82-11-10. Drug and alcohol testing.** The federal regulations titled "drug and alcohol testing," 49 C.F.R. Part 199 as in effect October 1, 2010, are adopted by reference only as they apply to operators of pipeline facilities that deal in the transportation of natural gas by pipeline, with the following modifications:

(a) 49 C.F.R. 199.1 shall be deleted and replaced by the following: "This regulation requires operators of pipeline facilities subject to K.A.R. 82-11-4 to test covered employees for the presence of prohibited drugs and alcohol."

(b) 49 C.F.R. 199.2 shall be deleted and replaced by the following:

"(a) This part applies to operators of intrastate natural gas pipelines within the state of Kansas.

"(b) This part does not apply to covered functions performed on:

"(1) Master meter systems, as defined in K.A.R. 82-11-3; or

"(2) pipeline systems that transport only petroleum gas or petroleum gas/air mixtures."

(c) 49 C.F.R. 199.3 shall be deleted and replaced by the following: "As used in this part:

"(a) 'accident' means an incident involving gas pipeline facilities reportable under K.A.R. 82-11-3;

"(b) 'administrator' means the Administrator, Pipeline and Hazardous Materials Safety Administration or the state corporation commission of the state of Kansas;

"(c) 'covered employee, employee, or individual to be tested' means a person who performs a covered function, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors;

"(d) 'covered function' means an operations, maintenance, or emergency response function regulated by K.A.R. 82-11-4 and K.A.R. 82-11-8 that is performed on a pipeline;

"(e) 'DOT Procedures' means the Procedures for Transportation Workplace Drug and Alcohol Testing Programs published by the Office of the Secretary of Transportation in 49 C.F.R. Part 40;

"(f) 'fail a drug test' means that the confirmation test results show positive evidence under DOT Procedures of a prohibited drug in the employee's system;

"(g) 'operator' means a person who owns or operates pipeline facilities subject to K.A.R. 82-11-1, et seq.;

"(h) 'pass a drug test' means that initial testimony or confirmation testing under DOT Procedures does not show evidence of the presence of a prohibited drug in the person's system;

"(i) 'performs a covered function' includes actually performing, ready to perform, or immediately available to perform a covered function;

"(j) 'positive rate for random drug testing' means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (i.e., positives, negatives, and refusals) under this part;

"(k) 'prohibited drug' means any of the following substances specified in Schedule I or Schedule II of the Controlled Substances Act, 21 U.S.C. §812 — marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP);

"(l) 'refuse to submit, refuse, or refuse to take' means behavior consistent with DOT Procedures concerning refusal to take a drug test or refusal to take an alcohol test;

"(m) 'state agency' means the state corporation commission of the state of Kansas."

(d) 49 C.F.R. 199.7 shall be deleted and replaced by the following:

"(a) Each operator who seeks a waiver under 49 C.F.R. 40.21 from the stand-down restriction must submit an application for waiver in duplicate to the state corporation commission of Kansas and the Associate Administrator for Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001;

"(b) Each application must:

"(1) Identify 49 C.F.R. 40.21 as the rule from which the waiver is sought;

"(2) Explain why the waiver is requested and describe the employees to be covered by the waiver;

"(3) Contain the information required by 49 C.F.R. 40.21 and any other information or arguments available to support the waiver requested; and

"(4) Unless good cause is shown in the appli-

cation, be submitted at least 60 days before the proposed effective date of the waiver.

"(c) No public hearing or other proceeding is held directly on an application before its disposition under this section. If the Associate Administrator determines that the application contains adequate justification, the Associate Administrator grants the waiver. If the Associate Administrator determines that the application does not justify granting the waiver, the Associate Administrator denies the application. The Associate Administrator notifies each applicant of the decision to grant or deny an application."

(e) 49 C.F.R. 199.9 shall be deleted.

(f) 49 C.F.R. 199.100 shall be deleted and replaced by the following: "The purpose of this subpart is to establish programs designed to help prevent accidents and injuries resulting from the use of prohibited drugs by employees who perform covered functions for operators of certain pipeline facilities subject to K.A.R. 82-11-4."

(g) 49 C.F.R. 199.200 shall be deleted and replaced by the following: "The purpose of this subpart is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform covered functions for operators of certain pipeline facilities subject to K.A.R. 82-11-4." (Authorized by and implementing K.S.A. 66-1,150; effective April 16, 1990; amended March 12, 1999; amended July 7, 2003; amended June 26, 2009; amended Aug. 5, 2011.)

## Article 12.—WIRE-STRINGING RULES

**82-12-7. Utility requirements for telecommunication supply lines.** A utility may proceed with construction of any telecommunication supply line if both of the following requirements are met:

(a) Before beginning construction, the utility shall give written notice to all of the following entities that have facilities within ½ mile of any contemplated telecommunication supply line construction or change in construction:

(1) Railroads; and

(2) any other utilities, unless the utilities have executed a joint use or other agreement covering the area in which the construction is proposed.

(b) The proposed telecommunication supply line construction shall meet the following requirements:

(1) Be within the utility's certified area; and

(2) not result in any objection from other utilities or railroads that have been given written notice as required by subsection (a). (Authorized by and implementing K.S.A. 66-183; effective Aug. 11, 1995; amended Aug. 5, 2011.)

## Article 14.—THE KANSAS UNDERGROUND UTILITY DAMAGE PREVENTION ACT

**82-14-1. Definitions.** The following terms as used in the administration and enforcement of the Kansas underground utility damage prevention act, K.S.A. 66-1801 et seq. and amendments thereto, shall be defined as specified in this regulation.

(a) "Backreaming" means the process of enlarging the diameter of a bore by pulling a specially designed tool through the bore from the bore exit point back to the bore entry point.

(b) "Commission" means the state corporation commission of Kansas.

(c) "Drill head" means the mechanical device connected to the drill pipe that is used to initiate the excavation in a directional boring operation. This term is sometimes referred to as the drill bit.

(d) "Excavation scheduled start date" means the later of the start date stated in the notice of intent of excavation filed by the excavator with the notification center or the start date filed by the excavator with a tier 2 member or tier 3 member.

(e) "Excavation site" means the area where excavation is to occur.

(f) "Locatable" has the meaning of that word as used in "locatable facility," which is defined in K.S.A. 66-1802 and amendments thereto. In addition to the requirements for locating underground facilities, as specified in K.S.A. 66-1802 and amendments thereto, the operator shall be able to locate underground facilities within 24 inches of the outside dimensions in all horizontal directions of an underground facility using tracer wire, conductive material, GPS technology, or any other technology that provides the operator with the ability to locate the pipelines for at least 20 years.

(g) "Locate" means the act of marking the tolerance zone of the operator's underground facilities by the operator.

(h) "Locate ball" means an electronic marker device that is buried with the facility and is used to enhance signal reflection to a facility detection device.

(i) "Meet on site" means a meeting between an operator and an excavator that occurs at the excavation site in order for the excavator to provide an accurate description of the excavation site.

(j) "Notice of intent of excavation" means the written notification required by K.S.A. 66-1804 and amendments thereto.

(k) "Notification center," as defined in K.S.A. 66-1802 and amendments thereto, means the underground utility notification center operated by Kansas one call, inc.

(l) "Pullback operation" means the installation of facilities in a directional bore by pulling the facility from the bore exit point back to the bore entry point.

(m) "Pullback device" means the apparatus used to connect drilling tools to the facility being installed in a directional bore.

(n) "Reasonable care" means the precautions taken by an excavator to conduct an excavation in a careful and prudent manner. Reasonable care shall include the following:

(l) Providing for proper support and backfill around all existing underground facilities;

(2) using nonintrusive means, as necessary, to expose the existing facility in order to visually determine that there will be no conflict between the facility and the proposed excavation path when the path is within the tolerance zone of the existing facility;

(3) exposing the existing facility at intervals as often as necessary to avoid damage when the proposed excavation path is parallel to and within the tolerance zone of an existing facility; and

(4) maintaining the visibility of the markings that indicate the location of underground utilities throughout the excavation period.

(o) "Tier 1 member" means any operator of a tier 1 facility, as defined in K.S.A. 66-1802 and amendments thereto, or any operator of a tier 2 facility, as defined in K.S.A. 66-1802 and amendments thereto, that elects to be a tier 1 member of the notification center pursuant to K.A.R. 82-14-3.

(p) "Tier 2 member" means any operator of a tier 2 facility, as defined in K.S.A. 66-1802 and amendments thereto, that elects to be a tier 2 member of the notification center.

(q) "Tier 3 member" means any operator of a tier 2 facility, as defined in K.S.A. 66-1802 and amendments thereto, that meets the requirements for a tier 3 facility, as defined in K.S.A. 66-1802 and amendments thereto, and elects to be a tier 3 member of the notification center.

(r) "Tolerance zone" has the meaning specified in K.S.A. 66-1802 and amendments thereto. The tolerance zone shall not be greater than the following:

(1) 25 inches for each tier 1 facility; and

(2) 61 inches for each tier 2 facility.

(s) "Trenchless excavation" means any excavation performed in a manner that does not allow the excavator to visually observe the placement of the new facility. This term shall include underground boring, tunneling, horizontal auguring, directional drilling, plowing, and geoprobing. (Authorized by and implementing K.S.A. 2008 Supp. 66-1815; effective Jan. 19, 2007; amended July 6, 2009.)

**82-14-2. Excavator requirements.** In addition to the provisions of K.S.A. 66-1804, K.S.A. 66-1807, K.S.A. 66-1809, and K.S.A 66-1810 and amendments thereto, the following requirements shall apply to each excavator:

(a) If an excavator directly contacts a tier 2 member or a tier 3 member, the excavation scheduled start date shall be the later of the following:

(1) The excavation scheduled start date assigned by the notification center; or

(2) two full working days after the day of contact with the tier 2 member or tier 3 member.

(b) Unless all affected operators have provided notification to the excavator, excavation shall not begin at any excavation site before the excavation scheduled start date.

(c) If a meet on site is requested by the excavator, the excavation scheduled start date shall be no earlier than the fifth working day after the date on which the notice of intent of excavation was given to the notification center or to the tier 2 member or tier 3 member.

(d) Each notice of intent of excavation shall include the name and telephone number of the individual who will be representing the excavator.

(e) Each description of the excavation site shall include the following:

(1) The street address, if available, and the specific location of the proposed excavation site at the street address; and

(2) an accurate description of the proposed excavation site using any available designations, including the closest street, road, or intersection, and any additional information requested by the notification center.

(f) If the excavation site is outside the boundaries of any city or if a street address is not available, the description of the excavation site shall include one of the following:

(1) An accurate description of the excavation site using any available designations, including driving directions from the closest named street, road, or intersection;

(2) the specific legal description, including the quarter section; or

(3) the longitude and latitude coordinates.

(g) An excavator shall not claim preengineered project status, as defined in K.S.A. 66-1802 and amendments thereto, unless the public agency responsible for the project performed the following before allowing excavation:

(1) Identified all operators that have underground facilities located within the excavation site;

(2) requested that the operators specified in paragraph (g)(1) verify the location of their underground facilities, if any, within the excavation site;

(3) required the location of all known underground facilities to be noted on updated engineering drawings as specifications for the project;

(4) notified all operators that have underground facilities located within the excavation site of the project of any changes to the engineering drawings that could affect the safety of existing facilities; and

(5) complied with the requirements of K.S.A. 66-1804(a), and amendments thereto.

(h) If an excavator wishes to conduct an excavation as a permitted project, as defined in K.S.A. 66-1802 and amendments thereto, the permit obtained by the excavator shall have been issued by a federal, state, or municipal governmental entity and shall have been issued contingent on the excavator's having met the following requirements:

(1) Notified all operators with facilities in the vicinity of the excavation of the intent to excavate as a permitted project;

(2) visually verified the presence of the facility markings at the excavation site; and

(3) complied with the requirements of K.S.A. 66-1804(a) and amendments thereto.

(i) If the excavator requests a meet on site as part of the description of the proposed excavation site given to the notification center, the tier 2 member, or the tier 3 member, then the excavator shall document the meet on site and any subsequent meetings regarding facility locations with a record noting the name and company affiliation for the representative of the excavator and the representative of the operator that attend the meeting. The excavator shall keep this record for at least two years. This documentation shall include the following:

(1) Verification that the description of the excavation site is understood by both parties;

(2) the agreed-upon excavation scheduled start date;

(3) the date and time of the meet on site; and

(4) the name and company affiliation of each attendee of the meet on site.

(j) Each excavator using trenchless excavation techniques shall develop and implement operating guidelines for trenchless excavation techniques. At a minimum, the guidelines shall require the following:

(1) Training in the requirements of the Kansas underground utility damage prevention act;

(2) training in the use of nonintrusive methods of excavation used if there is an indication of a conflict between the tolerance zone of an existing facility and the proposed excavation path;

(3) calibration procedures for the locator and sonde if this equipment is used by the excavator;

(4) recordkeeping procedures for measurements taken while boring;

(5) training in the necessary precautions to be taken in monitoring a horizontal drilling tool when backreaming or performing a pullback operation that crosses within the tolerance zone of an existing facility;

(6) training in the maintenance of appropriate clearance from existing facilities during the excavation operation and during the placement of new underground facilities;

(7) for horizontal directional drilling operations, a requirement to visually check the drill head and pullback device as they pass through potholes, entrances, and exit pits; and

(8) emergency procedures for unplanned utility strikes.

(k) If any contact with or damage to any underground facility or the facility's associated tracer wire, locate ball, or associated surface equipment occurs, the excavator shall immediately inform the operator. (Authorized by K.S.A. 2008 Supp. 66-1815; implementing K.S.A. 66-1803 and K.S.A. 66-1809; effective Jan. 19, 2007; amended July 6, 2009.)

**82-14-3. Operator requirements.** In ad-

dition to the provisions of K.S.A. 66-1806, K.S.A. 66-1807, and K.S.A. 66-1810 and amendments thereto, the requirements specified in this regulation shall apply to each operator.

(a) Each operator shall inform the notification center of its election to be considered as a tier 1 member, tier 2 member, or tier 3 member.

(b) Unless otherwise agreed to between the notification center and the operator, any operator of a tier 2 facility may change its membership election once every calendar year by informing the notification center of the operator's intention on or before November 30 of the preceding calendar year.

(c) Each tier 1 member shall perform the following:

(1) File and maintain maps of the operator's underground facilities or a map showing the operator's service area with the notification center; and

(2) file and maintain, with the notification center, the operator's telephone contact number that can be accessed on a 24-hour-per-day basis.

(d) Each tier 2 member shall perform the following:

(1) Establish telephone or internet service with the ability to receive notification from excavators on a 24-hour-per-day basis;

(2) file with the notification center updated maps of the operator's underground facilities or a map showing the operator's service area;

(3) file with the notification center the operator's current telephone contact number or numbers that can be accessed on a 24-hour-per-day basis;

(4) file with the notification center the operator's preferred method of contact for all referrals received from the notification center; and

(5) maintain for at least two years all information provided by the excavator pursuant to K.A.R. 82-14-2(e) and (f).

(e) Each tier 3 member shall perform the following:

(1) File with the notification center updated maps of the operator's underground facilities or a map showing the operator's service area;

(2) file with the notification center the operator's current telephone contact number or numbers that can be accessed on a 24-hour-per-day basis;

(3) file with the notification center the operator's preferred method of contact for all referrals received from the notification center;

(4) maintain for at least two years all information provided by the excavator pursuant to K.A.R. 82-14-2(e) and (f);

(5) develop and operate a locate service web site capable of receiving locate requests;

(6) publish and maintain a dedicated telephone number for locate services;

(7) maintain 24-hour response capability for emergency locates; and

(8) employ at least two technically qualified individuals whose job function is dedicated to the location of underground utilities.

(f) Except in cases of emergencies or separate agreements between the parties, each operator of a tier 1 facility shall perform one of the following, within the two working days before the excavation scheduled start date assigned by the notification center:

(1) Inform the excavator of the location of the tolerance zone of the operator's underground facilities in the area described in the notice of intent of excavation; or

(2) notify the excavator that the operator has no facilities in the area described in the notice of intent of excavation.

(g) Except in cases of emergencies or separate agreements between the parties, the operator of a tier 2 facility shall perform one of the following within the two working days before the excavation scheduled start date assigned by the notification center or the tier 2 member or tier 3 member, whichever is later:

(1) Mark the location of its facilities according to the requirements of subsections (m) and (n) in the area described in the notice of intent of excavation and, if applicable, notify the excavator of the operator's election to require a tolerance zone of 60 inches; or

(2) inform the excavator that the operator's underground facilities are expected to be at least two feet deeper than the excavator's planned excavation depth and that the location of its facilities will not be provided for the affected tier 2 facilities.

(h) Each operator of a tier 2 facility that notifies an excavator of its election to require a tolerance zone of 60 inches shall record and maintain the following records of the notification for at least two years:

(1) The name of the excavator contacted for the notification of a 60-inch tolerance zone;

(2) the date of the notification; and

(3) a description of the location of the excavation site.

(i) Each operator of a tier 2 facility that notifies an excavator of its election not to provide locates for its facilities that are expected to be two feet deeper than the excavator's maximum planned excavation depth shall record and maintain the following records of the notification for at least two years:

(1) The name of the excavator notified that the operator will not provide locates;

(2) the excavator's maximum planned excavation depth;

(3) the date of the notification; and

(4) a description of the location of the excavation site.

(j) If the operator of a tier 2 facility is unable to provide the location of its facilities within a 60-inch tolerance zone, the operator shall mark the approximate location of its facilities to the best of its ability, notify the excavator that the markings could be inaccurate, remain on site or in the vicinity of the excavation, and provide additional guidance to the excavator in locating the facilities as needed during the excavation.

(k) Each tier 2 facility constructed, replaced, or repaired after July 1, 2008 shall be locatable. Location data shall be maintained in the form of maps or any other format as determined by the operator.

(l) The requirement to inform the excavator of the facility location shall be met by marking the location of the operator's facility and identifying the name of the operator with flags, paint, or any other method by which the location of the facility is marked in a clearly visible manner.

(m) In marking the location of its facilities, each operator shall use safety colors substantially similar to five of the colors specified in the American national standards institute standard no. Z535.1-2002, "American national standard for safety color code," not including annex A, dated July 25, 2002 and hereby adopted by reference, according to the following table:

| Facility Type | Color |
|---|---|
| Electric power distribution lines and transmission lines | Safety red |
| Gas distribution and transmission lines, hazardous liquid distribution and transmission lines | Safety yellow |
| Telephone, telegraph, and fiber optic system lines; cable television lines; alarm lines; and signal lines | Safety orange |
| Potable water lines | Safety blue |
| Sanitary sewer main lines | Safety green |

(n) If the facility has any outside dimension that is eight inches or larger, the operator shall mark its facility so that the outside dimensions of the facility can be easily determined by the excavator.

(o) If the facility has any outside dimension that is smaller than eight inches, the operator shall mark its facility so that the location of the facility can be easily determined by the excavator.

(p) The requirement to notify the excavator that the tier 1 operator has no facilities in the area described in the notice of intent of excavation shall be met by performing one of the following:

(1) Marking the excavation site in a manner indicating that the operator has no facilities at that site; or

(2) contacting the excavator by telephone, facsimile, or any other means of communication. Two documented attempts by the operator to reach an excavator by telephone during normal business hours shall constitute compliance with this paragraph.

(q) If the notice of intent of excavation contains a request for a meet on site, the operator shall meet with the excavator at a mutually agreed-upon time within two working days after the day on which the notice of intent of excavation was given.

(r) After attending a meet on site, the operator shall inform the excavator of the tolerance zone of the operator's facilities in the area of the planned excavation within two working days before the excavation scheduled start date that was agreed to at the meet on site.

(s) Any operator may request that the excavator whiteline the proposed excavation site.

(t) If the operator requests that the excavator whiteline the excavation site, the operator shall have two working days after the whitelining is completed to provide the location of the tolerance zone.

(u) If the operator requests that the excavator use whitelining at the excavation site, the operator shall document the whitelining request and any subsequent meetings regarding the facility location for that excavation site. The operator shall

maintain records of the whitelining documentation for two years after the excavation scheduled start date. The documentation shall include the following:

(1) A record stating the name and contact information of the excavator contacted for the request for whitelining;

(2) verification that both parties understand the description of the excavation site;

(3) the agreed-upon excavation scheduled start date; and

(4) the date and time of the request for whitelining.

(v) Each operator that received more than 2,000 requests for facility locations in the preceding calendar year shall file a damage summary report at least semiannually with the Kansas corporation commission. The report shall include information on each incident of facility damage resulting from excavation activity that was discovered by the operator during that period. For each incident, at a minimum the following data, if known, shall be included in the report:

(1) The type of operator;

(2) the type of excavator;

(3) the type of excavation equipment;

(4) the city or county, or both, in which the damage occurred;

(5) the type of facility that was damaged;

(6) the date of damage, specifying the month and year;

(7) the type of locator;

(8) the existence of a valid notice of intent of excavation; and

(9) the primary cause of the damage.

(w) The damage summary report for the first six months of the calendar year shall be due on or before August 1 of the same calendar year. The damage summary report for the last six months of the calendar year shall be due on or before February 1 of the next calendar year. (Authorized by K.S.A. 2008 Supp. 66-1815; implementing K.S.A. 66-1806, as amended by L. 2008, ch. 122, sec. 8; effective Jan. 19, 2007; amended July 6, 2009.)

**82-14-4. Notification center requirements.** In addition to the provisions of K.S.A. 66-1805 and amendments thereto, the executive director of the notification center shall ensure that the following requirements are met:

(a) Notice shall be provided to each affected operator of a tier 1 facility of any excavation site for which the location has been requested pursuant to K.S.A. 66-1804(e), and amendments thereto, and K.A.R. 82-14-2 (e) or (f) if the affected operator is a tier 1 member and has facilities recorded with the notification center in the area of the proposed excavation site.

(b) If the affected operator is a tier 2 member and has a facility recorded with the notification center in the area of the proposed excavation, the notification center shall provide the excavator with the name of the tier 2 member and contact information for the tier 2 member.

(c) If the affected operator is a tier 3 member and has facilities recorded with the notification center in the area of the proposed excavation, the notification center shall provide the excavator with the name of the tier 3 member and the preferred method of contact for the tier 3 member.

(d) Notice provided by the notification center directly to the operators of tier 2 facilities of any excavation site shall be deemed to meet the requirements of subsections (b) and (c) if the operator agrees to the method of notification.

(e) A record of receipts for each notice of intent of excavation shall be maintained by the notification center for two years, including an audio record of each notice of intent of excavation, if available, and a written or electronic version of the notification sent to each operator that is a tier 1 member.

(f) A copy of the notification center's record documenting the notice of intent of excavation shall be provided to the commission or to the person giving the notice of intent of excavation, upon request.

(g) A quality control program shall be established and maintained by the notification center. The program shall ensure that the employees receiving and recording the notices of intent of excavation are adequately trained. (Authorized by K.S.A. 2008 Supp. 66-1815; implementing K.S.A. 66-1805, as amended by L. 2008, ch. 122, sec. 7; effective Jan. 19, 2007; amended July 6, 2009.)

**82-14-5. Tier 3 member notification requirements.** In addition to meeting the requirements of K.A.R. 82-14-3(e), each tier 3 member shall ensure that the following requirements are met:

(a) A record of receipts for each notice of intent of excavation shall be maintained for at least two years, including an audio record, if available, of each notice of intent of excavation and a written or electronic version of the notification.

(b) A copy of the tier 3 member's record documenting the notice of intent of excavation resulting in a response from the member shall be provided to the commission or to the person giving the notice of intent of excavation, upon request.

(c) A quality control program shall be established and maintained. The program shall establish procedures for receiving and recording the notices of intent of excavation. (Authorized by K.S.A 2008 Supp. 66-1815; implementing K.S.A 66-1802, as amended by L. 2008, ch. 122, sec. 5; effective Jan. 19, 2007; amended July 6, 2009.)

**82-14-6. Violation of act; enforcement procedures.** (a) After investigation, if the commission staff believes that there has been a violation or violations of K.S.A. 66-1801 et seq. and amendments thereto or any regulation or commission order issued pursuant to the Kansas underground utility damage prevention act and the commission staff determines that penalties or remedial action is necessary to correct the violation or violations, the commission staff may serve a notice of probable noncompliance on the person or persons against whom a violation is alleged. Service shall be made by registered mail or hand delivery.

(b) Any notice of probable noncompliance issued under this regulation may include the following:

(1) A statement of the provisions of the statutes, regulations, or commission orders that the respondent is alleged to have violated and a statement of the evidence upon which the allegations are based;

(2) a copy of this regulation; and

(3) any proposed remedial action or penalty assessments, or both, requested by the commission staff.

(c) Within 30 days of receipt of a notice of probable noncompliance, the recipient shall respond by mail in at least one of the following ways:

(1) Submit written explanations, a statement of general denial, or other materials contesting the allegations;

(2) submit a signed acknowledgment of commission staff's findings of noncompliance; or

(3) submit a signed proposal for the completion of any remedial action that addresses the commission staff's findings of noncompliance.

(d) The commission staff may amend a notice of probable noncompliance at any time before issuance of a penalty assessment. If an amendment includes any new material allegations of fact or if the staff proposes an increased civil penalty amount or additional remedial action, the respondent shall have 30 days from service of the amendment to respond.

(e) Unless good cause is shown or a consent agreement is executed by the commission staff and the respondent before the expiration of the 30-day time limit, the failure of a party to mail a timely response to a notice of probable noncompliance shall constitute an admission to all factual allegations made by the commission staff and may be used against the respondent in future proceedings.

(f) At any time before an order is issued assessing penalties or requiring remedial action or before a hearing, the commission staff and the respondent may agree to dispose of the case by joint execution of a consent agreement. The consent agreement may allow for a smaller penalty than otherwise required. The consent agreement may also allow for nonmonetary remedial penalties. Upon joint execution, the consent agreement shall become effective when the commission issues an order approving the consent agreement.

(g) Each consent agreement shall include the following:

(1) An admission by the respondent of all jurisdictional facts;

(2) an express waiver of any further procedural steps and of the right to seek judicial review or otherwise challenge or contest the validity of the commission's show cause order;

(3) an acknowledgment that the notice of probable noncompliance may be used to construe the terms of the order approving the consent agreement; and

(4) a statement of the actions required of the respondent and the time by which the actions shall be completed.

(h) If any violation resulting in a notice of probable noncompliance is not settled with a consent agreement, a penalty order may be issued by the commission no sooner than 30 days after the respondent has been served with a notice of probable noncompliance.

(i) The respondent shall remit payment for any civil assessments imposed by a penalty order within 20 days of service of the order.

(j) The respondent may request a hearing to challenge the allegations set forth in the penalty order by filing a motion with the commission within 15 days of service of a penalty order. The respon-

dent's failure to respond within 15 days shall be considered an admission of noncompliance.

(k) An order may be issued by the commission to open a formal investigation docket regarding any potential noncompliance with the Kansas underground utility damage prevention act, and amendments thereto, or any regulations or orders pursuant to that act. If the commission finds evidence that any party to the investigation docket was not in compliance, a show cause order may be issued by the commission. If a show cause order is issued during the course of a formal investigation, the staff shall not be required to issue a notice of probable noncompliance. (Authorized by K.S.A 66-106 and K.S.A 66-1812; implementing K.S.A 66-1812; effective July 6, 2009.)

## Article 16.—ELECTRIC UTILITY RENEWABLE ENERGY STANDARDS

**82-16-1. Definitions.** As used in these regulations, the following definitions shall apply:

(a) "Act" means the renewable energy standards act, K.S.A. 66-1256 through 66-1262 and amendments thereto.

(b) "Auxiliary power" has the meaning assigned to "station power" in K.S.A. 66-1,170(i), and amendments thereto.

(c) "Capacity from generation" means the net capacity of renewable generation resources owned or leased by a utility. Net capacity is the gross capacity minus auxiliary power required to operate the resource as determined in a test conducted as soon as possible after commercial operation begins. This test shall reflect operation of the resource over a four-hour period under conditions that do not limit performance due to ambient conditions, equipment, or operating or regulatory restrictions. The determination for a multiunit resource, including a wind farm, may be made through tests for a representative sample of at least 10% of the units. If the tests specified in this subsection are not practicable, the nameplate capacity of the resource minus the associated auxiliary power may be used as the net capacity unless there are factors that would prevent the resource from achieving nameplate capacity, other than ambient conditions, equipment, or operating or regulatory restrictions.

(d) "Capacity from net metering systems" means the rated generating capacity of systems interconnected with a utility pursuant to the net metering and easy connection act, K.S.A. 66-1263 et seq., and amendments thereto.

(e) "Capacity from purchased energy" means the capacity associated with energy purchased by a utility from renewable energy resources. If the purchase is pursuant to a long-term contract of 10 years or more, the capacity from purchased energy shall be the nameplate capacity of the resource minus auxiliary power, adjusted as appropriate to reflect the utility's share of the output of the resource. Otherwise, the capacity from purchased energy shall be determined in the same manner as that used to calculate the capacity from RECs.

(f) "Capacity from RECs" means the capacity associated with the purchase of renewable energy credit. This capacity shall be determined by applying to the REC purchases the actual capacity factor of a utility's own renewable generation from the prior calendar year according to the following formulas:

$$\text{Capacity (MWs)} = \frac{\text{Energy (MWhs)}}{\text{Capacity Factor} \times 8760 \text{ hours}}$$

$$\text{Capacity Factor}_i = \frac{12}{n} \sum_{t=1}^{n} \frac{E_{i,t}}{8760 \times C_{i,t}}$$

where

i = the individual renewable generation facility

n = the number of months the facility has been in operation over the past 24 months, with n representing at least 12 months

$E_{i,t}$ = the total energy output (MWh) by renewable generation facility i during compliance period t

$C_{i,t}$ = the average total generator capacity (MW) by renewable generation facility i during compliance period t

The actual capacity factor shall be that of the same or similar type of resource as the source of the REC, if known. If the utility has multiple installations of the same or similar type of resource, the capacity factor shall be the average of the facilities. If the utility did not have this type of resource as the source of the REC or if the source is unknown, the overall capacity factor of its total renewable generation shall be used. In the absence of renewable resource generation, a default capacity factor of 34% shall be used.

(g) "Electric distribution cooperative" means a cooperative as defined by K.S.A. 17-4603, and amendments thereto, that is engaged in the retail sale and distribution of electricity and does not

own or operate any generation or wholesale transmission facilities within the state of Kansas.

(h) "Electric utility" and "utility" mean any "affected utility," as defined by K.S.A. 66-1257 and amendments thereto.

(i) "Generation and transmission cooperative" means a cooperative as defined by K.S.A. 17-4603, and amendments thereto, that does not engage in the retail distribution and sale of electricity and operates generation facilities and transmission facilities solely for the wholesale distribution and sale of electricity.

(j) "Nameplate capacity" means the maximum rated output of a generator under specific conditions designated by the manufacturer, generally indicated in units of kilovolt-amperes (kVA) and in kilowatts (kW) on a nameplate attached to the generator.

(k) "REC" means "renewable energy credit," as defined in K.S.A. 66-1257 and amendments thereto. For purposes of these regulations, this term is reflected on a certificate representing the attributes associated with one megawatt-hour (MWh) of energy generated by a renewable energy resource that is located in Kansas or serves ratepayers in the state.

(l) "Renewable energy resources" has the meaning specified in K.S.A. 66-1257, and amendments thereto. For the purposes of K.S.A. 66-1257(f)(9)(A) and (B) and amendments thereto, the following shall apply:

(1) "Existing hydropower" shall mean hydropower that existed on or before May 27, 2009.

(2) "New hydropower" shall mean hydropower that existed after May 27, 2009.

(m) "Renewable energy standards" means the standards established by K.S.A. 66-1256 through 66-1262, and amendments thereto, for energy and energy portfolios of each utility subject to the provisions of the act. (Authorized by and implementing K.S.A. 2009 Supp. 66-1261; effective Nov. 19, 2010.)

**82-16-2. Renewable energy standards and report.** (a) Each utility shall meet the portfolio requirement in K.S.A. 66-1258, and amendments thereto, by maintaining a portfolio of renewable capacity from generation, purchased energy, RECs, or net metering systems.

(b) Each utility shall submit a report to the commission detailing that utility's compliance with the portfolio standards established by the act. A generation and transmission cooperative may submit a collective report on behalf of the electric distribution cooperatives it represents. If this collective report is submitted, the electric distribution cooperatives shall not be required to file their own reports as required by this subsection. The report shall specify the renewable generation that has been put into service or the portion of the utility's portfolio of renewable generation resources served from purchased energy, RECs, or net metering systems on or before July 1 of each calendar year. The first report shall be due on or before August 1, 2011 for the year 2011. An annual report shall be due on or before August 1 of each subsequent year. Each report shall contain the following information:

(1) A description of each type of renewable energy resource that has been purchased or put into service on or before July 1 of that year, along with a narrative supporting the rationale for selecting the capacity resource;

(2) a description of each renewable energy resource that was in operation the previous calendar year, including type, location, owner, operator, date of commencement of operations, and for the previous calendar year, the monthly capacity factor, monthly availability factor, and monthly amount of energy generated;

(3) a description of the utility's plans for meeting the renewable energy standard requirements for the next calendar year, including the utility's assessment of the expected impact to revenue requirements and any limitations that the one percent revenue requirement cap could impose on the utility's ability to comply with these regulations;

(4) the Kansas retail one-hour peak demand for each of the previous three calendar years and the average for these years, with supporting data and calculations if the demand differs from the information reported on the federal energy regulatory commission's FERC form 1. Each electric distribution cooperative that does not file FERC form 1 with the commission shall file a Kansas electric cooperative utility annual report with the commission;

(5) the amount of renewable energy capacity that will qualify as a portion of the year's peak demand as calculated pursuant to paragraph (b)(4), broken down by capacity from generation, purchased energy, RECs, and net metering systems;

(6) the renewable energy capacity identified in

paragraph (b)(5) from a facility constructed in Kansas after January 1, 2000;

(7) if capacity from RECs is identified and necessary to meet the act's portfolio requirements in years other than 2011, 2016, and 2020, information on why the utility was unable to or did not acquire other renewable energy resources to meet the requirements;

(8) the calculated percentage increase in the utility's revenue requirements and retail utility rates that would be caused by compliance with the act's portfolio requirement for the year, as determined pursuant to K.A.R. 82-16-4. Supporting documentation for the determination shall be included with the report; and

(9) if the utility does not meet the act's portfolio requirement of renewable energy resources for 2011 or 2012, evidence of good faith efforts to comply with the portfolio requirements for 2011 or 2012, evidence of mitigating circumstances, and information regarding the factors specified in subsection (b) of K.A.R. 82-16-3. (Authorized by K.S.A. 2009 Supp. 66-1261; implementing K.S.A. 2009 Supp. 66-1258 and 66-1261; effective Nov. 19, 2010.)

**82-16-3. Administrative penalties.** Administrative penalties for noncompliance with the portfolio requirements of the act shall be imposed at levels that promote compliance after the commission's consideration of good faith efforts to comply, mitigating circumstances, and any other factors, in accordance with the following provisions:

(a) The standard minimum penalty shall be equal to two times the market value during the calendar year of sufficient RECs to have met the portfolio requirement.

(b) The penalty may be set by the commission above or below the standard minimum based on consideration of the relevant facts including the following, in addition to evidence of good faith efforts to comply or mitigating circumstances:

(1) The reasons for noncompliance;

(2) the degree of noncompliance;

(3) plans to achieve compliance;

(4) the impact of noncompliance on utility costs and revenues; and

(5) the impact of noncompliance on the environment.

(c) Pursuant to K.S.A. 66-1261 and amendments thereto, a noncomplying utility shall be exempted from administrative penalties by the commission if the utility demonstrates that compliance causes a retail rate impact of one percent or more as calculated pursuant to K.A.R. 82-16-4. (Authorized by and implementing K.S.A. 2009 Supp. 66-1261; effective Nov. 19, 2010.)

**82-16-4. Retail revenue requirement.** The retail revenue requirement attributable to compliance with the renewable energy standards requirement shall be calculated as follows for each utility:

(a) In conjunction with the reports required by K.A.R. 82-16-2, each utility shall file a separate retail revenue requirement calculation for each new capacity resource, whether renewable or nonrenewable, added during the year and also for renewable resources that were not added but were required to meet the portfolio requirement of the act. A capacity resource may result from new generation resources, purchased energy, RECs, or net metering systems. For purposes of complying with the act, "retail rate impact" shall mean the retail revenue requirement resulting from the determination of the retail revenue requirement specified in this regulation.

(b) Each determination of the retail revenue requirement shall reflect the total revenues required to allow the utility the opportunity to do the following:

(1) Earn a return on rate base items;

(2) earn a return on plant investments through depreciation;

(3) recover taxes other than income taxes;

(4) recover fuel and purchased power costs, including incremental fuel expense resulting from the inefficient dispatch of power generation if this expense is known;

(5) recover operating and maintenance costs;

(6) recover administrative and general expenses; and

(7) recover income taxes, including current deferred income taxes.

(c) In order to calculate a return on rate base items, each utility shall use the overall rate of return authorized by the commission from its last litigated rate case or specified in a stipulation and agreement authorized by the commission. If an overall rate of return was not specified in a utility's last rate case, then the average of the utility's proposed rate of return and the rate of return proposed by commission staff shall be used.

(d) The determination of the percentage in-

crease to a utility's total retail revenue requirement shall consist of two separate calculations.

(1) The first calculation shall include the results from the addition of renewable capacity resources and shall be calculated as follows:

(A) The cumulative retail revenue requirement for all renewable capacity resources added during the year shall be the numerator.

(B) The cumulative retail revenue requirement for all nonrenewable capacity resources added during the year shall be added to the total retail revenues authorized by the commission in the utility's last rate case. The total retail revenues resulting from a utility's last rate case shall consist of all commission-authorized revenues used to determine base rates as well as all retail revenues recovered through any riders, surcharges, and other mechanisms. The cumulative amount of the retail revenues associated with nonrenewable capacity resources added during the year and the total retail revenues authorized by the commission in the utility's last rate case shall be the denominator.

(C) The numerator divided by the denominator shall result in the percentage increase to a utility's total retail revenue requirement resulting from the addition of renewable capacity resources.

(2) The second calculation shall include the results from the addition of renewable capacity resources added during the year and renewable energy resources that were not added but were required to meet the portfolio requirement of the act. The basis for the costs of resources not added shall be specified, including whether the costs come from responses to a request for proposal, negotiations, or any other process. The calculation shall be made as follows:

(A) The cumulative retail revenue requirement for all renewable capacity resources added during the year and renewable resources that were not added but were required to meet the portfolio requirement shall be the numerator.

(B) The cumulative retail revenue requirement for all nonrenewable capacity resources added during the year shall be added to the total retail revenues authorized by the commission in the utility's last rate case. The total retail revenues resulting from a utility's last rate case shall consist of all commission-authorized revenues used to determine base rates as well as all retail revenues recovered through any riders, surcharges, and other mechanisms. The cumulative amount of the retail revenues associated with nonrenewable capacity resources added during the year and the total retail revenues authorized by the commission in the utility's last rate case shall be the denominator.

(C) The numerator divided by the denominator shall result in the percentage increase to a utility's total retail revenue requirement resulting from the addition of renewable capacity resources. (Authorized by K.S.A. 2009 Supp. 66-1261; implementing K.S.A. 2009 Supp. 66-1259 and 66-1260; effective Nov. 19, 2010.)

**82-16-5. Certification of renewable energy resources.** (a) If a utility seeks to classify as renewable any generation capacity from a source not listed in the act's definition of "renewable energy resources," the utility shall file an application with the commission for certification of a renewable energy resource on or before January 1 of the calendar year in which the resource is proposed to be included in the portfolio required by the act. The application shall contain the following information:

(1) A detailed technical description of the resource, including fuel type, technology, and expected operating specifications;

(2) a detailed description of the environmental impact of the resource, including impact on air, water, and land use;

(3) information concerning any applications for approvals or permits or any reviews or investigations by governmental entities with regard to environmental impact; and

(4) documentation or other evidence of certification or verification that the resource is considered a renewable energy resource by an entity that is widely recognized as having an established program and standards for certification of renewable energy resources.

(b) A determination shall be made by the commission regarding each application for classification of generation capacity filed pursuant to subsection (a), within 120 days after filing. (Authorized by K.S.A. 2009 Supp. 66-1261; implementing K.S.A. 2009 Supp. 66-1257 and 66-1262; effective Nov. 19, 2010.)

**82-16-6. Renewable energy credit program.** (a) Renewable energy credits intended to be used to meet the portfolio requirements in K.S.A. 66-1258, and amendments thereto, shall be issued and used as part of a REC program either established or approved by the commission. Each application for approval of any program not ap-

proved by the commission in any prior year shall be submitted on or before January 1 of the calendar year in which the RECs are proposed to be included in the portfolio.

(b) Any utility may purchase or sell RECs without commission approval. However, each renewable energy credit shall be counted only once. A REC sold by a utility shall not be included in the portfolio of the utility that sold the renewable energy credit. No utility shall include any REC in its portfolio that is included in the portfolio of any other utility, whether or not the utility is subject to the provisions of the act. Therefore, utilities and customer-generators shall not create, register, or sell RECs from energy produced from generation, purchased energy, or net metering system capacity if the energy is used by a utility to comply with the portfolio requirements of the act. For capacity that is only partially used for compliance, RECs may be created, registered, and sold for the pro rata portion of the energy produced by the unused portion of the resource.

(c) For purposes of complying with the act, any REC may be used only once. Unused RECs shall remain valid for up to two years from the date that the associated electricity is generated and shall be permanently retired at the end of two years or when used for compliance, whichever is earlier. A utility shall not sell RECs or the attributes associated with renewable energy generation or purchased energy used to comply with the requirements of the act to the utility's customers under a voluntary program established to let certain customers pay different rates to cover the cost of renewable energy, which is sometimes referred to as a "green pricing" program. To the extent that RECs from renewable energy resources are sold to customers, the utilities shall reduce the capacity used to comply with the act according to the formula specified in this subsection. Each utility shall retire any RECs sold under such a program.

Total Renewable Capacity for Compliance = TRC − $C_{GP}$

where

$$C_{GP} = \frac{E_{GP}}{CF \times 8760}$$

TRC = total renewable capacity
CGP = capacity used for green pricing
$E_{GP}$ = energy sold for green pricing
CF = capacity factor for source of the energy sold as green energy

(d) Each REC sold or purchased by any Kansas utility shall be reported in an approved registry that documents and verifies attributes and other compliance conditions as well as tracks the creation, sale, retirement, and other transactions regarding the REC to prevent double counting and misuse, in accordance with these regulations and commission direction. (Authorized by and implementing K.S.A. 2009 Supp. 66-1258; effective Nov. 19, 2010.)

## Article 17.—NET METERING

**82-17-1. Definitions.** The following terms used in the administration and enforcement of the Kansas net metering and easy connection act, K.S.A. 66-1263 through 66-1271 and amendments thereto, shall be defined as specified in this regulation.

(a) "Act" means the net metering and easy connection act (NMECA), K.S.A. 66-1263 through 66-1271 and amendments thereto.

(b) "Customer" means an entity receiving retail electric service from a utility.

(c) "IEEE" means the institute of electrical and electronics engineers, inc.

(d) "IEEE standard 1547" means the IEEE standard 1547, "IEEE standard for interconnecting distributed resources with electric power systems," published by the IEEE on July 28, 2003 and hereby adopted by reference.

(e) "IEEE standard 1547.1" means the IEEE standard 1547.1, "IEEE standard conformance test procedures for equipment interconnecting distributed resources with electric power systems," published by the IEEE on July 1, 2005 and hereby adopted by reference.

(f) "Net metered facility" means the equipment on a customer's side of a meter that meets the requirements in K.S.A. 66-1264(b)(1) through (b)(5), and amendments thereto.

(g) "Parallel operation" means a net metered facility that is connected electrically to an electric distribution system for longer than 100 milliseconds.

(h) "REC" means renewable energy credit, as defined in K.S.A. 66-1257 and amendments thereto. For purposes of these regulations, this term is reflected on a certificate representing the attributes associated with one megawatt-hour (MWh) of energy generated by a renewable energy resource that is located in Kansas or serves ratepayers in the state.

(i) "UL standard 1741" means the UL stan-

dard 1741, "inverters, converters, controllers and interconnection system equipment for use with distributed energy resources," published on January 28, 2010 by underwriters laboratories inc. and hereby adopted by reference. (Authorized by K.S.A. 2009 Supp. 66-1269; implementing K.S.A. 2009 Supp. 66-1268 and 66-1269; effective Aug. 6, 2010.)

**82-17-2. Utility requirements pursuant to the act.** (a) In addition to the requirements set forth in the act, any utility may install, at its expense, equipment to allow for load research metering for purposes of monitoring each net metered facility.

(b) Responsibilities for maintenance, repair, or replacement of meters, service lines, and other equipment provided by the utility shall be governed by the utility's current tariffs and terms of service on file with the commission. This equipment shall be accessible at all times to utility personnel.

(c) Each utility's interconnection with a customer-generator's net metered facility shall be subject to the utility's current tariffs and terms of service on file with the commission.

(d) Each utility shall enter into a written interconnection application or interconnection agreement with each customer-generator that is equivalent to sample forms available from the commission. Each agreement shall include the following information:

(1) Customer name, mailing address, service address, phone number, and emergency contact phone number;

(2) utility account number and number of meters associated with the account;

(3) information about the net metered facility, including AC power rating, voltage, type of system, address of the net metered facility, and the name of the manufacturer and the model number of the inverter or interconnection equipment;

(4) information about the installation of the net metered facility, including the name and license number of the contractor who installed the facility, and verification that the net metered facility meets the standards in K.A.R. 82-17-1(c), (d), (e), and (i);

(5) information regarding dispute resolution opportunities available with the commission as specified in K.A.R. 82-1-20;

(6) information regarding periodic testing requirements necessary to meet the standards in K.A.R. 82-17-1(c), (d), (e), and (i); and

(7) verification by a licensed engineer or licensed electrician that the net metered facility has been installed in a manner that meets the requirements of all applicable codes and standards for that net metered facility. (Authorized by K.S.A. 2009 Supp. 66-1269; implementing K.S.A. 2009 Supp. 66-1265, 66-1269, and 66-1270; effective Aug. 6, 2010.)

**82-17-3. Tariff requirements.** Each utility shall file a tariff with the commission setting forth the terms and conditions for net metering interconnection with a customer-generator. In addition to setting forth the terms and conditions required by the act, the tariff shall include the following information:

(a) Any specific criteria and guidelines for determining the appropriate size of generation to fit the expected load;

(b) a provision requiring the customer-generator to furnish, install, operate, and maintain in good repair without cost to the utility any relays, locks and seals, breakers, automatic synchronizers, disconnecting devices, and any other control and protective devices required by an applicable recognized industry standard that is clearly identified in the tariff or in a tariff that is already approved by the commission, or by any requirements adopted by federal, state or local governing authorities for the interconnection of net-metered facilities, for the parallel operation of the net metered facility with the utility's system;

(c) a provision requiring the customer-generator to supply, at no expense to the utility, a suitable location for the utility's equipment;

(d) a statement indicating whether or not the utility requires the customer-generator to install a utility-controlled manual disconnect switch located on the line side of a meter that has the capability to be locked out by utility personnel to isolate the utility's facilities if an electrical outage in the utility's facilities occurs. If a manual switch is required, the utility shall give notice to the customer-generator, as soon as possible, when the switch is locked out or used by the utility. The disconnect switch may also serve as a means of isolation for the net metered facility during any customer-generator maintenance activities, routine outages, or emergencies;

(e) a requirement that the customer-generator shall notify the utility before the initial energizing

or start-up testing, or both, of the net metered facility. The utility shall have the right to be present at these times;

(f) the requirement that, if harmonics, voltage fluctuations, or other disruptive problems on the utility's system can be directly attributed to the operation of the net metered facility, each problem shall be corrected at the customer-generator's expense. The utility shall provide to the customer-generator a written estimate of all costs that will be incurred by the utility and billed to the customer-generator to accommodate interconnection or correct problems;

(g) a requirement that no net metered facility shall damage the utility's system or equipment or present an undue hazard to utility personnel; and

(h) a requirement that the customer-generator enter into a written interconnection application or interconnection agreement with the utility, as specified in K.A.R. 82-17-2(d). (Authorized by K.S.A. 2009 Supp. 66-1269; implementing K.S.A. 2009 Supp. 66-1264, 66-1268, 66-1269; effective Aug. 6, 2010.)

**82-17-4. Reporting requirements.** (a) Each utility shall annually submit to the commission, by March 1, a report in a format approved by the commission listing all net metered facilities connected with the utility during the prior calendar year, pursuant to the act.

(b) Each report shall specify the following information:

(1) Information by customer type, including the following for each net metered facility:

(A) The type of generation resource in operation;

(B) zip code of the net metered facility;

(C) first year of interconnection;

(D) any excess kilowatt-hours that expired at the end of the prior calendar year;

(E) generator size; and

(F) number and type of meters; and

(2) the utility's system retail peak in Kansas and total rated net metered generating capacity for all net metered facilities connected with the utility's system in Kansas. (Authorized by K.S.A. 2009 Supp. 66-1269; implementing K.S.A. 2009 Supp. 66-1265, 66-1266, 66-1269, and 66-1271; effective Aug. 6, 2010.)

**82-17-5. Renewable energy credit program.** As specified in K.A.R. 82-16-6, neither utilities nor customer-generators may create, register, or sell renewable energy credits (RECs) from energy produced by a net metered facility that is used by a utility to comply with the requirements of the renewable energy standards act. Each utility shall inform a customer-generator if the utility does not intend to use the capacity of the customer-generator's net metered facility, in whole or part, to comply with these requirements for any specified calendar year or years. The utility shall provide this notice on or before October 1 of the year preceding the first such specified year. (Authorized by K.S.A. 2009 Supp. 66-1269; implementing K.S.A. 2009 Supp. 66-1271; effective Aug. 6, 2010.)

# Agency 84
# Public Employee Relations Board

*Articles*

84-2. PROCEDURE.

## Article 2.—PROCEDURE

**84-2-1. Service of pleadings.** (a) Method, proof, complaints, orders, and other processes and papers of the board. Service of pleadings and orders shall be conducted in accordance with K.S.A. 77-531, and amendments thereto. Complaints, decisions, orders, and other processes and papers of the board may be served personally, by certified mail, by telefacsimile machine, by electronic mail, or by leaving a copy in the proper office or place of business of persons to be served. The return by the individual serving any of these documents, setting forth the manner of service, shall be proof of service. The return post office receipt, when certified and mailed as specified in this subsection, shall be proof of service.

(b) Service by a party. The moving party and respondent in any action shall be required to file the original and five copies of any pleadings with the board or its designee in person, by certified mail, by telefacsimile machine, or by electronic mail. If a party files any pleading with the board by telefacsimile machine or by electronic mail, the party shall file the original and five copies of the pleading with the board either in person or by certified mail within five days of electronically filing the pleading. The moving party shall also cause a copy of the pleading to be served, by regular mail or in person, upon all other parties of record with a statement of certification of service appearing upon the pleading.

(c) Service upon attorney. If a party appears by the party's attorney, all papers other than the complaint, notice of original hearings, and decisions and orders may be served as provided in subsection (d), upon the party's attorney with the same force and effect as though served upon the party.

(d) Service by the board. Once a party has been permitted to intervene in a pending action, upon request of the intervening party the other parties shall be ordered by the board, its designee, or the presiding officer to serve upon the intervening party copies of all pleadings of the other parties filed with the board before the date of intervention. (Authorized by K.S.A. 2007 Supp. 75-4323; implementing K.S.A. 77-519; effective, E-72-29, Sept. 29, 1972; effective Jan. 1, 1973; amended May 1, 1975; amended July 30, 1990; amended June 19, 2009.)

# Agency 88

# Kansas Board of Regents

*Articles*

88-24. General Education Development (GED) Test.
88-28. Private and Out-of-State Postsecondary Education Institutions.
88-29. Qualified Admission.
88-29a. State University Admissions.
88-30. Student Health Insurance Program.

## Article 24.—GENERAL EDUCATION DEVELOPMENT (GED) TEST

**88-24-1. Eligibility to take GED test.** (a) Each applicant to take the general education development (GED) test shall meet the following requirements:

(1) Be neither currently enrolled at nor graduated from an accredited public, private, denominational, or parochial high school in the United States or Canada; and

(2) be 16 years of age or older.

(b) In addition to meeting the requirements specified in subsection (a), each applicant who is 16 or 17 years old shall meet the following requirements:

(1) Provide one of the following:

(A) Written permission from a parent or legal guardian; or

(B) written proof of legal emancipation; and

(2) provide proof of meeting one of the following requirements:

(A) Have participated in a final counseling session conducted by the school district where the applicant currently resides and signed a disclaimer pursuant to K.S.A. 72-1111(b)(2), and amendments thereto;

(B) have disenrolled from an alternative education program approved by a Kansas unified school district;

(C) have graduated or disenrolled from a program of instruction approved by the state board of education pursuant to K.S.A. 72-1111(g), and amendments thereto; or

(D) be exempt from compulsory attendance pursuant to a court order. (Authorized by and implementing K.S.A. 2009 Supp. 72-4530; effective Oct. 18, 2002; amended July 27, 2007; amended Oct. 15, 2010.)

## Article 28.—PRIVATE AND OUT-OF-STATE POSTSECONDARY EDUCATION INSTITUTIONS

**88-28-1. Definitions.** The following terms, wherever used in this article, shall have the meanings specified in this regulation: (a) "Academic year" means instruction consisting of at least 24 semester credit hours over a period of two semesters or the equivalent.

(b) "Associate's degree" means a postsecondary degree consisting of at least 60 semester credit hours or the equivalent of college-level coursework. This term shall include the following types of associate's degree:

(1) "Associate in applied science degree" means a technical-oriented or occupational-oriented associate's degree that meets the following conditions:

(A) Is granted to each student who successfully completes a program that emphasizes preparation in the applied arts and sciences for careers, typically at the technical or occupational level; and

(B) requires at least 15 semester credit hours in general education and at least 30 semester credit hours or the equivalent in the technical content area.

(2) "Associate in arts degree" means an associate's degree that meets the following conditions:

(A) Is granted to each student who successfully completes a program that emphasizes the liberal arts; and

(B) requires at least 30 semester credit hours or the equivalent in general education, including English, mathematics, humanities, communica-

tions, physical sciences, and social and behavioral sciences, or any combination of these subjects.

(3) "Associate in general studies degree" means an associate's degree that meets the following conditions:

(A) Is granted to each student who successfully completes a program that emphasizes a broad range of knowledge; and

(B) requires at least 24 semester credit hours or the equivalent in general education.

(4) "Associate in science degree" means an associate's degree that meets the following conditions:

(A) Is granted to each student who successfully completes a program that emphasizes either mathematics or the biological or physical sciences, or both; and

(B) requires at least 30 semester credit hours or the equivalent in general education.

(c) "Bachelor's degree" and "baccalaureate" mean a degree that meets the following conditions:

(1) Requires the equivalent of at least four academic years of college-level coursework in the liberal arts, sciences, or professional fields meeting the following conditions:

(A) Requires at least 120 semester credit hours or the equivalent;

(B) includes at least 45 semester credit hours or the equivalent in upper-division courses; and

(C) requires at least 60 semester credit hours or the equivalent from institutions that confer a majority of degrees at or above the baccalaureate level; and

(2) requires a distinct specialization, which is known as a "major," that requires either of the following:

(A) At least one academic year, or the equivalent in part-time study, of work in the major subject and at least one academic year, or the equivalent in part-time study, in related subjects; or

(B) at least two academic years, or the equivalent in part-time study, in closely related subjects within a liberal arts interdisciplinary program.

(d) "Catalog" means a document delivered in print or on-line containing the elements specified in K.A.R. 88-28-2.

(e) "Closure of an institution" or "closure" means the practice of no longer allowing students access to the institution to receive instruction. Closure of an institution occurs on the calendar day immediately following the last day on which students are allowed access to the institution to receive instruction.

(f) "Degree program" means a course of study that meets the following conditions:

(1) Leads to an associate's degree, a bachelor's degree, a master's degree, an intermediate (specialist) degree, a first professional degree, or a doctor's degree; and

(2) consists of at least 30 semester credit hours or the equivalent of coursework in a designated academic discipline area.

(g) "Doctor's degree" means a degree that may include study for a closely related master's degree and that meets the following conditions:

(1) Is granted to each student who successfully completes an intensive, scholarly program requiring the equivalent of at least three academic years beyond the bachelor's degree;

(2) requires a demonstration of mastery of a significant body of knowledge through successful completion of either of the following:

(A) A comprehensive examination; or

(B) a professional examination, the successful completion of which may be required in order to be admitted to professional practice in Kansas; and

(3) requires evidence, in the form of a doctoral dissertation, of competence in independent basic or applied research that involves the highest levels of knowledge and expertise.

(h) "Enrollment agreement" means a written contract between an institution and a student in which the institution agrees to provide instruction to the student for a fee. Each valid enrollment agreement shall meet the requirements of K.A.R. 88-28-7.

(i) "Enrollment period" means the period of time specified in an enrollment agreement during which instruction, including any examinations given, is to be provided to a student.

(j) "Entering an institution" means commencing class attendance by a student at an on-site institution or first submitting a lesson by a student for evaluation in a distance education program.

(k) "First professional degree" means a degree that meets the following conditions:

(1) Is granted to each student who successfully completes study beyond the fulfillment of undergraduate requirements, as approved by the state board;

(2) requires the equivalent of at least five academic years of study, including work towards a bachelor's degree; and

(3) includes a specialization in a professional field.

(l) "Honorary degree" means a special degree awarded as an honor that is bestowed upon a person without completion of the usual requirements.

(m) "Intermediate (specialist) degree" means a degree, including an educational specialist degree, granted to each student who successfully completes a program requiring the equivalent of at least one academic year beyond the master's degree in a professional field.

(n) "Master's degree" means a degree that meets the following conditions:

(1) Is granted to each student who successfully completes a program in the liberal arts and sciences or in a professional field beyond a bachelor's degree;

(2) requires the equivalent of at least one academic year in a curriculum specializing in a single discipline or single occupational or professional area; and

(3) culminates in a demonstration of mastery, which may include one or more of the following:

(A) A research thesis;

(B) a work of art; or

(C) the solution of an applied professional problem.

(o) "Program" means either of the following:

(1) A course or series of courses leading to a certificate, diploma, or degree; or

(2) training that prepares a person for a field of endeavor in a business, trade, technical, or industrial occupation.

(p) "Upper-division course" means any course with content and teaching appropriate for students in their third and fourth academic years or for other students with an adequate background in the subject. (Authorized by and implementing K.S.A. 2009 Supp. 74-32,165; effective Oct. 20, 2006; amended March 18, 2011.)

**88-28-6. Fees.** Fees for certificates of approval, registration of representatives, and certain transcripts shall be collected by the state board in accordance with this regulation.

(a) For institutions domiciled or having their principal place of business within the state of Kansas, the following fees shall apply:

(1) Initial application fees:

(A) Non-degree-granting institution .. $2,000

(B) Degree-granting institution ..... $3,000

(2) Initial evaluation fee, in addition to initial application fees:

(A) Non-degree level ..... $750

(B) Associate degree level ..... $1,000

(C) Baccalaureate degree level ..... $2,000

(D) Master's degree level ..... $3,000

(E) Professional and doctoral degree levels ..... $4,000

(3) Renewal application fees:

(A) Non-degree-granting institution ..... 2% of gross tuition but not less than $800 and not more than $15,000

(B) Degree-granting institution ... 2% of gross tuition, but not less than $1,600 and not more than $15,000

(4) New program submission fees, for each new program:

(A) Non-degree program ..... $250

(B) Associate degree program ..... $500

(C) Baccalaureate degree program .... $750

(D) Master's degree program ..... $1,000

(E) Professional and doctoral degree programs ..... $2,000

(5) Program modification fee, for each program ..... $100

(6) Branch campus site fees, for each branch campus site:

(A) Initial non-degree-granting institution ..... $1,500

(B) Initial degree-granting institution $2,500

(7) Renewal branch campus site fees, for each branch campus site:

(A) Non-degree-granting institution ..... 2% of gross tuition, but not less than $800 and not more than $15,000

(B) Degree-granting institution ... 2% of gross tuition, but not less than $1,600 and not more than $15,000

(8) On-site branch campus review fee, for each branch campus site ..... $250

(9) Representative fees:

(A) Initial registration ..... $200

(B) Renewal of registration ..... $150

(10) Late submission of renewal of application fee ..... $125

(11) Student transcript copy fee ..... $10

(12) Returned check fee ..... $50

(13) Changes in institution profile fees:

(A) Change of institution name ..... $100

(B) Change of institution location ..... $100

(C) Change of ownership only ..... $100

(b) For institutions domiciled or having their

principal place of business outside the state of Kansas, the following fees shall apply:

(1) Initial application fees:

(A) Non-degree-granting institution .. $4,000

(B) Degree-granting institution ..... $5,500

(2) Initial evaluation fee, in addition to initial application fees:

(A) Non-degree level ..... $1,500

(B) Associate degree level ..... $2,000

(C) Baccalaureate degree level ..... $3,000

(D) Master's degree level ..... $4,000

(E) Professional and doctoral degree levels ..... $5,000

(3) Renewal application fees:

(A) Non-degree-granting institution ..... 3% of gross tuition received or derived from Kansas students, but not less than $2,400 and not more than $15,000

(B) Degree-granting institution ... 3% of gross tuition received or derived from Kansas students, but not less than $3,000 and not more than $15,000

(4) New program submission fees, for each new program:

(A) Non-degree program ..... $500

(B) Associate degree program ..... $750

(C) Baccalaureate degree program .... $1,000

(D) Master's degree program ..... $1,500

(E) Professional and doctoral degree programs ..... $2,500

(5) Program modification fee, for each program ..... $100

(6) Branch campus site fees, for each branch campus site:

(A) Initial non-degree-granting institution ..... $4,000

(B) Initial degree-granting institution $5,500

(7) Renewal branch campus site fees, for each branch campus site:

(A) Non-degree-granting institution ..... 3% of gross tuition received or derived from Kansas students, but not less than $2,400 and not more than $15,000

(B) Degree-granting institution ... 3% of gross tuition received or derived from Kansas students, but not less than $3,000 and not more than $15,000

(8) On-site branch campus review, fee for each branch campus site ..... $500

(9) Representative fees:

(A) Initial registration ..... $350

(B) Renewal of registration ..... $250

(10) Late submission of renewal of application fee ..... $125

(11) Student transcript copy fee ..... $10

(12) Returned check fee ..... $50

(13) Changes in institution profile fees:

(A) Change of institution name ..... $100

(B) Change of institution location ..... $100

(C) Change of ownership only ..... $100

(Authorized by and implementing K.S.A. 2010 Supp. 74-32,181, as amended by 2011 HB 2020, sec. 3; effective Oct. 20, 2006; amended April 16, 2010; amended, T-88-7-20-11, July 20, 2011; amended Oct. 21, 2011.)

## Article 29.—QUALIFIED ADMISSION

**88-29-1. Definitions.** The following terms, wherever used in this article or in article 29a, shall have the meanings specified in this regulation:

(a) "Accelerated course" means a course that meets all of the following criteria:

(1) Is designed for students performing above their grade level as determined by standardized testing;

(2) if the course is designed to be a ½-unit course, is completed in less than 40 clock-hours;

(3) if the course is designed to be a one-unit course, is completed in less than 80 clock-hours; and

(4) has been determined by the board of regents to include similar or greater content, depth, and complexity as a one-unit course completed in 120 clock-hours or a ½-unit course completed in 60 clock-hours.

(b) "Accredited high school" means one or more educational institutions that provide secondary instruction to students in grades 9, 10, 11, and 12 and that are designated accredited by a regional accrediting agency recognized by the United States department of education, by the Kansas state board of education, or by an agency with standards equivalent to those of the United States department of education or the Kansas state board of education.

(c) "Admission" means the permission given by the admission officer of a state educational institution to an applicant to enroll as a degree-seeking student in a state educational institution.

(d) "Admission category" refers to one of the admission categories adopted by a state educational institution pursuant to K.A.R. 88-29-3.

(e) "Complete application file" means the entire set of the following student records that have

been received in the admission office of a state educational institution:

(1) A completed application to the state educational institution;

(2) verification that all applicable application fees have been paid;

(3) an official copy of the final transcript from each high school attended, including a transcript documenting graduation from high school, or a GED certificate;

(4) when required pursuant to K.A.R. 88-29-5, K.A.R. 88-29a-5, K.A.R. 88-29-7, or K.A.R. 88-29a-7, an official copy of all ACT or SAT scores; and

(5) any other materials required by the state educational institution for advising or placement purposes.

(f) "Degree-seeking student" means a student who has been accepted for enrollment at a state educational institution and who has formally indicated to the state educational institution the intent to complete a program of study that is designated by the United States department of education as a program that is eligible for federal financial aid.

(g) "Earned the general educational development (GED) certificate with an overall score of not less than 50 points" means one of the following:

(1) Took the GED test on or after January 1, 2002, with an overall score of at least 2,550 points and a minimum score of 510 points on each subtest; or

(2) took the GED test before January 1, 2002, with an overall score of at least 250 points and a minimum score of 50 points on each subtest.

(h) "Exception window for nonresident freshman class admissions" means a method by which any state educational institution, pursuant to K.A.R. 88-29-8c or K.A.R. 88-29a-8c, may admit a person who is not a resident of Kansas, who does not meet the applicable requirements specified in K.A.R. 88-29-4, K.A.R. 88-29-7, or K.A.R. 88-29a-7, and who is not eligible for admission pursuant to the exception window for nonresident transfer admissions.

(i) "Exception window for nonresident transfer admissions" means a method by which any state educational institution, pursuant to K.A.R. 88-29-8b, may admit a person who is not a resident of Kansas and who has earned at least 24 credit hours of transferable coursework but who is not eligible for admission pursuant to K.A.R. 88-29-4.

(j) "Exception window for resident freshman class admissions" means a method by which any state educational institution, pursuant to K.A.R. 88-29-8 or K.A.R. 88-29a-8, may admit a Kansas resident who does not meet the applicable requirements specified in K.A.R. 88-29-4 through 88-29-6 or in K.A.R. 88-29a-5 and K.A.R. 88-29a-6 and who is not eligible for admission pursuant to the exception window for resident transfer admissions.

(k) "Exception window for resident transfer admissions" means a method by which any state educational institution, pursuant to K.A.R. 88-29-8a, may admit a Kansas resident who has earned at least 24 credit hours of transferable coursework at an accredited community college, university, or other college but who is not eligible for admission pursuant to K.A.R. 88-29-4.

(l) "Institution of higher education" means an educational institution in any state, territory or country that meets all of the following criteria:

(1) Meets one of the following requirements:

(A) Offers a course of instruction designated by the United States department of education as a program that is eligible for federal financial aid; or

(B) offers a course of instruction that is equivalent to a program designated by the United States department of education as a program that is eligible for federal financial aid;

(2) is legally authorized within the state, territory, or country that appears on the transcript to provide a program of education beyond secondary education; and

(3) meets one of the following requirements:

(A) Is accredited by an accrediting agency or association that is recognized by the United States department of education or an international accrediting agency; or

(B) has been granted preaccreditation status by an accrediting agency or association that is recognized by either the United States department of education or an international accrediting agency.

(m) "Integrated course" means a course that redistributes the content of two or more qualified admission precollege curriculum courses into a nontraditional combination. A nontraditional combination may combine the content of qualified admission algebra I and qualified admission geometry over a period of four semesters in a sequence of courses titled integrated math I and II.

(n) "Kansas resident" means a person deter-

mined to be a resident for fee purposes pursuant to K.S.A. 76-729 and amendments thereto.

(o) "Non-accredited private secondary school" means a private secondary school, as defined in K.S.A. 72-53,100 and amendments thereto, which may include a home school.

(p) "Non-degree-seeking student" means a student who has been accepted for enrollment in a state educational institution and who has formally indicated to the state educational institution the intent to enroll for self-enrichment or other reasons, excluding the intent to complete a course of study that is designated by the United States department of education as a program that is eligible for federal financial aid.

(q) "Precollege," when used to describe a course or curriculum, means a type of course or curriculum offered at an accredited high school that meets each of the following criteria:

(1) The course or curriculum is designed for a student performing at or above the student's grade level as determined by standardized testing.

(2) The content and requirements of the course or curriculum have been determined by the board of regents or the board's designee to reflect a pace of instruction, intensity and depth of material, level of abstraction, and application of critical thinking necessary to prepare students for study at state educational institutions.

(r) "State educational institution" has the meaning specified in K.S.A. 76-711 and amendments thereto.

(s) "Transferable college credit hours" means postsecondary coursework that an admitting state educational institution will accept.

(t) "Unit" means a measure of secondary credit that may be awarded to a student for satisfactory completion of a particular course or subject. One unit of credit is credit that is awarded for satisfactory completion of a course or subject that is offered for and generally requires 120 clock-hours to complete. Credit may be awarded in increments based upon the amount of time a course or subject is offered and the requirements for completion. (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective Aug. 1, 2007; amended, T-88-6-26-09, July 1, 2009; amended Nov. 13, 2009; amended July 22, 2011.)

**88-29-3. Categories of admission.** (a) In the admission policies of each state educational institution, which are required by K.A.R. 88-29-9 and K.A.R. 88-29a-9, each state educational institution shall adopt the regular admission category, which shall include any applicant who is given permission from the state educational institution to enroll as a degree-seeking student at the state educational institution without any conditions or restrictions other than that the student will be subject to all policies of the state educational institution.

(b) In the admission policies of each state educational institution, which are required by K.A.R. 88-29-9 and K.A.R. 88-29a-9, any state educational institution may adopt one or more admission categories in addition to the regular admission category specified in subsection (a). These additional categories shall be limited to the following:

(1) The temporary admission category, which shall include any applicant who is given permission from the state educational institution to enroll as a degree-seeking student at the state educational institution for a specified period of time not to exceed one calendar year, during which period the student shall be required to provide the state educational institution with the student's complete application file; and

(2) the provisional admission category, which shall include any applicant who is given permission from the state educational institution to enroll as a degree-seeking student at the state educational institution for a probationary period of time, subject to restrictions that may include any of the following requirements:

(A) The applicant shall enroll only in a limited number of credit hours each semester as specified by the state educational institution;

(B) the applicant shall enroll in the developmental or college preparatory courses specified by the state educational institution;

(C) the applicant shall participate in an advising program specified by the state educational institution;

(D) the applicant shall achieve a certain specified grade point average specified by the state educational institution at the end of a period of time specified by the state educational institution; and

(E) the applicant shall meet any other provisions established in the state educational institution's admission policy for provisional admission established in accordance with K.A.R. 88-29-9 or K.A.R. 88-29a-9.

(c) A student in the regular admission category shall not be in any other admission category.

(d) The temporary and provisional admission

categories shall not be mutually exclusive. Each student who is not in the regular admission category shall be admitted into any other category or categories of admission adopted by the state educational institution for which the student is eligible. (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective Aug. 1, 2007; amended July 22, 2011.)

**88-29-4. Qualifications required for the admission of an applicant with 24 or more transferable credit hours.** (a) The requirements established in this regulation shall apply to any applicant who has earned 24 or more credit hours from an institution of higher education that are transferable to a state educational institution. If an applicant to whom this regulation is applicable does not meet the requirements of this regulation, the applicant may be admitted by means of the exception window for resident transfer admissions described in K.A.R. 88-29-8a or the exception window for nonresident transfer admissions described in K.A.R. 88-29-8b.

(b) Each state educational institution shall admit any Kansas resident who meets the following criteria:

(1) Has earned 24 or more credit hours from an institution of higher education that are transferable to a state educational institution; and

(2) has earned a cumulative grade point average of 2.0 or higher on a 4.0 scale in all postsecondary coursework.

(c) Any state educational institution may admit a nonresident who meets the following criteria:

(1) Has earned 24 or more credit hours from an institution of higher education that are transferable to a state educational institution; and

(2) has earned a cumulative grade point average of 2.0 or higher on a 4.0 scale in all postsecondary coursework. (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective Aug. 1, 2007; amended, T-88-6-26-09, July 1, 2009; amended Nov. 13, 2009; amended July 22, 2011.)

**88-29-5. Qualifications required for the admission of a Kansas resident who is under the age of 21.** This regulation shall be applicable to each state educational institution's review of applicants before the 2015 summer session. (a) The requirements established in this regulation shall apply to any applicant who is a Kansas resident and is under the age of 21, except that the requirements shall not apply to any applicant who has earned 24 or more credit hours from an institution of higher education that are transferable to a state educational institution. If an applicant to whom this regulation is applicable does not meet the requirements of this regulation, the applicant may be admitted by means of the exception window for resident freshman class admissions described in K.A.R. 88-29-8.

(b) Each state educational institution shall admit any Kansas resident under the age of 21 who meets both of the following requirements:

(1) Has graduated from an accredited high school in Kansas or, pursuant to K.S.A. 72-116 and amendments thereto, an accredited high school located out of state; and

(2) meets at least one of the following criteria:

(A) Has achieved a composite score on the ACT of at least 21;

(B) has ranked in the top third of the applicant's high school class upon completion of seven or eight semesters; or

(C) has completed the qualified admission precollege curriculum described in K.A.R. 88-29-11, or its functional equivalent described in K.A.R. 88-29-18, with a minimum grade point average of 2.0 on a 4.0 scale.

(c) Each state educational institution shall admit any Kansas resident under the age of 21 who meets both of the following requirements:

(1) Has graduated from a non-accredited private secondary school; and

(2) has achieved a composite score on the ACT of at least 21.

(d) Each state educational institution shall admit any Kansas resident who is under the age of 21 and who has earned the general educational development (GED) certificate with an overall score of not less than 50 points, as defined in K.A.R. 88-29-1. (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective Aug. 1, 2007; amended, T-88-6-26-09, July 1, 2009; amended Nov. 13, 2009; amended July 22, 2011.)

**88-29-6. Qualifications required for the admission of a Kansas resident who is 21 or older.** This regulation shall be applicable to each state educational institution's review of applicants before the 2015 summer session.

(a) The requirements established in this regulation shall apply to any applicant who is a Kansas resident and who will be 21 or older on the first day of classes at the state educational institution to which the student is applying, except that the requirements shall not apply to any applicant who

has earned 24 or more credit hours from an institution of higher education that are transferable to a state educational institution. If an applicant to whom this regulation is applicable does not meet the requirements of this regulation, the applicant may be admitted by means of the exception window described in K.A.R. 88-29-8.

(b) Each state educational institution shall admit any Kansas resident who is 21 or older and who meets one of the following criteria:

(1) Has graduated from an accredited high school in Kansas or, pursuant to K.S.A. 72-116 and amendments thereto, an accredited high school located out of state; or

(2) has earned the general educational development (GED) certificate with an overall score of not less than 50 points, as defined in K.A.R. 88-29-1. (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective Aug. 1, 2007; amended July 22, 2011.)

**88-29-7. Qualifications required for the admission of a nonresident who is under the age of 21.** This regulation shall be applicable to each state educational institution's review of applicants before the 2015 summer session. (a) The requirements established in this regulation shall apply to any applicant who is a nonresident and is under the age of 21, except that the requirements shall not apply to any applicant who has earned 24 or more credit hours from an institution of higher education that are transferable to a state educational institution. If an applicant to whom this regulation is applicable does not meet the requirements prescribed in this regulation, the applicant may be admitted by means of the exception window for nonresident freshman class admissions described in K.A.R. 88-29-8c.

(b) Any state educational institution may admit any nonresident who meets both of the following requirements:

(1) Has graduated from an accredited high school; and

(2) meets at least one of the following criteria:

(A) Achieved a composite score on the ACT of at least 21;

(B) ranked in the top third of the applicant's high school class upon completion of seven or eight semesters; or

(C) completed the qualified admission precollege curriculum described in K.A.R. 88-29-11, or its functional equivalent described in K.A.R. 88-29-19, with a minimum grade point average of at least 2.5 on a 4.0 scale.

(c) Any state educational institution may admit any nonresident who meets both of the following requirements:

(1) Has graduated from a non-accredited private secondary school meeting requirements substantially equivalent to those in K.S.A. 72-53,100 through 72-53,102, and amendments thereto; and

(2) has achieved a composite score on the ACT of at least 21. (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective Aug. 1, 2007; amended, T-88-6-26-09, July 1, 2009; amended Nov. 13, 2009; amended July 22, 2011.)

**88-29-7a. Qualifications required for the admission of a nonresident who is 21 or older.** This regulation shall be applicable to each state educational institution's review of applicants before the 2015 summer session. (a) The requirements of this regulation shall apply to any applicant who is a nonresident and who will be 21 or older on the first day of classes at the state educational institution to which the student is applying, except that this regulation shall not apply to any applicant who has earned 24 or more credit hours from an institution of higher education that are transferable to a state educational institution. If an applicant to whom this regulation is applicable does not meet the requirements of this regulation, the applicant may be admitted by means of the exception window described in K.A.R. 88-29-8c.

(b) Any state educational institution may admit any nonresident who is 21 or older and who meets one of the following criteria:

(1) Has graduated from an accredited high school; or

(2) has earned the general educational development (GED) certificate with an overall score of not less than 50 points, as defined in K.A.R. 88-29-1. (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective July 22, 2011.)

**88-29-8. The exception window for resident freshman class admissions.** This regulation shall be applicable to each state educational institution's review of applicants before the 2015 summer session. (a) Any state educational institution may admit any Kansas resident who does not meet the applicable requirements specified in K.A.R. 88-29-5 or K.A.R. 88-29-6 and who has earned fewer than 24 credit hours from an institution of higher education that are transferable to

the state educational institution by means of the exception window for resident freshman class admissions. The maximum number of students admitted by means of this exception window shall be calculated as follows:

(1) The total number of admitted new students who have earned fewer than 24 credit hours from an institution of higher education that are transferable to the state educational institution, regardless of admission category, shall be counted on the twentieth day of the fall, spring, and summer sessions of each academic year.

(2) The maximum number of admissions calculated using the exception window shall be equal to 10 percent of the sum of the three numbers counted in paragraph (a)(1).

(b) If the state educational institution exceeds the allotted number of admissions using this exception window, the excess over the allowable total number of exceptions shall be subtracted from the subsequent year's allowable total number of exceptions for resident freshman class admissions. (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective Aug. 1, 2007; amended, T-88-6-26-09, July 1, 2009; amended Nov. 13, 2009; amended July 22, 2011.)

**88-29-8a. The ten percent exception window for resident transfer admissions.** Any state educational institution may admit any Kansas resident who has earned 24 or more credit hours from an institution of higher education that are transferable to a state educational institution, but who does not meet the applicable requirements specified in K.A.R. 88-29-4, by means of the ten percent exception window for resident transfer admissions created pursuant to K.S.A. 76-717(a)(6), and amendments thereto.

(a) The maximum number of students admitted by means of this ten percent exception window shall be calculated as follows:

(1) The total number of admitted new resident students who have earned at least 24 transferable credit hours from an institution of higher education that are transferable to the state educational institution, regardless of admission category, shall be counted on the twentieth day of the fall, spring, and summer sessions of each academic year.

(2) The maximum number of admissions calculated using this ten percent exception window shall be equal to 10 percent of the sum of the three numbers counted in paragraph (a)(1).

(b) If the state educational institution exceeds the allotted number of admissions using the ten percent exception window, the excess over the allowable total number of exceptions shall be subtracted from the subsequent year's allowable total number of exceptions for resident transfer admissions. (Authorized by and implementing K.S.A. 76-717, as amended by L. 2009, ch. 37, §1; effective, T-88-6-26-09, July 1, 2009; effective Nov. 13, 2009.)

**88-29-8b. The ten percent exception window for nonresident transfer admissions.** Any state educational institution may admit any nonresident who has earned 24 or more credit hours from an institution of higher education that are transferable to a state educational institution, but who does not meet the applicable requirements specified in K.A.R. 88-29-4, by means of the ten percent exception window for nonresident transfer admissions created pursuant to K.S.A. 76-717(a)(9), and amendments thereto.

(a) The maximum number of students admitted by means of this ten percent exception window shall be calculated as follows:

(1) The total number of admitted new nonresident students who have earned at least 24 transferable credit hours from an institution of higher education that are transferable to the state educational institution, regardless of admission category, shall be counted on the twentieth day of the fall, spring, and summer sessions of each academic year.

(2) The maximum number of admissions calculated using this ten percent exception window shall be equal to 10 percent of the sum of the three numbers counted in paragraph (a)(1).

(b) If the state educational institution exceeds the allotted number of admissions using this ten percent exception window, the excess over the allowable total number of exceptions shall be subtracted from the subsequent year's allowable total number of exceptions for nonresident transfer admissions. (Authorized by and implementing K.S.A. 76-717, as amended by L. 2009, ch. 37, §1; effective, T-88-6-26-09, July 1, 2009; effective Nov. 13, 2009.)

**88-29-8c. The exception window for nonresident freshman class admissions.** This regulation shall be applicable to each state educational institution's review of applicants before the 2015 summer session. (a) Any state educational institution may admit any nonresident who does not meet the applicable requirements spec-

ified in K.A.R. 88-29-7 or K.A.R. 88-29-7a and who has earned fewer than 24 credit hours from an institution of higher education that are transferable to the state educational institution, by means of the exception window for nonresident freshman class admissions. The maximum number of students admitted by means of this exception window shall be calculated as follows:

(1) The total number of admitted new nonresident students who have earned fewer than 24 credit hours from an institution of higher education that are transferable to the state educational institution, regardless of admission category, shall be counted on the twentieth day of the fall, spring, and summer sessions of each academic year.

(2) The maximum number of admissions that may be made using this exception window shall be equal to 10 percent of the sum of the three numbers counted in paragraph (a)(1) or 50 students, whichever is greater.

(b) If the state educational institution exceeds the allotted number of admissions using this exception window, the excess over the allowable total number of exceptions shall be subtracted from the subsequent year's allowable total number of exceptions for nonresident freshman class admissions. (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective July 22, 2011.)

**88-29-9. Admission policies for state educational institutions.** This regulation shall be applicable to each state educational institution's review of applicants before the 2015 summer session. The chancellor or president of each state educational institution or a designee shall establish admission policies that meet all of the following requirements:

(a) The policies shall not conflict with the provisions of this article.

(b) The policies shall specify the materials required for a complete application file.

(c) The policies shall address the enrollment of both degree-seeking and non-degree-seeking students as well as each student's transition from degree-seeking to non-degree-seeking status or from non-degree-seeking to degree-seeking status. Policies shall mandate that each non-degree-seeking student who applies to enroll as a degree-seeking student shall be admitted only if one of the following conditions is met:

(1) The student meets the applicable requirements specified in K.A.R. 88-29-4 through 88-29-7.

(2) The student is admitted by means of the exception window for resident freshmen class admissions described in K.A.R. 88-29-8.

(3) The student is admitted by means of the exception window for resident transfer admissions described in K.A.R. 88-29-8a.

(4) The student is admitted by means of the exception window for nonresident transfer admissions described in K.A.R. 88-29-8b.

(5) The student is admitted by means of the exception window for nonresident freshman class admissions described in K.A.R. 88-29-8c.

(d) The policies shall include an explanation of the exception windows and the state educational institution's method to determine which applicants would be admitted if there were more applicants than the state educational institution is allowed under K.A.R. 88-29-8, K.A.R. 88-29-8a, K.A.R. 88-29-8b, or K.A.R. 88-29-8c.

(e) The policies may include the establishment of subcategories of non-degree-seeking students.

(f) The policies shall include a statement indicating whether the state educational institution will consider, in the admission decision, any postsecondary credit from an institution that is not accredited and has not been granted preaccreditation status by an agency recognized by the United States department of education or by an equivalent international agency. If the state educational institution considers these credits, the admission decision shall be made in accordance with K.A.R. 88-29-4.

(g) The policies shall include a statement of whether the state educational institution enrolls students in the temporary or provisional admission category.

(1) If the state educational institution enrolls any students in the temporary admission category, the policies shall include all of the following:

(A) A description of requirements for exiting the temporary admission category and entering another admission category;

(B) a statement that a temporarily admitted student may be denied admission to a specific degree program;

(C) a statement that each student who fails to exit from the temporary admission category within the specified period of time shall be disenrolled;

(D) a statement that each applicant who is admitted in the temporary admission category pursuant to K.A.R. 88-29-10(a)(2) or K.A.R. 88-29-10(b)(2) shall be allowed to exit from the temporary admission category and enter the reg-

ular admission category only upon verification of high school graduation; and

(E) a statement that each applicant who is admitted into the temporary admission category pursuant to K.A.R. 88-29-10(b)(3) shall be allowed to exit the temporary admission category and enter the regular admission category only upon verification that the applicant meets both of the following requirements:

(i) Remained in the top third of the class after the applicant's seventh semester or returned to the top third of the applicant's class during the eighth semester; and

(ii) graduated from high school.

(2) If the state educational institution enrolls any students in the provisional admission category, the policies shall include all of the following:

(A) A description of requirements for exiting the provisional admission category and entering another admission category;

(B) a statement that any student admitted in the provisional admission category may be denied admission to a specific degree program; and

(C) a statement that each student who fails to exit from the provisional admission category within the period of time specified by the state educational institution shall be disenrolled.

(3) The state educational institution's policy shall mandate that a student who meets the criteria for both the temporary and provisional admission categories shall not be granted regular admission until the student fulfils the requirements for exiting each of the categories in which the student is initially enrolled.

(h) The admission policy of each state educational institution shall be required to be approved in advance by the board of regents. (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective Aug. 1, 2007; amended, T-88-6-26-09, July 1, 2009; amended Nov. 13, 2009; amended July 22, 2011.)

**88-29-10. Methods for state educational institutions to use when evaluating qualifications for admission.** This regulation shall be applicable to each state educational institution's review of applicants before the 2015 summer session.

(a) Each admission officer at a state educational institution shall consider an applicant's ACT or SAT scores as follows:

(1) A documented score of 980 on the SAT, excluding the writing portion of the SAT, shall be deemed the equivalent of a composite score of 21 on the ACT for purposes of this article.

(2) A documented composite score of 21 or above on the ACT may be used to admit an applicant in the temporary admission category after the applicant's completion of the sixth high school semester, without further review of the applicant's materials.

(3) The admission officer shall consider the applicant's best composite ACT score for admission decisions.

(4) If an applicant has taken both the ACT and SAT, the admission officer shall consider the applicant's better score on the two tests for admission decisions.

(b) Each admission officer at a state educational institution shall consider class rank as follows:

(1) If class rank cannot be determined, the admission officer shall not admit an applicant under this criterion.

(2) If an applicant's documented class rank is in the top third of the applicant's class after the applicant's seventh semester of high school, the class rank may be used to admit an applicant into the temporary admission category without further review of the applicant's materials.

(3) If an applicant's documented class rank is in the top third of the applicant's class after the applicant's sixth semester of high school, the class rank may be used to admit an applicant into the temporary admission category without further review of the applicant's materials.

(c) Each admission officer at a state educational institution shall calculate grade point average in the qualified admission precollege curriculum as follows:

(1) The admission officer shall ensure that the requirements of K.A.R. 88-29-11 are met before calculating grade point average.

(2) The admission officer shall calculate a grade point average only for approved qualified admission precollege curriculum courses appearing on the official high school transcript.

(3) The admission officer shall consider a course to be part of the approved qualified admission precollege curriculum only if the course was approved by the board of regents staff, in accordance with procedures established by the board of regents or the board's designee, for the semester and year in which the applicant completed the course and if the applicant earned a grade of D or better.

(4) The admission officer shall consider a

course to be part of the approved qualified admission precollege curriculum only if the course code that appears on the official high school transcript is the same as the course code of the approved course.

(5)(A) If the high school transcript reports grades on a four-point scale, the admission officer shall calculate grade point averages in the approved qualified admission precollege curriculum by assigning four points to a grade of A, three points to a grade of B, two points to a grade of C and one point to a grade of D. Pluses and minuses shall not be considered in the calculation.

(B) If the high school transcript reports grades on a scale other than a four-point scale, the admission officer shall mathematically convert the grades to a four-point scale and assign points as described in paragraph (b)(5)(A).

(6) The admission officer shall consider grades of P or pass as follows:

(A) If the high school transcript indicates that a P is equivalent to a grade of D or higher, the admission officer shall assign one grade point to each grade of P.

(B) If the high school transcript indicates that a P is equivalent to a grade of C or higher, the admission officer shall assign two grade points to each grade of P.

(C) If the high school transcript does not indicate the minimum letter grade corresponding to a P, the admission officer shall not include the course in the calculations for the grade point average in the qualified admission precollege curriculum.

(7) If an applicant has retaken an approved qualified admission precollege course, the admission officer shall use the highest grade when calculating the grade point average for the approved qualified admission precollege curriculum.

(8) If an applicant has taken a college course to meet the requirements for the approved qualified admission precollege curriculum and if this college course appears on the applicant's official high school transcript, the admission officer shall include the college course in the grade point average as follows:

(A) Each college course with three or more credit hours, but no more than six credit hours, shall be treated as a one-unit high school course.

(B) Each college course with more than six credit hours shall be treated as a two-unit high school course.

(d) If functional equivalents are substituted for courses in the qualified admission precollege curriculum in one or more disciplines, the admission officer of a state educational institution shall not assign a grade point value to the functional equivalents when calculating the qualified admission precollege curriculum grade point average.

(e) At the time of admission of an applicant, the state educational institution shall notify the applicant of each of the following:

(1) The category or categories in which the applicant is admitted;

(2) any enrollment restrictions associated with the applicant's category or categories of admission; and

(3) the requirements for removing any enrollment restrictions associated with the applicant's category or categories of admission. (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective Aug. 1, 2007; amended July 22, 2011.)

**88-29-11. Requirements for the qualified admission precollege curriculum.** This regulation shall be applicable to each applicant graduating from high school in academic year 2013-2014 or earlier. In order to admit any applicant under the qualified admission precollege curriculum criteria, each state educational institution shall require the applicant to provide an official high school transcript documenting completion of the approved qualified admission precollege curriculum that meets the following requirements:

(a) For each student graduating from high school before 2010, the transcript shall indicate the following distribution of courses:

(1) Four units of approved qualified admission English courses, with the content described in K.A.R. 88-29-14;

(2) three units of approved qualified admission mathematics courses that have the content described in K.A.R. 88-29-15 and that meet the following requirements:

(A) Are at or above the level of qualified admission algebra I; and

(B) were taken during ninth through twelfth grades;

(3) three units of approved qualified admission natural science courses that have the content described in K.A.R. 88-29-16 and that meet the following requirements:

(A) The three units shall be selected from any of the following courses, with at least one unit in each selected course:

(i) Qualified admission biology;

(ii) qualified admission advanced biology;
(iii) qualified admission chemistry;
(iv) qualified admission physics;
(v) qualified admission earth-space science; or
(vi) qualified admission principles of technology; and
(B) at least one unit shall be selected from a qualified admission chemistry course or a qualified admission physics course; and
(4) three units of approved qualified admission social science courses that have the content described in K.A.R. 88-29-17 and that are distributed according to the following requirements:
(A) A minimum of ½ unit shall be a qualified admission United States government course;
(B) a minimum of ½ unit shall be selected from any of the following courses:
(i) Qualified admission world history;
(ii) qualified admission world geography; or
(iii) qualified admission international relations;
(C) a minimum of one unit shall be a qualified admission United States history course;
(D) up to one unit shall be selected from any of the following courses:
(i) A qualified admission anthropology course;
(ii) a qualified admission current social issues course;
(iii) a qualified admission economics course;
(iv) a qualified admission race and ethnic group relations course;
(v) a qualified admission sociology course;
(vi) a qualified admission psychology course;
(vii) a qualified admission United States history course; or
(viii) a qualified admission United States government course;
(E) a ½-unit course shall not be used to fulfill more than one requirement of this regulation for more than one discipline in the qualified admissions precollege curriculum; and
(F) a one-unit course may be used to fulfill two ½-unit requirements of this regulation.
(b) For each student graduating from high school in 2010 and thereafter but before academic year 2014-2015, the qualified admission precollege curriculum shall consist of courses that are among those listed in the document titled "Kansas board of regents precollege curriculum courses approved for university admissions," revised June 13, 2011, which is hereby adopted by reference. The qualified admission precollege curriculum shall consist of the following distribution of courses:
(1) Four units of approved qualified admission English courses that include reading, writing, and literature;
(2) three units of approved qualified admission mathematics courses that meet the following requirements:
(A) Each course shall be completed in the ninth through twelfth grades; and
(B) each course shall be selected from any of the following courses:
(i) Qualified admission algebra I;
(ii) qualified admission geometry;
(iii) qualified admission algebra II;
(iv) any mathematics course that has qualified admission algebra II as a prerequisite; or
(v) any other course approved by the chief executive officer of the board of regents or the chief executive officer's designee;
(3) three units of approved qualified admission natural science courses that meet the following requirements:
(A) The three units shall be selected from any of the following courses:
(i) Qualified admission biology;
(ii) qualified admission advanced biology;
(iii) qualified admission chemistry;
(iv) qualified admission physics;
(v) qualified admission earth-space science;
(vi) qualified admission principles of technology; or
(vii) any other courses approved by the chief executive officer of the board of regents or the chief executive officer's designee; and
(B) at least one unit shall be selected from a qualified admission chemistry course or a qualified admission physics course; and
(4) three units of approved qualified admission social science courses that are distributed according to the following requirements:
(A) A minimum of ½ unit shall be a qualified admission United States government course;
(B) a minimum of ½ unit shall be selected from any of the following courses:
(i) Qualified admission world history;
(ii) qualified admission world geography; or
(iii) qualified admission international relations;
(C) a minimum of one unit shall be a qualified admission United States history course;
(D) not more than one unit shall be selected from any of the following courses:
(i) Qualified admission anthropology;
(ii) qualified admission current social issues;
(iii) qualified admission economics;

(iv) qualified admission psychology;

(v) qualified admission race and ethnic group relations;

(vi) qualified admission sociology;

(vii) qualified admission United States history;

(viii) qualified admission United States government; or

(ix) any other courses approved by the chief executive officer of the board of regents or the chief executive officer's designee;

(E) a ½-unit course shall not be used to fulfill more than one requirement of this regulation for more than one discipline in the qualified admissions precollege curriculum; and

(F) a one-unit course may be used to fulfill two ½-unit requirements of this regulation. (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective Aug. 1, 2007; amended, T-88-6-26-09, July 1, 2009; amended Nov. 13, 2009; amended July 22, 2011.)

**88-29-12. Establishment of a qualified admission precollege curriculum by an accredited high school in Kansas.** (a) Any accredited high school in Kansas may establish a qualified admission precollege curriculum. Failure to establish a qualified admission precollege curriculum shall render the high school's graduates ineligible for admission to a state educational institution under the qualified admission precollege curriculum criteria specified in K.A.R. 88-29-5, K.A.R. 88-29a-5, K.A.R. 88-29-7, and K.A.R. 88-29a-7. If an accredited high school establishes a qualified admission precollege curriculum, the curriculum shall meet the requirements of this regulation.

(b) Each course to be included in an accredited high school's qualified admission precollege curriculum shall be approved in advance by the chief executive officer of the board of regents or the chief executive officer's designee. Each accredited high school in Kansas that desires to establish and maintain a qualified admission precollege curriculum shall submit materials to the board of regents in accordance with procedures established and distributed to Kansas accredited high schools by the board of regents or the board's designee. Failure to submit materials in a timely manner may disqualify the high school's students for admission to a state educational institution under the qualified admission precollege curriculum criteria specified in K.A.R. 88-29-5, K.A.R. 88-29a-5, K.A.R. 88-29-7, and K.A.R. 88-29a-7.

(c) Each course for inclusion in an accredited high school's qualified admission precollege curriculum shall be approved according to the following procedures:

(1) A course shall be approved only if it is among those courses listed in "Kansas board of regents precollege curriculum courses approved for university admissions," as adopted by reference in K.A.R. 88-29-11.

(2) Two ½-unit courses may be approved to fulfill one unit of the qualified admission precollege curriculum.

(3) Any college course offered by an eligible institution of higher education may be approved for inclusion in an accredited high school's qualified admission precollege curriculum if the course meets all of the following conditions:

(A) The course is among those listed in "Kansas board of regents precollege curriculum courses approved for university admissions," as adopted by reference in K.A.R. 88-29-11.

(B) The number of credit hours for the college course is three or more.

(C) The college course appears on the official high school transcript.

(d) The list of courses that have been approved to be included in the qualified admission precollege curriculum for each accredited high school in Kansas shall be available from the board.

(e) Upon receipt of information that a course does not meet the requirements specified in subsection (c), the content of that course may be reviewed by the chief executive officer of the board of regents or the chief executive officer's designee to determine whether it should be approved. (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective Aug. 1, 2007; amended, T-88-6-26-09, July 1, 2009; amended Nov. 13, 2009; amended July 22, 2011.)

**88-29-18. Functional equivalents of the qualified admission precollege curriculum; residents.** In order to admit an applicant under the criterion of successful completion of the functional equivalent of the qualified admission precollege curriculum, the admission officer of each state educational institution shall require each applicant who is a Kansas resident and who graduated from high school in academic year 2013-2014 or earlier to meet one or more of the sets of requirements specified in subsections (a) through (d). An admission officer of a state educational

institution shall not grant any exception to this regulation.

(a) To demonstrate successful completion of the functional equivalent of the qualified admission precollege English courses described in K.A.R. 88-29-11, each applicant shall provide both of the following:

(1) Documentation on the official high school transcript of completion of any three units of high school English with no grade lower than a C; and

(2) official documentation of achievement of at least one of the following:

(A) A score of three or higher in either of the following college board advanced placement (AP) courses:

(i) Language and composition; or

(ii) literature and composition; or

(B) a grade of B or higher in a general education English course taken before high school graduation and either offered by or accepted in transfer by a state educational institution.

(b) To demonstrate successful completion of the functional equivalent of the qualified admission precollege mathematics courses as described in K.A.R. 88-29-11, each applicant shall provide both of the following:

(1) Documentation on the official high school transcript of completion of any two units of high school mathematics courses with no grade lower than a C; and

(2) official documentation of achievement of at least one of the following:

(A) A score of three or higher in any of the following college board advanced placement (AP) courses:

(i) Calculus AB; or

(ii) calculus BC; or

(B) a grade of C or higher in a general education mathematics course taken before high school graduation and either offered by or accepted in transfer by a state educational institution.

(c) To demonstrate successful completion of the functional equivalent of the qualified admission precollege natural science courses described in K.A.R. 88-29-11, each applicant shall provide both of the following:

(1) Documentation on the official high school transcript of completion of any two units of high school science courses with no grade less than a C; and

(2) official documentation of achievement of at least one of the following:

(A) A score of three or higher in any of the following college board advanced placement (AP) courses:

(i) Biology;

(ii) chemistry; or

(iii) physics B; or

(B) a grade of C or higher in a general education natural science laboratory course taken before high school graduation and either offered by or accepted in transfer by a state educational institution.

(d) To demonstrate successful completion of the functional equivalent of the qualified admission precollege social science courses described in K.A.R. 88-29-11, each applicant shall provide both of the following:

(1) Documentation on the official high school transcript of completion of any two units of high school social science courses with no grade lower than a C; and

(2) official documentation of achievement of at least one of the following:

(A) A score of three or higher in any of the following college board advanced placement (AP) courses:

(i) Microeconomics;

(ii) macroeconomics;

(iii) comparative government and policies;

(iv) United States government and policies;

(v) European history;

(vi) United States history; or

(vii) psychology; or

(B) a grade of B or higher in a general education social science course taken before high school graduation and either offered by or accepted in transfer by a state educational institution. (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective Aug. 1, 2007; amended, T-88-6-26-09, July 1, 2009; amended Nov. 13, 2009; amended July 22, 2011.)

**88-29-19. Functional equivalents of the qualified admission precollege curriculum; nonresidents.** In order to admit an applicant under the criterion of successful completion of the functional equivalent of the precollege curriculum, the admission officer of each state educational institution shall require each applicant who is not a resident of Kansas and who graduated from high school in academic year 2013-2014 or earlier to meet one or more of the sets of requirements specified in subsections (a) through (e). An admission officer of a state educational institution shall not grant any exception to this regulation.

(a) To demonstrate successful completion of the functional equivalent of the qualified admission precollege English courses described in K.A.R. 88-29-11, each applicant shall provide both of the following:

(1) Documentation on the official high school transcript of completion of any three units of high school English with no grade lower than a C and at least one grade of B or higher; and

(2) official documentation of achievement of at least one of the following:

(A) A score of three or higher in either of the following college board advanced placement (AP) courses:

(i) Language and composition; or

(ii) literature and composition; or

(B) a grade of B or higher in a general education English course taken before high school graduation and either offered by or accepted in transfer by a state educational institution.

(b) To demonstrate successful completion of the functional equivalent of the qualified admission precollege mathematics courses described in K.A.R. 88-29-11, each applicant shall provide both of the following:

(1) Documentation on the official high school transcript of completion of any two units of high school mathematics courses with no grade lower than a C and at least one grade of B or higher; and

(2) official documentation of achievement of at least one of the following:

(A) A score of three or higher in either of the following college board advanced placement (AP) courses:

(i) Calculus AB; or

(ii) calculus BC; or

(B) a grade of C or better in a general education mathematics course taken before high school graduation and either offered by or accepted in transfer by a state educational institution.

(c) To demonstrate successful completion of the functional equivalent of the qualified admission precollege natural science courses described in K.A.R. 88-29-11, each applicant shall provide both of the following:

(1) Documentation on the official high school transcript of completion of any two units of high school science courses with no grade less than a C and at least one grade of B or higher; and

(2) official documentation of achievement of at least one of the following:

(A) A score of three or higher in any of the following college board advanced placement (AP) courses:

(i) Biology;

(ii) chemistry; or

(iii) physics B; or

(B) a grade of C or higher in a general education natural science laboratory course taken before high school graduation and either offered by or accepted in transfer by a state educational institution.

(d) To demonstrate successful completion of the functional equivalent of the qualified admission precollege social science courses described in K.A.R. 88-29-11, each applicant shall provide both of the following:

(1) Documentation on the official high school transcript of completion of any two units of high school social science course with no grade lower than a C and at least one grade of B or higher; and

(2) official documentation of achievement of at least one of the following:

(A) A score of three or higher in any of the following college board advanced placement (AP) courses:

(i) Microeconomics;

(ii) macroeconomics;

(iii) comparative government and policies;

(iv) United States government and policies;

(v) European history;

(vi) United States history; or

(vii) psychology; or

(B) a grade of B or higher in a general education social science course taken before high school graduation and either offered by or accepted in transfer by a state educational institution.

(e) To demonstrate successful completion of the functional equivalent of all of the courses described in K.A.R. 88-29-11, each applicant who has attended an accredited high school located outside the United States shall provide official documentation of a study in mathematics, science, literature, and composition and completion of this study at a level that exceeds the minimum graduation standards of that accredited high school. (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective Aug. 1, 2007; amended, T-88-6-26-09, July 1, 2009; amended Nov. 13, 2009; amended July 22, 2011.)

## Article 29a.—STATE UNIVERSITY ADMISSIONS

**88-29a-5. Qualifications required for the admission of a Kansas resident who is un-**

**der the age of 21.** This regulation shall be applicable to each state educational institution's review of applicants beginning with the 2015 summer session. (a) The requirements in this regulation shall apply to any applicant who is a Kansas resident and is under the age of 21, except that the requirements shall not apply to any applicant who has earned 24 or more credit hours from an institution of higher education that are transferable to a state educational institution. If an applicant to whom this regulation is applicable does not meet the requirements of this regulation, the applicant may be admitted by means of the exception window for resident freshman class admissions described in K.A.R. 88-29a-8.

(b) Each state educational institution shall admit any Kansas resident under the age of 21 who meets the following requirements:

(1) Has graduated from an accredited high school in Kansas or, pursuant to K.S.A. 72-116 and amendments thereto, an accredited high school located out of state;

(2) has completed one of the following with a minimum grade point average of 2.0 on a 4.0 scale:

(A) The qualified admission precollege curriculum described in K.A.R. 88-29a-11; or

(B) the Kansas scholars curriculum established pursuant to K.A.R. 88-13-3;

(3) meets at least one of the following criteria:

(A) Has achieved a composite score on the ACT of at least 21; or

(B) has ranked in the top third of the applicant's high school class upon completion of seven or eight semesters; and

(4) has achieved a minimum cumulative GPA of 2.0 on a 4.0 scale on all transferable college credit hours.

(c) Each state educational institution shall admit any Kansas resident under the age of 21 who meets the following requirements:

(1) Has graduated from a non-accredited private secondary school;

(2) has completed one of the following:

(A) Coursework equivalent to the qualified admission precollege curriculum as described in K.A.R. 88-29a-11; or

(B) coursework equivalent to the Kansas scholars curriculum established pursuant to K.A.R. 88-13-3;

(3) has achieved a composite score on the ACT of at least 21; and

(4) has achieved a minimum cumulative GPA of 2.0 on a 4.0 scale on all transferable college credit hours.

(d) Each state educational institution shall admit any Kansas resident who is under the age of 21 and who meets the following requirements:

(1) Earned the general educational development (GED) certificate with an overall score of not less than 50 points, as defined in K.A.R. 88-29-1;

(2) achieved a composite score on the ACT of at least 21; and

(3) achieved a minimum cumulative GPA of 2.0 on a 4.0 scale on all transferable college credit hours. (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective July 22, 2011.)

**88-29a-6. Qualifications required for the admission of a Kansas resident who is 21 or older.** This regulation shall be applicable to each state educational institution's review of applicants beginning with the 2015 summer session.

(a) The requirements in this regulation shall apply to any applicant who is a Kansas resident and who will be 21 or older on the first day of classes at the state educational institution to which the student is applying, except that the requirements shall not apply to any applicant who has earned 24 or more credit hours from an institution of higher education that are transferable to a state educational institution. If an applicant to whom this regulation is applicable does not meet the requirements of this regulation, the applicant may be admitted by means of the exception window described in K.A.R. 88-29a-8.

(b) Each state educational institution shall admit any Kansas resident who is 21 or older and who meets both of the following criteria:

(1) Has graduated from an accredited high school in Kansas or, pursuant to K.S.A. 72-116 and amendments thereto, an accredited high school located out of state; and

(2) has achieved a minimum cumulative GPA of 2.0 on a 4.0 scale on all transferable college credit hours.

(c) Each state educational institution shall admit any Kansas resident who is 21 or older and who meets both of the following criteria:

(1) Has earned the general educational development (GED) certificate with an overall score of not less than 50 points, as defined in K.A.R. 88-29-1; and

(2) has achieved a minimum cumulative GPA of 2.0 on a 4.0 scale on all transferable college

credit hours. (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective July 22, 2011.)

**88-29a-7. Qualifications required for the admission of a nonresident who is under the age of 21.** This regulation shall be applicable to each state educational institution's review of applicants beginning with the 2015 summer session. (a) The requirements in this regulation shall apply to any applicant who is a nonresident and is under the age of 21, except that the requirements shall not apply to any applicant who has earned 24 or more credit hours from an institution of higher education that are transferable to a state educational institution. If an applicant to whom this regulation is applicable does not meet the requirements prescribed in this regulation, the applicant may be admitted by means of the exception window for nonresident freshman class admissions described in K.A.R. 88-29a-8c.

(b) Any state educational institution may admit any nonresident who meets the following requirements:

(1) Has graduated from an accredited high school;

(2) has completed one of the following with a minimum grade point average of 2.5 on a 4.0 scale:

(A) The qualified admission precollege curriculum described in K.A.R. 88-29a-11, or its functional equivalent described in K.A.R. 88-29a-18; or

(B) the Kansas scholars curriculum established pursuant to K.A.R. 88-13-3;

(3) meets at least one of the following criteria:

(A) Achieved a composite score on the ACT of at least 21; or

(B) ranked in the top third of the applicant's high school class upon completion of seven or eight semesters; and

(4) achieved a minimum cumulative GPA of 2.0 on a 4.0 scale on all transferable college credit hours.

(c) Any state educational institution may admit any nonresident who meets the following requirements:

(1) Has graduated from a non-accredited private secondary school meeting requirements substantially equivalent to those in K.S.A. 72-53,100 through 72-53,102, and amendments thereto;

(2) has completed one of the following with a minimum grade point average of 2.5 on a 4.0 scale:

(A) Coursework equivalent to the qualified admission precollege curriculum as described in K.A.R. 88-29a-18; or

(B) coursework equivalent to the Kansas scholars curriculum established pursuant to K.A.R. 88-13-3;

(3) has achieved a composite score on the ACT of at least 21; and

(4) has achieved a minimum cumulative GPA of 2.0 on a 4.0 scale on all transferable college credit hours. (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective July 22, 2011.)

**88-29a-7a. Qualifications required for the admission of a nonresident who is 21 or older.** This regulation shall be applicable to each state educational institution's review of applicants beginning with the 2015 summer session. (a) The requirements of this regulation shall apply to any applicant who is a nonresident and who will be 21 or older on the first day of classes at the state educational institution to which the student is applying, except that this regulation shall not apply to any applicant who has earned 24 or more credit hours from an institution of higher education that are transferable to a state educational institution. If an applicant to whom this regulation is applicable does not meet the requirements of this regulation, the applicant may be admitted by means of the exception window described in K.A.R. 88-29a-8c.

(b) Any state educational institution may admit any nonresident who is 21 or older and who meets both of the following criteria:

(1) Has graduated from an accredited high school; and

(2) has achieved a minimum cumulative GPA of 2.0 on a 4.0 scale on all transferable college credit hours.

(c) Any state educational institution may admit any nonresident who is 21 or older and who meets both of the following criteria:

(1) Has earned the general educational development (GED) certificate with an overall score of not less than 50 points, as defined in K.A.R. 88-29-1; and

(2) has achieved a minimum cumulative GPA of 2.0 on a 4.0 scale on all transferable college credit hours. (Authorized by and implementing

K.S.A. 2010 Supp. 76-717; effective July 22, 2011.)

**88-29a-8. The exception window for resident freshman class admissions.** This regulation shall be applicable to each state educational institution's review of applicants beginning with the 2015 summer session. (a) Any state educational institution may admit any Kansas resident who does not meet the applicable requirements specified in K.A.R. 88-29a-5 or K.A.R. 88-29a-6 and who has earned fewer than 24 credit hours from an institution of higher education that are transferable to the state educational institution by means of the exception window for resident freshman class admissions. The maximum number of students admitted by means of this exception window shall be calculated as follows:

(1) The total number of admitted new students who have earned fewer than 24 credit hours from an institution of higher education that are transferable to the state educational institution, regardless of admission category, shall be counted on the twentieth day of the fall, spring, and summer sessions of each academic year.

(2) The maximum number of admissions calculated using this exception window shall be equal to 15 percent of the sum of the three numbers counted in paragraph (a)(1).

(b) If the state educational institution exceeds the allotted number of admissions using this exception window, the excess over the allowable total number of exceptions shall be subtracted from the subsequent year's allowable total number of exceptions for resident freshman class admissions. (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective July 22, 2011.)

**88-29a-8c. The exception window for nonresident freshman class admissions.** This regulation shall be applicable to each state educational institution's review of applicants beginning with the 2015 summer session. (a) Any state educational institution may admit any nonresident who does not meet the applicable requirements specified in K.A.R. 88-29a-7 or K.A.R. 88-29-7a and who has earned fewer than 24 credit hours from an institution of higher education that are transferable to the state educational institution, by means of the exception window for nonresident freshman class admissions. The maximum number of students admitted by means of this exception window shall be calculated as follows:

(1) The total number of admitted new nonresident students who have earned fewer than 24 credit hours from an institution of higher education that are transferable to the state educational institution, regardless of admission category, shall be counted on the twentieth day of the fall, spring, and summer sessions of each academic year.

(2) The maximum number of admissions that may be made using this exception window shall be equal to 15 percent of the sum of the three numbers counted in paragraph (a)(1) or 75 students, whichever is greater.

(b) If the state educational institution exceeds the allotted number of admissions using this exception window, the excess over the allowable total number of exceptions shall be subtracted from the subsequent year's allowable total number of exceptions for nonresident freshman class admissions. (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective July 22, 2011.)

**88-29a-9. Admission policies for state educational institutions.** This regulation shall be applicable to each state educational institution's review of applicants beginning with the 2015 summer session. The chancellor or president of each state educational institution or a designee shall establish admission policies that meet all of the following requirements:

(a) The policies shall not conflict with the provisions of this article.

(b) The policies shall specify the materials required for a complete application file.

(c) The policies shall address the enrollment of both degree-seeking and non-degree-seeking students as well as each student's transition from degree-seeking to non-degree-seeking status or from non-degree-seeking to degree-seeking status. Policies shall mandate that each non-degree-seeking student who applies to enroll as a degree-seeking student shall be admitted only if one of the following conditions is met:

(1) The student meets the applicable requirements specified in K.A.R. 88-29-4 through 88-29-7a and K.A.R. 88-29a-5 through 88-29a-7.

(2) The student is admitted by means of the exception window for resident freshmen class admissions described in K.A.R. 88-29a-8.

(3) The student is admitted by means of the exception window for resident transfer admissions described in K.A.R. 88-29-8a.

(4) The student is admitted by means of the exception window for nonresident transfer admissions described in K.A.R. 88-29-8b.

(5) The student is admitted by means of the exception window for nonresident freshman class admissions described in K.A.R. 88-29a-8c.

(d) The policies shall include an explanation of the exception windows and the state educational institution's method to determine which applicants would be admitted if there were more applicants than the state educational institution is allowed under K.A.R. 88-29a-8, K.A.R. 88-29-8a, K.A.R. 88-29-8b, or K.A.R. 88-29a-8c.

(e) The policies may include the establishment of subcategories of non-degree-seeking students.

(f) The policies shall include a statement indicating whether the state educational institution will consider, in the admission decision, any postsecondary credit from an institution that is not accredited and has not been granted preaccreditation status by an agency recognized by the United States department of education or by an equivalent international agency. If the state educational institution considers these credits, the admission decision shall be made in accordance with K.A.R. 88-29-4.

(g) The policies shall include a statement of whether the state educational institution enrolls students in the temporary or provisional admission category.

(1) If the state educational institution enrolls any students in the temporary admission category, the policies shall include all of the following:

(A) A description of requirements for exiting the temporary admission category and entering another admission category;

(B) a statement that a temporarily admitted student may be denied admission to a specific degree program;

(C) a statement that each student who fails to exit from the temporary admission category within the specified period of time shall be disenrolled;

(D) a statement that each applicant who is admitted in the temporary admission category pursuant to K.A.R. 88-29a-10(a)(2) or K.A.R. 88-29a-10(b)(2) shall be allowed to exit from the temporary admission category and enter the regular admission category only upon verification of high school graduation; and

(E) a statement that each applicant who is admitted into the temporary admission category pursuant to K.A.R. 88-29a-10(b)(3) shall be allowed to exit the temporary admission category and enter the regular admission category only upon verification that the applicant meets both of the following requirements:

(i) Remained in the top third of the class after the applicant's seventh semester or returned to the top third of the applicant's class during the eighth semester; and

(ii) graduated from high school.

(2) If the state educational institution enrolls any students in the provisional admission category, the policies shall include all of the following:

(A) A description of requirements for exiting the provisional admission category and entering another admission category;

(B) a statement that any student admitted in the provisional admission category may be denied admission to a specific degree program; and

(C) a statement that each student who fails to exit from the provisional admission category within the period of time specified by the state educational institution shall be disenrolled.

(3) The state educational institution's policy shall mandate that a student who meets the criteria for both the temporary and provisional admission categories shall not be granted regular admission until the student fulfils the requirements for exiting each of the categories in which the student is initially enrolled.

(h) The admission policy of each state educational institution shall be required to be approved in advance by the board of regents. (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective July 22, 2011.)

**88-29a-10. Methods for state educational institutions to use when evaluating qualifications for admission.** This regulation shall be applicable to each state educational institution's review of applicants beginning with the 2015 summer session.

(a) Each admission officer at a state educational institution shall consider an applicant's ACT or SAT scores as follows:

(1) A documented score of 980 on the SAT, excluding the writing portion of the SAT, shall be deemed the equivalent of a composite score of 21 on the ACT for purposes of this article.

(2) A documented composite score of 21 or above on the ACT may be used to admit an applicant in the temporary admission category after the applicant's completion of the sixth high school semester, without further review of the applicant's materials.

(3) The admission officer shall consider the applicant's best composite ACT score for admission decisions.

(4) If an applicant has taken both the ACT and SAT, the admission officer shall consider the applicant's better score on the two tests for admission decisions.

(b) Each admission officer at a state educational institution shall consider class rank as follows:

(1) If class rank cannot be determined, the admission officer shall not admit an applicant under this criterion.

(2) If an applicant's documented class rank is in the top third of the applicant's class after the applicant's seventh semester of high school, the class rank may be used to admit an applicant into the temporary admission category without further review of the applicant's materials.

(3) If an applicant's documented class rank is in the top third of the applicant's class after the applicant's sixth semester of high school, the class rank may be used to admit an applicant into the temporary admission category without further review of the applicant's materials.

(c) Each admission officer at a state educational institution shall calculate grade point average in the qualified admission precollege curriculum as follows:

(1) The admission officer shall ensure that the requirements of K.A.R. 88-29a-11 are met before calculating grade point average.

(2) The admission officer shall calculate a grade point average only for approved qualified admission precollege curriculum courses appearing on the official high school transcript.

(3) The admission officer shall consider a course to be part of the approved qualified admission precollege curriculum only if the course was approved in accordance with K.A.R. 88-29a-11 for the semester and year in which the applicant completed the course and if the applicant earned a grade of D or better.

(4) The admission officer shall consider a course to be part of the approved qualified admission precollege curriculum only if the course code that appears on the official high school transcript is the same as the course code of the approved course.

(5)(A) If the high school transcript reports grades on a four-point scale, the admission officer shall calculate grade point averages in the approved qualified admission precollege curriculum by assigning four points to a grade of A, three points to a grade of B, two points to a grade of C, and one point to a grade of D. Pluses and minuses shall not be considered in the calculation.

(B) If the high school transcript reports grades on a scale other than a four-point scale, the admission officer shall mathematically convert the grades to a four-point scale and assign points as described in paragraph (c)(5)(A).

(6) The admission officer shall consider grades of P or pass as follows:

(A) If the high school transcript indicates that a P is equivalent to a grade of D or higher, the admission officer shall assign one grade point to each grade of P.

(B) If the high school transcript indicates that a P is equivalent to a grade of C or higher, the admission officer shall assign two grade points to each grade of P.

(C) If the high school transcript does not indicate the minimum letter grade corresponding to a P, the admission officer shall not include the course in the calculations for the grade point average in the qualified admission precollege curriculum.

(7) If an applicant has retaken an approved qualified admission precollege course, the admission officer shall use the highest grade when calculating the grade point average for the approved qualified admission precollege curriculum.

(8) If an applicant has taken a college course to meet the requirements for the approved qualified admission precollege curriculum and if this college course appears on the applicant's official high school transcript, the admission officer shall include the college course in the grade point average as follows:

(A) Each college course with three or more credit hours, but no more than six credit hours, shall be treated as a one-unit high school course.

(B) Each college course with more than six credit hours shall be treated as a two-unit high school course.

(d) If functional equivalents are substituted for courses in the qualified admission precollege curriculum in one or more disciplines, the admission officer of a state educational institution shall not assign a grade point value to the functional equivalents when calculating the qualified admission precollege curriculum grade point average.

(e) At the time of admission of an applicant, the state educational institution shall notify the applicant of each of the following:

(1) The category or categories in which the applicant is admitted;

(2) any enrollment restrictions associated with

the applicant's category or categories of admission; and

(3) the requirements for removing any enrollment restrictions associated with the applicant's category or categories of admission. (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective July 22, 2011.)

**88-29a-11. Requirements for the qualified admission precollege curriculum.** This regulation shall be applicable to each state educational institution's review of applicants beginning with the academic year 2014-2015 summer session. In order to admit any applicant under the qualified admission precollege curriculum criteria, each state educational institution shall require the applicant to provide an official high school transcript documenting completion of the approved qualified admission precollege curriculum specified in this regulation.

For each student graduating from high school in academic year 2014-2015 and thereafter, the qualified admission precollege curriculum shall consist of courses that are among those listed in "Kansas board of regents precollege curriculum courses approved for university admissions," as adopted by reference in K.A.R. 88-29-11. The qualified admission precollege curriculum shall consist of the following distribution of courses:

(a) One of the following:

(1) Four units of approved qualified admission English courses that include reading, writing, and literature; or

(2) three and ½ units of approved qualified admission English courses that include reading, writing, and literature and ½ unit of speech;

(b)(1) If the student has achieved the ACT or SAT college readiness math benchmark, three units of approved qualified admission mathematics courses that meet the following requirements:

(A) The course shall be completed in the ninth through twelfth grades; and

(B) the course shall be selected from any of the following courses:

(i) Qualified admission algebra I;

(ii) qualified admission geometry;

(iii) qualified admission algebra II;

(iv) any mathematics course that has qualified admission algebra II as a prerequisite; or

(v) any other course approved by the chief executive officer of the board of regents or the chief executive officer's designee; and

(2) if the student has not achieved the ACT or SAT college readiness math benchmark, four units of approved qualified admission mathematics courses, one of which shall be taken in the year the student graduates high school, that meet the following requirements:

(A) The course shall be completed in the ninth through twelfth grades;

(B) at least three of the courses shall be selected from any of the following courses:

(i) Qualified admission algebra I;

(ii) qualified admission geometry;

(iii) qualified admission algebra II;

(iv) any mathematics course that has qualified admission algebra II as a prerequisite; or

(v) any other course approved by the chief executive officer of the board of regents or the chief executive officer's designee; and

(C) the fourth unit may be selected from any other mathematics courses prescribed by the local school district and designed to prepare students for college;

(c) three units of approved qualified admission natural science courses that meet the following requirements:

(1) The three units shall be selected from any of the following courses:

(A) Qualified admission biology;

(B) qualified admission advanced biology;

(C) qualified admission chemistry;

(D) qualified admission physics;

(E) qualified admission earth-space science;

(F) qualified admission principles of technology; or

(G) any other course approved by the chief executive officer of the board of regents or the chief executive officer's designee; and

(2) at least one unit shall be selected from a qualified admission chemistry course or a qualified admission physics course;

(d) three units of approved qualified admission social science courses that are distributed according to the following requirements:

(1) A minimum of ½ unit shall be a qualified admission United States government course;

(2) a minimum of ½ unit shall be selected from any of the following courses:

(A) Qualified admission world history;

(B) qualified admission world geography; or

(C) qualified admission international relations;

(3) a minimum of one unit shall be a qualified admission United States history course;

(4) not more than one unit shall be selected from any of the following courses:

(A) Qualified admission anthropology;

(B) qualified admission current social issues;

(C) qualified admission economics;

(D) qualified admission psychology;

(E) qualified admission race and ethnic group relations;

(F) qualified admission sociology;

(G) qualified admission United States history;

(H) qualified admission United States government; or

(I) any other course approved by the chief executive officer of the board of regents or the chief executive officer's designee;

(5) a ½-unit course shall not be used to fulfill more than one requirement of this regulation for more than one discipline in the qualified admissions precollege curriculum; and

(6) a one-unit course may be used to fulfill two ½-unit requirements of this regulation; and

(e) three units of elective courses selected from any of the following categories:

(1) English;

(2) mathematics;

(3) natural science;

(4) social science;

(5) foreign language;

(6) personal finance;

(7) speech, debate, or forensics;

(8) journalism;

(9) computer or information systems;

(10) fine arts;

(11) career and technical education; or

(12) any other course approved by the chief executive officer of the board of regents or the chief executive officer's designee. (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective July 22, 2011.)

**88-29a-18. Functional equivalents of the qualified admission precollege curriculum; residents.** In order to admit an applicant under the criterion of successful completion of the functional equivalent of the precollege curriculum, the admission officer of each state educational institution shall require each applicant who is a resident of Kansas and who graduates from high school in academic year 2014-2015 or later to meet at least one of the sets of requirements specified in subsections (a) through (e). An admission officer of a state educational institution shall not grant any exception to this regulation.

(a) To demonstrate successful completion of the functional equivalent of the qualified admission precollege English courses described in K.A.R. 88-29a-11, each applicant shall provide both of the following:

(1) Documentation on the official high school transcript of completion of any three units of high school English with no grade lower than a C and at least one grade of B or higher; and

(2) official documentation of achievement of at least one of the following:

(A) A score of three or higher in either of the following college board advanced placement (AP) courses:

(i) Language and composition; or

(ii) literature and composition; or

(B) a grade of B or higher in a general education English course taken before high school graduation and either offered by or accepted in transfer by a state educational institution.

(b) To demonstrate successful completion of the functional equivalent of the qualified admission precollege mathematics courses described in K.A.R. 88-29a-11, each applicant shall provide both of the following:

(1) Documentation on the official high school transcript of completion of any three units of high school mathematics courses with no grade lower than a C and at least one grade of B or higher; and

(2) official documentation of achievement of at least one of the following:

(A) A score of three or higher in either of the following college board advanced placement (AP) courses:

(i) Calculus AB; or

(ii) calculus BC; or

(B) a grade of C or better in a general education mathematics course taken before high school graduation and either offered by or accepted in transfer by a state educational institution.

(c) To demonstrate successful completion of the functional equivalent of the qualified admission precollege natural science courses described in K.A.R. 88-29a-11, each applicant shall provide both of the following:

(1) Documentation on the official high school transcript of completion of any two units of high school science courses with no grade less than a C and at least one grade of B or higher; and

(2) official documentation of achievement of at least one of the following:

(A) A score of three or higher in any of the following college board advanced placement (AP) courses:

(i) Biology;
(ii) chemistry; or
(iii) physics B; or
(B) a grade of C or higher in a general education natural science laboratory course taken before high school graduation and either offered by or accepted in transfer by a state educational institution.
(d) To demonstrate successful completion of the functional equivalent of the qualified admission precollege social science courses described in K.A.R. 88-29a-11, each applicant shall provide both of the following:
(1) Documentation on the official high school transcript of completion of any two units of high school social science course with no grade lower than a C and at least one grade of B or higher; and
(2) official documentation of achievement of at least one of the following:
(A) A score of three or higher in any of the following college board advanced placement (AP) courses:
(i) Microeconomics;
(ii) macroeconomics;
(iii) comparative government and policies;
(iv) United States government and policies;
(v) European history;
(vi) United States history; or
(vii) psychology; or
(B) a grade of B or higher in a general education social science course taken before high school graduation and either offered by or accepted in transfer by a state educational institution.
(e) To demonstrate successful completion of the functional equivalent of the qualified admission precollege elective courses described in K.A.R. 88-29a-11, each applicant shall provide both of the following:
(1) Documentation on the official high school transcript of completion of any two units of English, mathematics, social science, natural science, fine arts, computer or information systems, foreign languages, personal finance, speech, debate, forensics, journalism, or career and technical education courses with no grade less than a C and at least one grade of B or higher; and
(2) official documentation of achievement of at least one of the following:
(A) A score of three or higher in any of the following college board advanced placement (AP) courses:
(i) English;
(ii) natural science;
(iii) social science;
(iv) foreign language;
(v) fine arts; or
(vi) computer or information systems; or
(B) a grade of C or higher in an English, mathematics, social science, natural science, fine arts, computer or information systems, foreign language, personal finance, speech, debate, forensics, journalism, or career and technical education course taken before high school graduation and either offered by or accepted in transfer by a state educational institution. (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective July 22, 2011.)

**88-29a-19. Functional equivalents of the qualified admission precollege curriculum; nonresidents.** In order to admit an applicant under the criterion of successful completion of the functional equivalent of the precollege curriculum, the admission officer of each state educational institution shall require each applicant who is not a resident of Kansas and who graduates from high school in academic year 2014-2015 or later to meet at least one of the sets of requirements specified in subsections (a) through (g). An admission officer of a state educational institution shall not grant any exception to this regulation.
(a) To demonstrate successful completion of the functional equivalent of the qualified admission precollege English courses described in K.A.R. 88-29a-11, each applicant shall provide both of the following:
(1) Documentation on the official high school transcript of completion of any three units of high school English with no grade lower than a C and at least one grade of B or higher; and
(2) official documentation of achievement of at least one of the following:
(A) A score of three or higher in either of the following college board advanced placement (AP) courses:
(i) Language and composition; or
(ii) literature and composition; or
(B) a grade of B or higher in a general education English course taken before high school graduation and either offered by or accepted in transfer by a state educational institution.
(b) To demonstrate successful completion of the functional equivalent of the qualified admission precollege mathematics courses described in

K.A.R. 88-29a-11, each applicant shall provide both of the following:

(1) Documentation on the official high school transcript of completion of any three units of high school mathematics courses with no grade lower than a C and at least one grade of B or higher; and

(2) official documentation of achievement of at least one of the following:

(A) A score of three or higher in either of the following college board advanced placement (AP) courses:

(i) Calculus AB; or

(ii) calculus BC; or

(B) a grade of C or better in a general education mathematics course taken before high school graduation and either offered by or accepted in transfer by a state educational institution.

(c) To demonstrate successful completion of the functional equivalent of the qualified admission precollege natural science courses described in K.A.R. 88-29a-11, each applicant shall provide both of the following:

(1) Documentation on the official high school transcript of completion of any two units of high school science courses with no grade less than a C and at least one grade of B or higher; and

(2) official documentation of achievement of at least one of the following:

(A) A score of three or higher in any of the following college board advanced placement (AP) courses:

(i) Biology;

(ii) chemistry; or

(iii) physics B; or

(B) a grade of C or higher in a general education natural science laboratory course taken before high school graduation and either offered by or accepted in transfer by a state educational institution.

(d) To demonstrate successful completion of the functional equivalent of the qualified admission precollege social science courses described in K.A.R. 88-29a-11, each applicant shall provide both of the following:

(1) Documentation on the official high school transcript of completion of any two units of high school social science course with no grade lower than a C and at least one grade of B or higher; and

(2) official documentation of achievement of at least one of the following:

(A) A score of three or higher in any of the following college board advanced placement (AP) courses:

(i) Microeconomics;

(ii) macroeconomics;

(iii) comparative government and policies;

(iv) United States government and policies;

(v) European history;

(vi) United States history; or

(vii) psychology; or

(B) a grade of B or higher in a general education social science course taken before high school graduation and either offered by or accepted in transfer by a state educational institution.

(e) To demonstrate successful completion of the functional equivalent of the qualified admission precollege elective courses described in K.A.R. 88-29a-11, each applicant shall provide both of the following:

(1) Documentation on the official high school transcript of completion of any two units of English, mathematics, social science, natural science, fine arts, computer or information systems, foreign languages, personal finance, speech, debate, forensics, journalism, or career and technical education courses with no grade less than a C and at least one grade of B or higher; and

(2) official documentation of achievement of at least one of the following:

(A) A score of three or higher in any of the following college board advanced placement (AP) courses:

(i) English;

(ii) natural science;

(iii) social science;

(iv) foreign language;

(v) fine arts; or

(vi) computer or information systems; or

(B) a grade of C or higher in a English, mathematics, social science, natural science, fine arts, computer or information systems, foreign language, personal finance, speech, debate, forensics, journalism, or career and technical education course taken before high school graduation and either offered by or accepted in transfer by a state educational institution.

(f) To demonstrate successful completion of the functional equivalent of all of the courses described in K.A.R. 88-29a-11, each applicant who has attended an accredited high school located outside the United States shall provide official documentation of a study in mathematics, science, literature, and composition and completion of this

study at a level that exceeds the minimum graduation standards of that accredited high school.

(g) To demonstrate successful completion of the functional equivalents of all courses described in K.A.R 88-29a-11, each applicant who has attended an accredited high school located in a state other than Kansas shall provide the following:

(1) Documentation on the official high school transcript of completion of the precollege curriculum of the state which the applicant resides with a minimum grade point average of 2.5 on a 4.0 scale; and

(2) documentation on the official high school transcript of completion of the precollege curriculum mathematics requirements described in K.A.R. 88-29a-11 with a minimum grade point average of 2.5 on a 4.0 scale. (Authorized by and implementing K.S.A. 2010 Supp. 76-717; effective July 22, 2011.)

## Article 30.—STUDENT HEALTH INSURANCE PROGRAM

**88-30-1. Definitions.** The following terms wherever used in this article shall have the meanings specified in this regulation:

(a) "Degree-seeking undergraduate student" means a student who has formally indicated to the state educational institution the intent to complete a program of study that is designated by the United States department of education as a program that is eligible for federal financial aid.

(b) "Dependent" means a student's unmarried child under the age of 19 who is not self-supporting.

(c) "Employer contribution" means the amount paid by a state educational institution for the coverage of a student employee that equals 75% of the cost of student-only coverage.

(d) "State board" means the state board of regents.

(e) "State educational institution" has the meaning specified in K.S.A. 76-711, and amendments thereto, except that for purposes of this article, the university of Kansas medical center shall be considered a state educational institution separate from the university of Kansas, Lawrence, and its campuses.

(f)(1) "Student" means any individual who meets each of the following conditions:

(A) Is enrolled at a state educational institution, except as provided in paragraph (f)(1)(C)(iv);

(B) is not eligible for coverage under K.A.R. 108-1-1; and

(C) meets one of the following conditions:

(i) Is a degree-seeking undergraduate student who is enrolled in at least six hours in the fall or spring semesters or at least three hours in the summer semester or is participating in an internship approved or sponsored by the state educational institution;

(ii) is a master's degree student who is enrolled in at least three hours each semester;

(iii) is an individual with J-1 or other nonimmigrant status;

(iv) is an individual with nonimmigrant status who is engaged in optional practical training or academic training, even though the individual is not enrolled:

(v) is a doctoral student;

(vi) is a master's or doctoral student who is participating in an internship approved or sponsored by the state educational institution; or

(vii) has been appointed as a postdoctoral fellow.

(2) "Student" shall not include either of the following:

(A) Except as provided in paragraph (f)(3), any individual who is enrolled exclusively in any of the following:

(i) One or more semester-based internet courses;

(ii) one or more semester-based television courses;

(iii) one or more home study courses; or

(iv) one or more correspondence courses; or

(B) a concurrent enrollment pupil, as defined in K.S.A. 72-11a03, and amendments thereto.

(3) The limitations of paragraph (f)(2)(A) shall not apply to any student employee whose official workstation is on the main campus of a state educational institution.

(4) Each individual who meets the criteria for being a "student," as specified in this subsection, at the time of application for coverage under the student health insurance program shall remain eligible for coverage throughout the coverage period.

(g) "Student employee" means a student who meets one of the following conditions:

(1) Is appointed for the current semester to a graduate assistant, graduate teaching assistant, or graduate research assistant position that is at least a 50% appointment; or

(2) holds concurrent appointments to more

than one graduate assistant, graduate teaching assistant, or graduate research assistant position that total at least a 50% appointment.

(h) "Student health insurance program" means the health and accident insurance coverage or health care services of a health maintenance organization for which the state board has contracted pursuant to K.S.A. 75-4101, and amendments thereto.

This regulation shall be effective on and after August 1, 2011. (Authorized by and implementing K.S.A. 2009 Supp. 75-4101; effective, T-88-6-14-07, June 14, 2007; effective Oct. 12, 2007; amended Aug. 1, 2011.)

# Agency 91

# Kansas State Department of Education

**Editor's Note:**

Regulations adopted under constitutional authority exempt from general filing act. See, Opinion of Attorney General No. 81-236.

Filing requirements for regulations adopted under constitutional authority. See K.S.A. 72-7514b.

*Articles*

91-1. CERTIFICATE REGULATIONS.
91-40. SPECIAL EDUCATION.

## Article 1.—CERTIFICATE REGULATIONS

**91-1-200. Definition of terms.** (a) "Accomplished teaching license" means a license issued to an individual who has successfully completed an advanced performance assessment designated by the state board for the purpose of identifying accomplished teaching, or who has achieved national board certification.

(b) "Accredited experience" means teaching experience gained, under contract, in a school accredited by the state board or a comparable agency in another state while the teacher holds an endorsement valid for the specific assignment. A minimum of 90 consecutive days of substitute teaching in the endorsement area of academic preparation and in the same teaching position shall constitute accredited experience. Other substitute teaching experiences shall not constitute accredited experience.

(c) "All levels" means early childhood through late adolescence and adulthood (prekindergarten through grade 12).

(d) "Alternative teacher education program" means a program to prepare persons to teach by a means other than the traditional, college-based, approved program.

(e) "Approved program" means a teacher education program approved by the state board for content and pedagogy.

(f) "Content assessment" means an assessment designated by the state board to measure subject matter knowledge for an endorsement.

(g) "Deficiency plan" means a detailed schedule of instruction from an approved program that, if completed, will qualify an individual for full endorsement in a subject. The individual who is to receive the instruction and a representative of the institution at which the instruction is to be given shall sign each deficiency plan.

(h) "Duplication of a license" means the issuance of a license to replace a license that is lost or destroyed.

(i) "Emergency substitute teaching license" means a license issued to an individual that allows access to practice as a substitute teacher as defined by S.B.R. 91-31-34(b).

(j) "Endorsement" means the legend printed on each license that identifies the subject in which an individual has specialization.

(k) "Evidence-centered assessment" means an assessment designated by the state board to measure an individual's knowledge of subject matter and ability to implement the knowledge and skills of a teacher leader.

(l) "Exchange license" means a two-year license issued under the exchange license agreement.

(m) "Initial license" means the first license that an individual holds to begin practice while preparing for the professional license.

(n) "Institutional verification" means acknowledgment that an individual has successfully completed a program within an accredited unit.

(o) "Interim alternative license" means a license that allows temporary access to practice to an individual who has completed an alternative teacher education program and been issued a license in another state.

(p) "Licensure" means the granting of access to practice teaching, administration, or school services in Kansas public schools.

(q) "Local education agency and "LEA" mean any governmental agency authorized or required by state law to provide education to children, including each unified school district, special edu-

cation cooperative, school district interlocal, state school, and school institution.

(r) "Mentor" means a teacher or administrator who holds a professional license assigned by an LEA to provide support, modeling, and conferencing to a beginning professional.

(s) "Official transcript" means a student record that includes grades and credit hours earned and that is affixed with the official seal of the college and the signature of the registrar.

(t) "One year of teaching experience" means accredited experience that constitutes one-half time or more in one school year, while under contract.

(u) "Pedagogical assessment" means an assessment designated by the state board to measure teaching knowledge.

(v) "Performance assessment" means an assessment designated by the state board to measure an individual's ability to implement the knowledge and skills of a teacher, administrator, or school services provider.

(w) "Prekindergarten" means a program for children three and four years old.

(x) "Professional license" means a license issued to an individual based on successful completion of a performance assessment and maintained by professional development.

(y) "Provisional school specialist endorsement license" means a license issued to an individual that allows access to practice as a school specialist while the individual is in the process of completing requirements for the school specialist license.

(z) "Provisional teaching endorsement license" means a license issued to an individual that allows access to practice in an endorsement area while the individual is in the process of completing requirements for that endorsement.

(aa) "Recent credit or recent experience" means credit or experience earned during the six-year period immediately preceding the filing of an application.

(bb) "Restricted teaching license" means a license that allows an individual limited access to practice under a special arrangement among the individual, a Kansas teacher education institution, and an LEA.

(cc) "Standards board" means the teaching and school administration professional standards advisory board.

(dd) "State board" means the state board of education.

(ee) "Subject" means a specific teaching area within a general instructional field.

(ff) "Substitute teaching license" means a license issued to an individual that allows access to practice as a substitute as defined in S.B.R. 91-31-34(b).

(gg) "Teacher education institution" means a college or university that has an accredited administrative unit for the purpose of preparing teachers.

(hh) "Transitional license" means a license that allows temporary access to practice to an individual who held a license but who does not meet recent credit, recent experience, or renewal requirements to qualify for an initial or professional license.

(ii) "Valid credit" and "credit" mean a semester hour of credit earned in, or validated by, a college or university that is on the accredited list maintained by the state board.

(jj) "Visiting scholar teaching license" means a license that allows an individual who has documented exceptional talent or outstanding distinction in a particular subject area temporary, limited access to practice. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2003; amended July 1, 2003; amended July 18, 2008; amended Aug. 28, 2009; amended Aug. 12, 2011.)

**91-1-201. Type of licensure.** (a) The following types of licenses shall be issued by the state board:

(1) Accomplished teaching license;

(2) initial licenses, including the following:

(A) Initial school leadership license;

(B) initial school specialist license; and

(C) initial teaching license;

(3) emergency substitute teaching license;

(4) exchange school specialist license;

(5) exchange teaching license;

(6) foreign exchange teaching license;

(7) interim alternative license;

(8) professional licenses, including the following:

(A) Professional school leadership license;

(B) professional school specialist license; and

(C) professional teaching license;

(9) provisional school specialist endorsement license;

(10) provisional teaching endorsement license;

(11) restricted school specialist license;

(12) restricted teaching license;

(13) substitute teaching license;

(14) transitional license; and

(15) visiting scholar teaching license.

(b) (1) Each initial license shall be valid for two years from the date of issuance.

(2) An initial teaching license may be issued for one or more of the following levels:

(A) Early childhood (birth through kindergarten, birth through grade 3, or prekindergarten through grade 3);

(B) early childhood through late childhood (kindergarten through grade 6);

(C) late childhood through early adolescence (grades 5 through 8);

(D) early adolescence through late adolescence and adulthood (grades 6 through 12); or

(E) early childhood through late adolescence and adulthood (prekindergarten through grade 12).

(3) Each initial school leadership license shall be issued for all levels.

(4) Each initial school specialist license shall be issued for the level that corresponds with the approved program completed by the applicant.

(c)(1) Each professional license shall be valid on the date of issuance. Each license shall expire on the license holder's fifth birthdate following issuance of the license.

(2) A professional teaching license may be issued for one or more of the following levels:

(A) Early childhood (birth through kindergarten, birth through grade 3, or prekindergarten through grade 3);

(B) early childhood through late childhood (kindergarten through grade 6);

(C) late childhood through early adolescence (grades 5 through 8);

(D) early adolescence through late adolescence and adulthood (grades 6 through 12); or

(E) early childhood through late adolescence and adulthood (prekindergarten through grade 12).

(3) Each professional school leadership license shall be issued for all levels.

(4) Each professional school specialist license shall be issued for the level that corresponds with the approved program completed by the applicant.

(d) (1) Each accomplished teaching license shall be valid for 10 years from the date of issuance.

(2) An accomplished teaching license may be issued for one or more of the following levels:

(A) Early childhood (birth through kindergarten, birth through grade 3, or prekindergarten through grade 3);

(B) early childhood through late childhood (kindergarten through grade 6);

(C) late childhood through early adolescence (grades 5 through 8);

(D) early adolescence through late adolescence and adulthood (grades 6 through 12); or

(E) early childhood through late adolescence and adulthood (prekindergarten through grade 12).

(e) Each substitute teaching license shall be valid on the date of issuance and shall be issued for all levels. Each substitute license shall expire on the license holder's fifth birthdate following issuance of the license.

(f) The first emergency substitute teaching license issued to an individual shall be valid for the school year in which it is issued and shall be issued for all levels. Each subsequent renewal of an emergency substitute license shall be valid for two consecutive school years.

(g) Each visiting scholar teaching license shall be valid through June 30 of the school year for which it is issued and shall be issued for the level corresponding with the teaching assignment.

(h)(1) Each exchange license shall be valid for two years from the date of issuance.

(2) An exchange teaching license may be issued for one or more of the following levels:

(A) Early childhood (birth through kindergarten, birth through grade 3, or prekindergarten through grade 3);

(B) early childhood through late childhood (kindergarten through grade 6);

(C) late childhood through early adolescence (grades 5 through 8);

(D) early adolescence through late adolescence and adulthood (grades 6 through 12); or

(E) early childhood through late adolescence and adulthood (prekindergarten through grade 12).

(3) Each exchange school specialist license shall be issued for the level that corresponds with the approved program completed by the applicant.

(i) Each foreign exchange teaching license shall be valid through June 30 of the school year for which it is issued and shall be valid for the level corresponding with the teaching assignment.

(j) (1) Each restricted teaching license shall be valid for the school year in which the license is issued. Any restricted teaching license may be re-

issued for two additional consecutive school years if progress reports are submitted as required in S.B.R. 91-1-203 (h)(2).

(2) A restricted teaching license may be issued for one or more of the following levels:

(A) Late childhood through early adolescence (grades 5 through 8);

(B) early adolescence through late adolescence and adulthood (grades 6 through 12); or

(C) early childhood through late adolescence and adulthood (prekindergarten through grade 12).

(k) (1) Each restricted school specialist license shall be valid for three consecutive school years from the date of issuance.

(2) Each restricted school specialist license shall be issued for all levels.

(l) (1) Each transitional license shall be valid for the school year in which the license is issued.

(2) Each transitional license shall be nonrenewable.

(3) A transitional license may be issued for one or more of the following levels:

(A) Early childhood (birth through kindergarten, birth through grade 3, or prekindergarten through grade 3);

(B) early childhood through late childhood (kindergarten through grade 6);

(C) late childhood through early adolescence (grades 5 through 8);

(D) early adolescence through late adolescence and adulthood (grades 6 through 12); or

(E) early childhood through late adolescence and adulthood (prekindergarten through grade 12).

(m)(1) Each interim alternative license shall be valid for one year from the date of issuance.

(2) The initial one-year term shall be automatically extended for one additional one-year term if the licensee demonstrates progress toward achieving an initial or professional license. Each interim alternative license shall be nonrenewable after two years.

(3) An interim alternative license may be issued for one or more of the following levels:

(A) Early childhood (birth through kindergarten, birth through grade 3, or prekindergarten through grade 3);

(B) early childhood through late childhood (kindergarten through grade 6);

(C) late childhood through early adolescence (grades 5 through 8);

(D) early adolescence through late adolescence and adulthood (grades 6 through 12); or

(E) early childhood through late adolescence and adulthood (prekindergarten through grade 12).

(n)(1) Each provisional teaching endorsement license shall be valid for two years from the date of issuance.

(2) A provisional teaching endorsement license may be issued for one or more of the following levels:

(A) Early childhood (birth through kindergarten, birth through grade 3, or prekindergarten through grade 3);

(B) early childhood through late childhood (kindergarten through grade 6);

(C) late childhood through early adolescence (grades 5 through 8);

(D) early adolescence through late adolescence and adulthood (grades 6 through 12); or

(E) early childhood through late adolescence and adulthood (prekindergarten through grade 12).

(o)(1) Each provisional school specialist license shall be valid for two years from the date of issuance.

(2) A provisional school specialist endorsement license shall be issued for all levels.

(p)(1) A nonrenewable license shall be issued to each applicant who meets all other requirements for an initial license except the assessments.

(2) Each nonrenewable license shall be valid only through June 30 of the school year for which the license is issued. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2003; amended July 1, 2003; amended Jan. 2, 2004; amended Aug. 25, 2006; amended Aug. 10, 2007; amended July 18, 2008; amended Aug. 12, 2011.)

**91-1-202. Endorsements.** (a) Each license issued by the state board shall include one or more endorsements.

(b) Endorsements available for teaching at the early childhood license level (birth through kindergarten, birth through grade 3, or prekindergarten through grade 3) shall be as follows:

(1) Early childhood;

(2) early childhood unified;

(3) deaf or hard-of-hearing;

(4) visually impaired; and

(5) school psychologist.

(c) Endorsements available for teaching at the

early childhood through late childhood license level (kindergarten through grade 6) shall be as follows:

(1) Adaptive special education;

(2) early childhood through late childhood generalist;

(3) English for speakers of other languages (ESOL);

(4) functional special education; and

(5) gifted.

(d) Endorsements available for teaching at the late childhood through early adolescence license level (grades 5 through 8) shall be as follows:

(1) Adaptive special education;

(2) English for speakers of other languages (ESOL);

(3) English language arts;

(4) functional special education;

(5) gifted;

(6) history, government, and social studies;

(7) mathematics; and

(8) science.

(e) Endorsements available for teaching at the early adolescence through late adolescence and adulthood license level (grades 6 through 12) shall be as follows:

(1) Adaptive special education;

(2) agriculture;

(3) biology;

(4) business;

(5) chemistry;

(6) communication technology;

(7) earth and space science;

(8) English for speakers of other languages (ESOL);

(9) English language arts;

(10) family and consumer science;

(11) functional special education;

(12) gifted;

(13) journalism;

(14) mathematics;

(15) physics;

(16) power, energy, and transportation technology;

(17) production technology;

(18) psychology;

(19) speech and theatre;

(20) technology education; and

(21) history, government, and social studies.

(f) Endorsements available for teaching at the early childhood through late adolescence and adulthood level (prekindergarten through grade 12) shall be as follows:

(1) Adaptive special education;

(2) art;

(3) deaf or hard-of-hearing;

(4) English for speakers of other languages (ESOL);

(5) foreign language;

(6) functional special education;

(7) gifted;

(8) health;

(9) instrumental music;

(10) music;

(11) physical education;

(12) visually impaired; and

(13) vocal music.

(g) Endorsements available for school leadership at all levels shall be as follows:

(1) Building leadership;

(2) district leadership; and

(3) program leadership.

(h) Endorsements available for school specialist fields at all levels shall be as follows:

(1) Library media specialist;

(2) reading specialist;

(3) school counselor;

(4) school psychologist; and

(5) teacher leader.

(i) Endorsements available for the foreign exchange teaching license shall be issued in the content area and valid only for the local education agency approved by the commissioner.

(j) Endorsements available for the restricted teaching license shall be issued in the content area and valid only for the local education agency approved by the state board.

(k) Endorsements available for the provisional teaching endorsement license at the early childhood through late childhood license level (kindergarten through grade 6) shall be as follows:

(1) Adaptive special education;

(2) English for speakers of other languages (ESOL);

(3) functional special education; and

(4) gifted.

(l) Endorsements available for the provisional teaching endorsement license at the early childhood license level (birth through kindergarten, birth through grade 3, or prekindergarten through grade 3) shall be as follows:

(1) Early childhood; and

(2) early childhood unified.

(m) Endorsements available for the provisional teaching endorsement license at the late child-

hood through early adolescence license level (grades 5 through 8) shall be as follows:

(1) Adapted special education;

(2) English for speakers of other languages (ESOL);

(3) English language arts;

(4) functional special education;

(5) gifted;

(6) history, government, and social studies;

(7) mathematics; and

(8) science.

(n) Endorsements available for the provisional teaching endorsement license at the early adolescence through late adolescence and adulthood license level (grades 6 through 12) shall be as follows:

(1) Adaptive special education;

(2) agriculture;

(3) biology;

(4) business;

(5) chemistry;

(6) communication technology;

(7) earth and space science;

(8) English for speakers of other languages (ESOL);

(9) English language arts;

(10) family and consumer science;

(11) functional special education;

(12) gifted;

(13) journalism;

(14) mathematics;

(15) physics;

(16) power, energy, and transportation technology;

(17) production technology;

(18) psychology;

(19) speech and theatre;

(20) technology education; and

(21) history, government, and social studies.

(o) Endorsements available for the provisional teaching endorsement license at the early childhood through late adolescence and adulthood level (prekindergarten through grade 12) shall be as follows:

(1) Adaptive special education;

(2) art;

(3) deaf or hard-of-hearing;

(4) English for speakers of other languages (ESOL);

(5) foreign language;

(6) functional special education;

(7) gifted;

(8) health;

(9) instrumental music;

(10) music;

(11) physical education;

(12) visually impaired; and

(13) vocal music.

(p) Endorsements available for provisional school specialist endorsement license at all levels shall be as follows:

(1) Library media specialist;

(2) reading specialist; and

(3) school counselor.

(q) Each applicant for a license with an adaptive or functional special education endorsement, or a gifted, visually impaired, or deaf or hard-of-hearing endorsement, shall have successfully completed one of the following:

(1) A state-approved program to teach general education students; or

(2) a professional education component that allows students to acquire the following:

(A) Knowledge of human development and learning;

(B) knowledge of general education foundations;

(C) knowledge of interpersonal relations and cultural influences;

(D) knowledge of teaching methodology; and

(E) the ability to apply the acquired knowledge to teach nonexceptional students. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2003; amended July 1, 2003; amended Aug. 25, 2006; amended Aug. 10, 2007; amended Aug. 28, 2009; amended Aug. 12, 2011.)

**91-1-203. Licensure requirements.** (a) Initial licenses.

(1) Each applicant for an initial teaching license shall submit to the state board the following:

(A) An official transcript verifying the granting of a bachelor's degree;

(B) verification from an accredited institution by the unit head or designee of completion of a teacher education program;

(C) verification of successful completion of a pedagogical assessment as determined by the state board;

(D) verification of successful completion of an endorsement content assessment as determined by the state board;

(E) verification of eight semester hours of recent credit;

(F) an application for an initial license; and

(G) the licensure fee.

(2) Each applicant for an initial school leadership license shall submit to the state board the following:

(A) An official transcript verifying the granting of a graduate degree;

(B) verification from an accredited institution by the unit head or designee of completion of a graduate-level school leadership program;

(C) verification of a minimum 3.25 cumulative GPA on a 4.0 scale in graduate coursework;

(D) verification of successful completion of a school leadership assessment as determined by the state board;

(E) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(F) an application for an initial school leadership license;

(G) the licensure fee; and

(H) verification of three years of experience in a state accredited school while holding a professional teaching license, a professional school specialist license, a professional clinical license, or a full vocational-technical certificate.

(3) Each applicant for an initial school specialist license shall submit to the state board the following:

(A) An official transcript verifying the granting of a graduate degree;

(B) verification from an accredited institution by the unit head or designee of completion of a graduate-level school specialist program;

(C) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(D) verification of a minimum 3.25 cumulative GPA on a 4.0 scale in graduate coursework;

(E) if application is made for a library media specialist endorsement or reading specialist endorsement, a currently valid professional teaching license;

(F) if application is made for a school counselor endorsement, one of the following:

(i) A currently valid professional teaching license; or

(ii) verification that the applicant successfully completed additional field experiences consisting of two three-credit-hour courses or at least 70 clock-hours over at least two semesters during the approved program specified in paragraph (a)(3)(B);

(G) verification of successful completion of a school specialist assessment as determined by the state board;

(H) an application for an initial school specialist license; and

(I) the licensure fee.

(b) Professional licenses.

(1) Each applicant for an initial professional teaching license shall submit to the state board the following:

(A) Verification of successful completion of the teaching performance assessment prescribed by the state board while employed in a school accredited by the state board or by a national or regional accrediting agency recognized by the state board;

(B) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(C) an application for professional teacher license; and

(D) the licensure fee.

(2) Each applicant for an initial professional school leadership license shall submit to the state board the following:

(A) Verification of successful completion of the school leadership performance assessment prescribed by the state board while employed in a school accredited by the state board or by a national or regional accrediting agency recognized by the state board;

(B) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(C) an application for professional school leadership license; and

(D) the licensure fee.

(3) Each applicant for an initial professional school specialist license shall submit to the state board the following:

(A) (i) Verification of successful completion of the school specialist performance assessment prescribed by the state board while the applicant is employed in a school accredited by the state board or by a national or regional accrediting agency recognized by the state board and while the applicant holds an initial school specialist license; or

(ii) if the applicant was issued an initial school specialist license with endorsement for school counselor as specified in paragraph (a)(3)(F)(ii), verification of successful completion of a supervised internship year while the applicant is employed as a school counselor in a school accredited by the state board or by a national or regional ac-

crediting agency recognized by the state board and while the applicant holds an initial school specialist license. The internship shall be for one full school year or two full semesters and shall be under the supervision of a teacher education institution in collaboration with the hiring local education agency;

(B) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(C) an application for professional school specialist license; and

(D) the licensure fee.

(4) Each applicant for an initial professional school specialist license with endorsement for teacher leader shall submit to the state board the following:

(A) An official transcript verifying the granting of a graduate degree;

(B)(i) Verification from an accredited institution by the unit head or designee of completion of a graduate-level teacher leader program and verification of successful completion of an evidence-centered assessment; or

(ii) verification by a teacher who has acquired the competencies established by the teacher leader standards of successful completion of an evidence-centered assessment;

(C) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(D) verification of at least five years of accredited experience;

(E) verification of a minimum 3.25 cumulative GPA on a 4.0 scale in graduate coursework;

(F) verification of a currently valid professional teaching license;

(G) an application for an initial professional school specialist license for teacher leader; and

(H) the licensure fee.

Paragraph (b)(4) shall remain in effect only through the five years after the effective date of this regulation.

(c) Accomplished teaching licenses. Each applicant for an initial accomplished teaching license shall submit to the state board the following:

(1) Verification of achieving national board certification issued by the national board for professional teaching standards;

(2) verification of a currently valid Kansas professional teaching license;

(3) an application for an accomplished teaching license; and

(4) the licensure fee.

(d) Substitute teaching license. Each applicant for an initial substitute teaching license shall submit to the state board the following:

(1) An official transcript from an accredited institution verifying the granting of a bachelor's degree;

(2) verification from an accredited institution of completion of an approved teacher education program;

(3) an application for substitute teaching license; and

(4) the licensure fee.

(e) Emergency substitute teaching license. Each applicant for an emergency substitute teaching license shall submit to the state board the following:

(1) An official transcript verifying the completion of at least 60 semester hours of general education coursework, professional education coursework, or a combination of these types of coursework;

(2) an application for emergency substitute teaching license; and

(3) the licensure fee.

(f) Visiting scholar teaching license.

(1) Each applicant for a visiting scholar teaching license shall submit to the state board the following:

(A) An application for a visiting scholar teaching license and the appropriate fee;

(B) written verification from an administrator of an accredited or approved local education agency that the applicant will be employed if the license is issued; and

(C) documentation of exceptional talent or outstanding distinction in one or more subjects or fields.

(2) Upon receipt of an application for a visiting scholar teaching license, the following requirements shall be met:

(A) The application and documentation submitted shall be reviewed by the commissioner of education or the commissioner's designee. As deemed necessary, other steps shall be taken by the commissioner of education or the commissioner's designee to determine the applicant's qualifications to be issued a visiting scholar teaching license.

(B) A recommendation to the state board shall be made by the commissioner of education or the commissioner's designee on whether this license should be issued to the applicant.

(3) The decision of whether a visiting scholar teaching license should be issued to any applicant shall be made by the state board.

(g) Foreign exchange teaching license.

(1) Each applicant for a foreign exchange teaching license shall submit to the state board the following:

(A) An application for a foreign exchange teaching license and the appropriate fee;

(B) an official credential evaluation by a credential evaluator approved by the state board and listed on the state board's web site;

(C) verification of employment from the local education agency, including the teaching assignment, which shall be to teach in the content area of the applicant's teacher preparation or to teach the applicant's native language; and

(D) verification of the applicant's participation in the foreign exchange teaching program.

(2) The foreign exchange teaching license may be renewed for a maximum of two additional school years if the licensee continues to participate in the foreign exchange teaching program.

(h) Restricted teaching license.

(1) Each applicant for a restricted teaching license shall submit to the state board the following:

(A) An application for a restricted teaching license and the appropriate fee;

(B) an official transcript or transcripts verifying completion of an undergraduate or graduate degree in the content area or with equivalent coursework in the area for which the restricted license is sought. Heritage language speakers shall qualify as having met content equivalency for their heritage language;

(C) verification of a minimum 2.75 grade point average on a 4.0 scale for the most recent 60 semester credit hours earned;

(D) verification that the applicant has attained a passing score on the content assessment required by the state board of education;

(E) verification that the local education agency will employ the applicant if the license is issued;

(F) verification that the local education agency will assign a licensed teacher with three or more years of experience to serve as a mentor for the applicant;

(G) verification that the applicant has completed a supervised practical training experience through collaboration of the teacher education institution and the hiring local education agency;

(H) a statement from the licensing officer of a Kansas teacher education institution attesting to the following:

(i) The applicant has on file a written plan that will qualify the applicant for full licensure in the content area for which the restricted license is sought;

(ii) the plan for program completion can be completed in not more than two years and contains a specific designation of the coursework that is to be completed each year;

(iii) the program provided to the applicant will meet the institution's approved professional education standards; and

(iv) the institution will provide the applicant with on-site support at the employing local education agency, including supervision of the applicant's teaching experience; and

(I) a statement verifying that the local education agency and the teacher education institution have collaborated regarding the approved program that the applicant will pursue and the support that the applicant will receive.

(2) The teacher education institution providing a plan of study for any person holding a restricted teaching license shall coordinate the submission of a progress report before July 1 of each year during the effective period of the restricted license. This progress report shall verify the following:

(A) The applicant's contract will be renewed;

(B) the local education agency will continue to assign an experienced mentor teacher to the applicant;

(C) the applicant has made appropriate progress toward completion of the applicant's plan to qualify for full licensure;

(D) the institution will continue to support the applicant, on-site, as necessary; and

(E) the applicant has attained at least a 2.75 GPA on a 4.0 scale in those courses specified in the applicant's plan for full licensure.

(3) Each applicant who is unable to provide any verification or statement required in paragraph (2) of this subsection shall no longer be eligible to hold a restricted teaching license.

(i) Restricted school specialist license.

(1) Each applicant for a restricted school specialist license with endorsement for school library media or school counselor shall submit to the state board the following:

(A) An application for a restricted school specialist license and the appropriate fee;

(B) an official transcript or transcripts verifying

completion of a graduate degree in the content area of counseling or library media;

(C) verification of a minimum of three years of full-time professional counseling or librarian experience;

(D) verification of a minimum 3.25 cumulative grade point average on a 4.0 scale in graduate coursework; and

(E) documentation that the following conditions are met:

(i) The local education agency has made reasonable attempts to locate and hire a licensed person for the restricted school specialist position that the applicant is to fill;

(ii) the local education agency will employ the applicant if the license is issued;

(iii) the local education agency has an agreement with an experienced school specialist in the same content area to serve as a mentor for the applicant;

(iv) the local educational agency will provide, within the first six weeks of employment, an orientation or induction program for the applicant;

(v) the local education agency has collaborated with a Kansas teacher education institution regarding the program that the applicant will pursue to obtain full licensure; and

(vi) the local education agency will provide release time for the candidate to work with the mentor and to work on progress toward program completion; and

(F) a statement from the licensing officer of a Kansas teacher education institution attesting to the following:

(i) The applicant has on file a written plan that will qualify the applicant for full licensure in the school specialist content area for which the restricted license is sought;

(ii) the plan for program completion can be completed in not more than three years and contains a specific designation of the coursework that is to be completed each year;

(iii) the program provided to the applicant will meet the institution's approved professional education standards;

(iv) the institution will provide the applicant with onsite support; and

(v) the institution has collaborated with the employing local education agency concerning the applicant's program.

(2) Each local education agency that employs a person holding a restricted school specialist license shall submit to the commissioner of education a progress report before July 1 of each year during the effective period of the restricted school specialist license. This progress report shall include the following:

(A) Verification that the applicant has attained passing scores on the content assessment required by the state board of education by the end of the first year;

(B) verification from the chief administrative officer of the employing local education agency attesting to the following:

(i) The applicant's contract will be renewed; and

(ii) the local education agency will continue to assign an experienced mentor teacher to the applicant and provide accommodations to the applicant to work with the mentor teacher and to complete the applicant's plan for full licensure;

(C) a statement from the licensing officer of the applicant's teacher education institution attesting to the following:

(i) The applicant has made appropriate progress toward completion of the applicant's plan to qualify for full licensure; and

(ii) the institution will continue to support the applicant, on-site, as necessary; and

(D) an official transcript verifying that the applicant has attained at least a 3.25 GPA on a 4.0 scale in the courses specified in the applicant's plan for full licensure.

(3) Each applicant who is unable to provide any verification or statement required in paragraph (2) of this subsection shall no longer be eligible to hold a restricted school specialist license and shall return any previously issued restricted school specialist license to the state board.

(j) Transitional license.

(1) Each applicant for a transitional license shall submit to the state board the following:

(A) Verification of meeting the requirements for an initial or professional license as provided in S.B.R. 91-1-203(a) or (b) or S.B.R. 91-1-204(c), except for recent credit or recent experience; or

(B) verification of having previously held an initial or professional Kansas license or certificate that has been expired for six months or longer;

(C) an application for a transitional license; and

(D) the licensure fee.

(2) Any person who holds a transitional license issued under paragraph (j)(1)(A) may upgrade that license to an initial or professional license by submitting to the state board the following:

(A) Verification of accredited experience during the term of the transitional license; or

(B) (i) Verification of having successfully completed eight hours of recent credit; or

(ii) verification of meeting the requirements prescribed in S.B.R. 91-1-205(b)(3)(C), if the person meets the requirements of S.B.R. 91-1-206 and S.B.R. 91-1-215 through 219.

(3) Any person who holds a transitional license issued under paragraph (j)(1)(B) may upgrade that license to an initial or professional license by submitting to the state board verification of meeting the requirements prescribed in S.B.R. 91-1-205(a)(2) or (b).

(k) Provisional teaching endorsement license.

(1) Each applicant shall hold a currently valid initial or professional license at any level and shall submit to the state board the following:

(A) Verification of completion of at least 50 percent of an approved teacher education program in the requested endorsement field;

(B) a deficiency plan to complete the approved program requirements from the licensing officer of a teacher education institution;

(C) verification of employment and assignment to teach in the provisional endorsement area;

(D) an application for a provisional endorsement teaching license; and

(E) the licensure fee.

(2) Each applicant for a provisional teaching endorsement license for adaptive, functional, or gifted special education shall hold a currently valid initial or professional license and shall submit to the state board the following:

(A) Verification of completion of coursework in the areas of methodology and the characteristics of exceptional children and special education, and completion of a practicum in the specific special education field;

(B) a deficiency plan to complete the approved program requirements for the licensing officer of a teacher education institution;

(C) verification of employment and the assignment to teach in the provisional endorsement area;

(D) an application for a provisional endorsement teaching license; and

(E) the licensure fee.

(l) Provisional school specialist endorsement license. Each applicant shall hold a currently valid professional license as described in S.B.R. 91-1-201 (a)(8) and shall submit to the state board the following:

(1) Verification of completion of 50 percent of an approved school specialist program;

(2) a deficiency plan for completion of the approved school specialist program from the licensing officer at a teacher education institution;

(3) verification of employment and assignment in the school specialty endorsement area for which licensure is sought;

(4) for a provisional school counselor endorsement license, verification from the employing local education agency that a person holding a professional school counselor specialist license will be assigned to supervise the applicant during the provisional licensure period;

(5) an application for a provisional school specialist license; and

(6) the licensure fee. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2003; amended July 1, 2003; amended Jan. 2, 2004; amended Aug. 5, 2005; amended Aug. 10, 2007; amended July 18, 2008; amended Aug. 28, 2009; amended Aug. 12, 2011.)

**91-1-204. Licensure of out-of-state and foreign applicants.** (a) Notwithstanding any other licensure regulation, any person who meets the requirements of this regulation may be issued a license by the state board.

(b) Any applicant for an initial Kansas teaching or school specialist license who holds a valid teaching or school specialist license with one or more full endorsements issued by a state that has been approved by the state board for exchange licenses may be issued a two-year license, if the applicant's endorsements are based on completion of a state-approved program in that state.

(c)(1) Any person who holds a valid teaching, school leadership, or school specialist license issued by another state may apply for either an initial or a professional license.

(2) To obtain an initial teaching license, each applicant specified in paragraph (c)(1) shall submit the following:

(A) An official transcript verifying the granting of a bachelor's degree;

(B) verification from the unit head or designee of an accredited institution that the applicant has completed a state-approved teacher education program;

(C) verification of successful completion of a pedagogical assessment prescribed by the state board or evidence of successful completion of a

pedagogical assessment in the state in which the applicant holds a license;

(D) verification of successful completion of an endorsement content assessment prescribed by the state board or evidence of successful completion of an endorsement content assessment in the state in which the applicant holds a license;

(E) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(F) an application for a Kansas license; and

(G) the licensure fee.

(3) To obtain a professional teaching license, each applicant specified in paragraph (c)(1) shall submit the following:

(A) An official transcript verifying the granting of a bachelor's degree;

(B) verification from the unit head or designee of an accredited institution that the applicant has completed a state-approved teacher education program;

(C) a copy of the applicant's currently valid out-of-state professional license;

(D) (i) Evidence of successful completion of pedagogical, content, and performance assessments prescribed by the state board or evidence of successful completion of the three assessments in the state in which the applicant holds the professional license;

(ii) verification of at least three years of recent accredited experience under an initial or professional license; or

(iii) verification of at least five years of accredited experience under an initial or professional license;

(E) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(F) an application for a Kansas license; and

(G) the licensure fee.

(4) To obtain an initial school leadership license, each out-of-state applicant shall submit the following:

(A) An official transcript verifying the granting of a graduate degree;

(B) verification from an accredited institution by the unit head or designee of completion of a graduate-level school leadership program;

(C) verification of a minimum 3.25 cumulative GPA in graduate coursework;

(D) verification of successful completion of a school leadership assessment as determined by the state board;

(E) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(F) an application for initial school leadership license;

(G) the licensure fee; and

(H) verification of three years of experience in a state-accredited school while holding a professional teaching license, a professional school specialist license, a professional clinical license, a leadership license, or a full vocational-technical certificate.

(5) To obtain an initial school specialist license, each out-of-state applicant shall submit the following:

(A) An official transcript verifying the granting of a graduate degree;

(B) verification from an accredited institution by the unit head or designee of completion of a graduate-level school specialist program;

(C) verification of a minimum 3.25 cumulative GPA in graduate coursework;

(D) if application is made for a library media specialist endorsement, school counselor endorsement, or reading specialist endorsement, a currently valid professional teaching license;

(E) verification of successful completion of a school specialist assessment as determined by the state board;

(F) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(G) an application for an initial school specialist license; and

(H) the licensure fee.

(6) To obtain a professional school leadership license, each out-of-state applicant shall submit the following:

(A) An official transcript verifying the granting of a graduate degree;

(B) verification from an accredited institution by the unit head or designee of completion of a graduate-level school leadership program;

(C) verification of a minimum 3.25 cumulative GPA in graduate coursework;

(D) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(E) verification of three years of experience in a state-accredited school while holding a professional teaching license, a professional school specialist license, a professional clinical license, a leadership license, or a full vocational certificate;

(F) (i) Evidence of successful completion of the school leadership assessment and completion in a state-accredited school of the school leadership performance assessment prescribed by the state board or evidence of successful completion of the two assessments in the state in which the applicant holds a professional leadership license; or

(ii) verification of at least three years of recent accredited experience in a school leadership position while holding a valid professional school leadership license;

(G) an application for the professional school leadership license; and

(H) the licensure fee.

(7) To obtain a professional school specialist license, each out-of-state applicant shall submit the following:

(A) An official transcript verifying the granting of a graduate degree;

(B) verification from an accredited institution by the unit head or designee of completion of a graduate-level specialist program;

(C) verification of a minimum 3.25 cumulative GPA in graduate coursework;

(D) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(E) if application is made for a library media specialist endorsement, school counselor endorsement, or reading specialist endorsement, a currently valid professional teaching license;

(F) (i) Evidence of successful completion of the school specialist assessment and completion in a state-accredited school of the school specialist performance assessment prescribed by the state board or evidence of successful completion of the two assessments in the state in which the applicant holds a professional school specialist license; or

(ii) verification of at least three years of recent accredited experience in a school specialist position while holding a valid professional school specialist license;

(G) an application for the professional school specialist license; and

(H) the licensure fee.

(8) Any person who holds a valid initial or professional school specialist license as a school counselor in another state where the counselor license is issued without a classroom teaching requirement may apply for an initial or professional school specialist license with endorsement for school counselor.

(A) To obtain an initial school specialist license with endorsement for school counselor, each applicant specified in paragraph (c)(8) shall submit to the state board the following:

(i) An official transcript verifying the granting of a graduate degree;

(ii) verification from an accredited institution by the unit head or designee of completion of a graduate-level school counselor program;

(iii) verification of a minimum 3.25 cumulative GPA on a 4.0 scale in graduate coursework;

(iv) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit; and

(v) evidence of successful completion of the school counselor assessment prescribed by the state board or evidence of successful completion of a school counselor content assessment in the state in which the applicant holds a license.

(B) Each applicant who is issued an initial school specialist license with endorsement for school counselor as specified in paragraph (c)(8)(A) shall upgrade to the professional school specialist license by submitting to the state board verification of successful completion of a supervised internship year while the applicant is employed as a school counselor in a school accredited by the state board or by a national or regional accrediting agency recognized by the state board and while the applicant holds an initial school specialist license. The internship shall be for one full school year or two full semesters and shall be under the supervision of a teacher education institution in collaboration with the hiring local education agency.

(C) To obtain a professional school specialist license with endorsement for school counselor, each applicant specified in paragraph (c)(8) shall submit to the state board the following:

(i) Verification of all documentation specified in paragraph (c)(8)(A); and

(ii) verification of at least three years of recent accredited experience as a school counselor or verification of successful completion of a supervised internship year while the applicant is employed as a school counselor in a school accredited by the state board or by a national or regional accrediting agency recognized by the state board and while the applicant holds an initial or professional license. The internship shall be for one full school year or two full semesters and shall be under the supervision of a teacher education institution in collaboration with the hiring local education agency.

(d)(1) Any person who holds a valid professional teaching license in another state and has earned national board certification issued by the national board for professional teaching standards may apply for an accomplished teaching license, which shall be valid for as long as the national board certificate is valid.

(2) To obtain an accomplished teaching license, each applicant specified in paragraph (d)(1) shall submit the following:

(A) Evidence of current national board certification;

(B) verification of a valid professional teaching license issued by another state;

(C) an application for an accomplished teaching license; and

(D) the licensure fee.

(e)(1) Any person who holds a valid license in another state earned through completion of an alternative teacher-education program may apply for an interim alternative license.

(2) To obtain an interim alternative license, each applicant specified in paragraph (e)(1) shall submit to the state board the following:

(A) An official transcript verifying the granting of a bachelor's degree;

(B) a copy of the applicant's currently valid out-of-state license;

(C) verification of completion of the alternative teacher-education program;

(D) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(E) an application for an interim alternative license; and

(F) the licensure fee.

(3) Each person who holds an interim alternative license shall submit to the commissioner of education, within the first six months of validity of the interim alternative license, a request for review of the application by the licensure review committee.

(A) Upgrading the interim alternative license to the standard initial license shall require verification of the following:

(i) Successful completion of all requirements set by the licensure review committee and approved by the state board; and

(ii) successful completion of a pedagogical assessment prescribed by the state board and successful completion of an endorsement content assessment prescribed by the state board.

(B) Upgrading the interim alternative license to the professional level license shall require verification of the following;

(i) A recommendation from the licensure review committee and approval by the state board with no additional requirements set forth; and

(ii) verification that the person meets the requirements of S.B.R. 91-1-204(c)(3)(D).

(f) Any person who has completed an education program from a foreign institution outside of the United States may receive an initial license if, in addition to meeting the requirements for the initial license as stated in S.B.R. 91-1-203, that person submits the following:

(1) An official credential evaluation by a credential evaluator approved by the state board; and

(2) if the person's primary language is not English, verification of passing scores on an English proficiency examination prescribed by the state board. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2003; amended July 1, 2003; amended Aug. 10, 2007; amended July 18, 2008; amended Aug. 28, 2009; amended Aug. 12, 2011.)

**91-1-205. Licensure renewal requirements.** (a) Initial licenses.

(1) Any person, within five years of the date the person was first issued an initial license, may apply for renewal of the initial license by submitting an application for renewal of the initial license and the licensure fee.

(2) Any person who does not renew the initial license within five years of the date the initial license was issued may obtain one or more additional initial licenses only by meeting the requirements in S.B.R. 91-1-203 (a). The assessments required by S.B.R. 91-1-203 (a)(1)(C) and 91-1-203 (a)(1)(D) shall have been taken not more than one year before the date of application for the initial license, or the applicant may verify either eight semester hours of recent credit related to one or more endorsements on the initial license or one year of recent accredited experience or may meet the requirements of paragraph (b)(3)(C) or (D) of this regulation.

(3) A person who does not successfully complete the teaching performance assessment during four years of accredited experience under an initial teaching license shall not be issued an additional initial teaching license, unless the person successfully completes the following retraining requirements:

(A) A minimum of 12 semester credit hours

with a minimum cumulative GPA of 2.50 on a 4.0 scale, earned through the verifying teacher education institution and addressing the deficiencies related to the teaching performance assessment criteria; and

(B) following completion of the required credit hours, an unpaid internship supervised by the verifying teacher education institution and consisting of at least 12 weeks, with attainment of a grade of "B" or higher.

(4) A person who does not successfully complete the school specialist or school leadership performance assessment during four years of accredited experience shall not be issued an additional initial school specialist or school leadership license, unless the person successfully completes the following retraining requirements:

(A) A minimum of six semester credit hours with a minimum cumulative GPA of 3.25 on a 4.0 scale, earned through the verifying teacher education institution and addressing the deficiencies related to the performance assessment criteria; and

(B) following completion of the required credit hours, an unpaid internship supervised by the verifying teacher education institution and consisting of at least 12 weeks, with attainment of a grade of "B" or higher.

(b) Professional licenses. Any person may renew a professional license by submitting the following to the state board:

(1) An application for renewal;

(2) the licensure fee; and

(3) verification that the person, within the term of the professional license being renewed, meets any of the following requirements:

(A) Has completed all components of the national board for professional teaching standards assessment for board certification;

(B) has been granted national board certification;

(C)(i) Has earned a minimum of 120 professional development points under an approved individual development plan filed with a local professional development council if the applicant holds an advanced degree; or

(ii) has earned a minimum of 160 professional development points under an approved individual development plan filed with a local professional development council, including at least 80 points for college credit, if the applicant does not hold an advanced degree;

(D) has completed a minimum of eight credit hours in an approved program or completed an approved program;

(E) if the person holds an advanced degree, submits to the state board verification of having completed three years of recent accredited experience during the term of the most recent license. Each person specified in this paragraph shall be limited to two renewals; or

(F) if the person is participating in an educational retirement system in Kansas or another state, has completed half of the professional development points specified in paragraph (b)(3)(C).

(c) Accomplished teaching licenses.

(1) Any person may renew an accomplished teaching license by submitting to the state board the following:

(A) Verification of achieving renewal of national board certification since the issuance of the most recent accomplished teaching license;

(B) an application for accomplished teaching license; and

(C) the licensure fee.

(2) If a person fails to renew the national board certificate, the person may apply for a professional license by meeting the renewal requirement for a professional license specified in paragraph (b)(3)(C) or (D).

(d) Substitute teaching license. Any person may renew a substitute teaching license by submitting to the state board the following:

(1) Verification that the person has earned, within the last five years, a minimum of 50 professional development points under an approved individual development plan filed with a local professional development council;

(2) an application for a substitute teaching license; and

(3) the licensure fee.

(e) Provisional teaching endorsement license. An individual may renew a provisional teaching endorsement license one time by submitting to the state board the following:

(1) Verification of completion of at least 50 percent of the deficiency plan;

(2) verification of continued employment and assignment to teach in the provisional endorsement area;

(3) an application for a provisional endorsement teaching license; and

(4) the licensure fee.

(f) Provisional school specialist endorsement license. Any individual may renew a provisional

school specialist endorsement license by submitting to the state board the following:

(1) Verification of completion of at least 50 percent of the deficiency plan;

(2) verification of continued employment and assignment as a school specialist;

(3) an application for a provisional school specialist endorsement license; and

(4) the licensure fee.

(g) Any person who fails to renew the professional license may apply for a subsequent professional license by meeting the following requirements:

(1) Submit an application for a license and the licensure fee; and

(2) provide verification of one of the following:

(A) Having met the requirements of paragraph (b)(3); or

(B) having at least three years of recent, out-of-state accredited experience under an initial or professional license.

(3) If a person seeks a professional license based upon recent, out-of-state accredited experience, the person shall be issued the license if verification of the recent experience is provided. The license shall be valid through the remaining validity period of the out-of-state professional license or for five years from the date of issuance, whichever is less. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2003; amended July 1, 2003; amended Aug. 25, 2006; amended July 18, 2008; amended Aug. 28, 2009.)

**91-1-216. Procedures for promulgation of in-service education plans; approval by state board; area professional development centers' in-service programs.** (a) An in-service education plan to be offered by one or more educational agencies may be designed and implemented by the board of education or other governing body of an educational agency, or the governing bodies of any two or more educational agencies, with the advice of representatives of the licensed personnel who will be affected.

(b) Procedures for development of an in-service plan shall include the following:

(1) Establishment of a professional development council;

(2) an assessment of in-service needs;

(3) identification of goals and objectives;

(4) identification of activities; and

(5) evaluative criteria.

(c) Based upon information developed under subsection (b), the educational agency shall prepare a proposed in-service plan. The proposed plan shall be submitted to the state board by August 1 of the school year in which the plan is to become effective.

(d) The plan shall be approved, approved with modifications, or disapproved by the state board. The educational agency shall be notified of the decision by the state board within a semester of submission of the plan.

(e) An approved plan may be amended at any time by following the procedures specified in this regulation.

(f) Each area professional development center providing in-service education for licensure renewal shall provide the in-service education through a local school district, an accredited nonpublic school, an institution of postsecondary education, or an educational agency that has a state-approved in-service education plan. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2003; amended Aug. 28, 2009.)

**91-1-230. Institutional accreditation and program approval definitions.** (a) "Academic year" means July 1 through the following June 30.

(b) "Annual report" means a document that an institution submits to the commissioner on a yearly basis in which the information specified by the commissioner concerning unit standards and operations, programs offered by the unit, and statistical data is presented.

(c) "Approved," when used to describe a teacher education program, means that the program meets the program standards prescribed in regulations adopted by the state board.

(d) "Approved with stipulation," when used to describe a teacher education program, means that the program has deficiencies in meeting the program standards prescribed in regulations adopted by the state board that the institution shall correct before being approved.

(e) "Commissioner" means the state commissioner of education or the commissioner's designee.

(f) "Evaluation review committee" means the standing committee of the teaching and school administration professional standards board, or its successor, that is responsible for making accredi-

tation and program approval recommendations to the state board.

(g) "Focused visit" means the on-site visit to a teacher education institution that has limited accreditation or accreditation with conditions by the state board and is seeking full accreditation.

(h) "Full accreditation" means the status assigned to a teacher education institution that is determined through a focused visit to meet substantially the accreditation standards adopted by the state board.

(i) "Initial visit" means the first on-site visit to a teacher education institution that is seeking accreditation for the first time from the state board.

(j) "Institutional candidate" means the designation assigned to an institution that is seeking accreditation for the first time and that has met the accreditation preconditions specified by the state board.

(k) "Institutional candidate visit" means an on-site visit that takes place following the designation of institutional candidate status to a teacher education institution.

(l) "Institutional report" means a document that describes how a teacher education institution meets the accreditation standards adopted by the state board.

(m) "Limited accreditation" means the status assigned to a teacher education institution that is determined through an initial visit to meet substantially the accreditation standards adopted by the state board.

(n) "Not approved," when used to describe a teacher education program, means that the program fails substantially to meet program standards adopted by the state board.

(o) "Program report" means a written document that describes coursework, assessment instruments, and performance criteria used in a program to achieve the program standards established by the state board.

(p) "Progress report" means a written document that addresses the stipulations that are noted if a new program is approved with stipulation.

(q) "Review team" means a group of persons appointed by the commissioner to review and analyze reports from teacher education institutions and prepare reports based upon the review and analysis.

(r) "State board" means the state board of education.

(s) "Student teaching" means preservice clinical practice for individuals preparing to become teachers.

(t) "Teacher education institution" and "institution" mean a college or university that offers at least a four-year course of study in higher education and maintains a unit offering teacher education programs.

(u) "Teacher education program" and "program" mean an organized set of learning activities designed to provide prospective school personnel with the knowledge, competencies, and skills to perform successfully in a specified educational position.

(v) "Upgrade report" means a written document that addresses the stipulations noted if an existing program is approved with stipulation. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Aug. 6, 2004; amended Aug. 12, 2011.)

**91-1-231. Procedures for initial accreditation of teacher education institutions.** (a) Statement of intent. Each teacher education institution that desires accreditation by the state board shall submit a written statement of its intent to seek accreditation to the commissioner at least 24 months before the institution desires to have its initial visit. Upon receipt of this statement, the initial visit shall be scheduled by the commissioner.

(b) Preconditions.

(1) At least three semesters before the initial visit, the teacher education institution shall submit to the commissioner a preconditions report addressing each of the preconditions specified by the state board.

(2) Upon receipt of a preconditions report, the report shall be referred by the commissioner to the appropriate committee of the standards board. The committee shall review the report and determine whether all of the preconditions have been met.

(3) If all of the preconditions have been met, the committee shall recommend to the commissioner that the institution be designated an institutional candidate.

(4) If the committee determines that the preconditions have not been met, the committee shall notify the institution of the committee's determination and shall advise the institution that it may submit, within 30 days of the notice, additional or revised documentation for consideration by the committee.

(5) If additional or revised documentation is submitted, the committee shall review the documentation and make a final recommendation to the commissioner.

(6) The final determination of whether the preconditions are met shall be made by the commissioner. If the preconditions are met, the institution shall be designated as an institutional candidate.

(c) Institutional candidate visit. Following designation as an institutional candidate, an institutional candidate visit shall be scheduled by the commissioner. If it is determined, based upon the institutional candidate visit, that an institution has the ability to meet the requirements of a teacher education institution, the institution may submit programs for approval and proceed with a self-study and institutional report.

(d) Limited accreditation.

(1) To attain the status of limited accreditation, an institution shall schedule an initial visit for the institution with the commissioner and submit an institutional report that shall be in the form and shall contain the information prescribed by the commissioner. The institutional report shall be submitted at least 60 days before the date of the initial visit scheduled for the institution.

(2) After the initial visit, the institution shall be either granted limited accreditation or denied accreditation following the procedure set forth in K.A.R. 91-1-232.

(3) Each institution shall retain the status of limited accreditation for three academic years, unless the status is changed by the state board.

(4) For licensing purposes, each institution that is granted limited accreditation shall be deemed to have full accreditation.

(e) Full accreditation.

(1) (A) Any institution that has been granted limited accreditation from the state board may apply for full accreditation by scheduling a focused visit of the institution with the commissioner and submitting an institutional report that shall be in the form and shall contain the information prescribed by the commissioner.

(B) Each institution shall schedule the focused visit to be completed at least one year before the institution's limited accreditation expires.

(C) Each institution shall submit its institutional report at least 60 days before the date of the focused visit to the institution.

(D) After the focused visit, the institution shall be either granted full accreditation or denied accreditation following the procedures set forth in K.A.R. 91-1-232.

(2) Subject to subsequent action by the state board, the full accreditation of any teacher education institution shall be effective for seven academic years. However, each teacher education institution granted full accreditation by the state board shall submit an annual report to the commissioner on or before July 30 of each year.

(f) Renewal of accreditation. Any institution may request renewal of its accreditation status by following the procedures specified in K.A.R. 91-1-70a.

(g) Change of accreditation status.

(1) The accreditation status of any teacher education institution may be changed or revoked by the state board if, after providing an opportunity for a hearing, the state board finds that the institution has failed to meet substantially the accreditation standards adopted by the state board, that the institution has made substantial changes to the unit, or that other just cause exists.

(2) The duration of the accreditation status of an institution may be extended by the state board.

(3)(A) If limited or full accreditation of an institution is denied or revoked, the institution shall not admit any new students into its teacher education unit.

(B) The institution may recommend for licensure only those students who complete their programs by the end of the semester in which the accreditation denial or revocation occurs. The institution shall provide written notice to all other students in its teacher education unit at the time of accreditation denial or revocation that the institution is no longer authorized to recommend students for licensure. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Aug. 6, 2004; amended Aug. 12, 2011.)

**91-1-232. On-site visits; recommendation; appeal.** (a) On-site visits.

(1) After the scheduling of an initial visit, a continuing accreditation visit, or a focused visit, an on-site review team shall be appointed by the commissioner. The team shall be appointed at least one year before the date of the visit. The chairperson of the on-site review team and the number of on-site review team members shall be designated by the commissioner. An institution may challenge the appointment of a team member only on the basis of a conflict of interest.

(2) In accordance with procedures adopted by the state board, each on-site review team shall examine and analyze the institutional report, review electronic exhibits, conduct an on-site review of the teacher education institution, and prepare reports expressing the findings and conclusions of the review team. The review team reports shall be submitted to the commissioner. The reports shall be forwarded by the commissioner to the evaluation review committee and to an appropriate representative of the teacher education institution.

(3) Any institution may prepare a written response to a review team report. Each response shall be prepared and submitted to the commissioner within a designated time frame following receipt of a review team's report. Each response shall be forwarded by the commissioner to the evaluation review committee.

(b) Recommendation and appeal.

(1) The evaluation review committee, in accordance with procedures adopted by the state board, shall prepare a written initial recommendation regarding the appropriate accreditation status to be assigned to the teacher education institution, which shall include a statement of the findings and conclusions of the evaluation review committee. The recommendation shall be submitted to an appropriate representative of the teacher education institution and to the commissioner.

(2) Within 30 days of the receipt of an initial recommendation of the evaluation review committee, the teacher education institution may submit a written request to the commissioner for a hearing before the evaluation review committee to appeal the initial recommendation. This request shall specify, in detail, the basis for the appeal, including an identification of each item disputed by the institution.

(3) If a request for a hearing is submitted according to paragraph (b)(2), the evaluation review committee shall conduct a hearing. The committee shall then prepare a written final recommendation regarding the appropriate status to be assigned to the teacher education institution, which shall include a statement of the findings and conclusions of the evaluation review committee. The recommendation shall be submitted to an appropriate representative of the teacher education institution and to the commissioner. The final recommendation shall be submitted by the commissioner to the state board for its consideration and determination.

(4) If a request for a hearing is not submitted within the time allowed under paragraph (2) of this subsection, the initial recommendation of the evaluation review committee shall become the final recommendation of the review committee. The committee's final recommendation shall be submitted by the commissioner to the state board for its consideration and determination. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Aug. 6, 2004; amended Aug. 12, 2011.)

**91-1-235. Procedures for initial approval of teacher education programs.** (a) Application.

(1) Each teacher education institution that desires to have any new program approved by the state board shall submit an application for program approval to the commissioner. The application shall be submitted at least 12 months before the date of implementation.

(2) Each institution shall submit with its application a program report containing a detailed description of each proposed program, including program coursework based on standards approved by the state board, and the performance-based assessment system that will be utilized to collect performance data on candidates' knowledge and skills. Each program report shall be in the form and shall contain the information prescribed by the commissioner. The program report shall include confirmation that the candidates in the program will be required to complete the following:

(A) Coursework that constitutes a major in the subject at the institution or that is equivalent to a major; and

(B) at least 12 weeks of student teaching.

(b) Review team. Upon receipt of a program report, a review team shall be appointed by the commissioner to analyze the program report. The chairperson of the review team shall be designated by the commissioner. The number of review team members shall be determined by the commissioner, based upon the scope of the program to be reviewed. An institution may challenge the appointment of a team member only on the basis of a conflict of interest.

(c) Program review process.

(1) In accordance with procedures adopted by the state board, a review team shall examine and analyze the proposed program report and shall prepare a report expressing the findings and conclusions of the review team. The review team's

report shall be submitted to the commissioner. The report shall be forwarded by the commissioner to an appropriate representative of the teacher education institution.

(2) An institution may prepare a response to the review team's report. This response shall be prepared and submitted to the commissioner within 45 days of receipt of the review team's report. The review team's report, any response by the institution, and any other supporting documentation shall be forwarded to the evaluation review committee by the commissioner.

(d) Initial recommendation. The evaluation review committee, in accordance with procedures adopted by the state board, shall prepare a written initial recommendation regarding the appropriate status to be assigned to the proposed program, which shall include a statement of the findings and conclusions of the evaluation review committee. The recommendation shall be submitted to an appropriate representative of the teacher education institution and to the commissioner.

(e) Request for hearing.

(1) Within 30 days of the receipt of an initial recommendation of the evaluation review committee, the teacher education institution may submit a written request to the evaluation review committee for a hearing before the committee to appeal the initial recommendation. This request shall specify, in detail, the basis for the appeal, including an identification of each item disputed by the institution.

(2) If a request for a hearing is submitted, the evaluation review committee shall conduct a hearing. The committee shall then prepare a written final recommendation regarding the appropriate status to be assigned to the proposed program, which shall include a statement of the findings and conclusions of the evaluation review committee. The final recommendation shall be submitted to an appropriate representative of the teacher education institution and to the commissioner. The final recommendation shall be submitted by the commissioner to the state board for its consideration and determination.

(3) If a request for a hearing is not submitted within the time allowed under paragraph (1) of this subsection, the initial recommendation of the evaluation review committee shall become the final recommendation of the review committee. The committee's final recommendation shall be submitted by the commissioner to the state board for its consideration and determination.

(f) Approval status. Each new program shall be approved with stipulation or not approved.

(g) Annual report.

(1) If a new program is approved with stipulation, the institution shall submit a progress report to the commissioner within 60 days after completion of the second semester of operation of the program, and thereafter in each of the institution's annual reports that are due on or before July 30.

(2) Each progress report shall be submitted by the commissioner to the evaluation review committee for its examination and analysis. Following review of the progress report, the evaluation review committee may remove any areas for improvement and change the status to approved until the institution's next program review.

(h) Change of approval status.

(1) At any time, the approval status of a teacher education program may be changed by the state board if, after providing an opportunity for a hearing, the state board finds that the institution either has failed to meet substantially the program standards or has materially changed the program. For just cause, the duration of the approval status of a program may be extended by the state board. The duration of the current approval status of a program shall be extended automatically if the program is in the process of being reevaluated by the state board. This extension shall be counted as part of any subsequent approval period of a program.

(2) At the time of an institution's next on-site visit, the new program shall be reviewed pursuant to K.A.R. 91-1-236.

(3) For licensure purposes, each teacher education program that is approved with stipulation shall be considered to be approved. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Aug. 6, 2004; amended Aug. 12, 2011.)

**91-1-236. Procedures for renewing approval of teacher education program.** (a) Application for program renewal.

(1) Each teacher education institution that desires to have the state board renew the approval status of one or more of its teacher education programs shall submit to the commissioner an application for program renewal. The application shall be submitted at least 12 months before the expiration of the current approval period of the program or programs.

(2) Each institution shall also submit a program

report, which shall be in the form and shall contain the information prescribed by the commissioner. The program report shall be submitted at least six months before the expiration of the current approval period of the program or programs. The program report shall include confirmation that the candidates in the program will be required to complete the following:

(A) Coursework that constitutes a major in the subject at the institution or that is equivalent to a major; and

(B) at least 12 weeks of student teaching.

(b) Review team. Upon receipt of a complete program report, a review team shall be appointed by the commissioner to analyze the program report. The chairperson of the review team shall be designated by the commissioner. The number of review team members shall be determined by the commissioner, based upon the scope of the program or programs to be reviewed. An institution may challenge the appointment of a review team member only on the basis of a conflict of interest.

(c) Program review process.

(1) In accordance with procedures adopted by the state board, each review team shall examine and analyze the program report and prepare a review report expressing the findings and conclusions of the review team. The review team's report shall be submitted to the commissioner. The report shall be forwarded by the commissioner to an appropriate representative of the teacher education institution.

(2) Any institution may prepare a written response to the review team's report. Each response shall be prepared and submitted to the commissioner within 45 days of receipt of the review team's report. The review team's report, any response filed by the institution, and any other supporting documentation shall be forwarded by the commissioner to the evaluation review committee.

(d) Initial recommendation. The evaluation review committee, in accordance with procedures adopted by the state board, shall prepare a written initial recommendation regarding the appropriate status to be assigned to the program or programs, which shall include a statement of the findings and conclusions of the evaluation review committee. The recommendation shall be submitted to an appropriate representative of the teacher education institution and to the commissioner.

(e) Request for hearing.

(1) Within 30 days of the receipt of an initial recommendation of the evaluation review committee, the teacher education institution may submit a written request to the commissioner for a hearing before the evaluation review committee to appeal the initial recommendation of the committee. This request shall specify, in detail, the basis for the appeal, including an identification of each item disputed by the institution.

(2) If a request for a hearing is submitted, the evaluation review committee shall conduct a hearing. The committee shall then prepare a written final recommendation regarding the appropriate status to be assigned to the program or programs, which shall include a statement of the findings and conclusions of the evaluation review committee. The final recommendation shall be submitted to an appropriate representative of the teacher education institution and to the commissioner. The final recommendation shall be submitted by the commissioner to the state board for its consideration and determination of program approval status according to paragraph (f)(1).

(3) If a request for a hearing is not submitted within the time allowed under paragraph (1) of this subsection, the initial recommendation of the evaluation review committee shall become the final recommendation of the review committee. The committee's final recommendation shall be submitted by the commissioner to the state board for its consideration and determination.

(f) Approval status.

(1) The status assigned to any teacher education program specified in this regulation shall be approved, approved with stipulation, or not approved.

(2) Subject to subsequent action by the state board, the assignment of approved status to a teacher education program shall be effective for seven academic years. However, the state board, at any time, may change the approval status of a program if, after providing an opportunity for a hearing, the state board finds that the institution either has failed to meet substantially the program standards adopted by the state board or has made a material change in a program. For just cause, the duration of the approval status of a program may be extended by the state board. The duration of the approval status of a program shall be extended automatically if the program is in the process of being reevaluated by the state board.

(3)(A) If a program is approved with stipulation, that status shall be effective for the period of time specified by the state board, which shall not exceed seven years.

(B) If any program of a teacher education institution is approved with stipulation, the institution shall include in an upgrade report to the commissioner the steps that the institution has taken and the progress that the institution has made during the previous academic year to address the deficiencies that were identified in the initial program review.

(C) The upgrade report shall be submitted by the commissioner to the evaluation review committee for its examination and analysis. After this examination and analysis, the evaluation review committee shall prepare a written recommendation regarding the status to be assigned to the teacher education program for the succeeding academic years. The recommendation shall include a statement of the findings and conclusions of the evaluation review committee. The recommendation shall be submitted to an appropriate representative of the teacher education institution and to the commissioner. If the institution does not agree with this recommendation, the institution may request a hearing according to the provisions in subsection (e).

(D) For licensure purposes, each teacher education program that is approved with stipulation shall be considered to be approved.

(4) Students shall be allowed two full, consecutive, regular semesters following the notification of final action by the state board to complete a program that is not approved. Summers and interterms shall not be counted as part of the two regular semesters. Students who finish within these two regular semesters may be recommended for licensure by the college or university. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Aug. 6, 2004; amended Aug. 12, 2011.)

## Article 40.—SPECIAL EDUCATION

**91-40-1. Definitions.** Additional definitions of terms concerning student discipline are provided in K.A.R. 91-40-33. (a) "Adapted physical education" means physical education that is modified to accommodate the particular needs of children with disabilities.

(b) "Agency" means any board or state agency.

(c) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term shall not include any medical device that is surgically implanted or the replacement of the device.

(d) "Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. This term shall include the following:

(1) Evaluating the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(2) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(3) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(4) coordinating and using other therapies, interventions, or services with assistive technology devices, including those associated with existing education and rehabilitation plans and programs;

(5) providing training or technical assistance for a child with a disability or, if appropriate, that child's family; and

(6) providing training or technical assistance for professionals including individuals providing education and rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of a child.

(e) "Audiology" means the following:

(1) Identification of children with hearing loss;

(2) determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(3) provision of habilitative activities, including language habilitation, auditory training, lip-reading, hearing evaluation, and speech conservation;

(4) creation and administration of programs for prevention of hearing loss;

(5) counseling and guidance of children, parents, and teachers regarding hearing loss; and

(6) determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

(f) "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three but not necessarily so, that adversely affects a child's educational performance. Other characteristics often associated with

autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term shall not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance.

(g) "Blindness" means a visual impairment that requires dependence on tactile and auditory media for learning.

(h) "Board" means the board of education of any school district.

(i) "Business day" means Monday through Friday, except for federal and state holidays unless holidays are specifically included in the designation of business day in a specific regulation.

(j) "Child find activities" means policies and procedures to ensure that all exceptional children, including exceptional children who are enrolled in private schools and exceptional children who are homeless, regardless of the severity of any disability, are identified, located, and evaluated.

(k) "Child with a disability" means the following:

(1) A child evaluated as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, emotional disturbance, an orthopedic impairment, autism, traumatic brain injury, any other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities and who, by reason thereof, needs special education and related services; and

(2) for children ages three through nine, a child who is experiencing developmental delays and, by reason thereof, needs special education and related services.

(l) "Consent" means that all of the following conditions are met:

(1) A parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication.

(2) A parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records, if any, that will be released and to whom.

(3) A parent understands the following:

(A) The granting of consent is voluntary on the part of the parent and may be revoked at any time.

(B) If the parent revokes consent, the revocation is not retroactive and does not negate an action that has occurred after the consent was given and before the consent was revoked.

(C) The parent may revoke consent in writing for the continued provision of a particular service or placement only if the child's IEP team certifies in writing that the child does not need the particular service or placement for which consent is being revoked in order to receive a free appropriate public education.

(m) "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(n) "Day" means a calendar day unless otherwise indicated as business day or school day.

(o) "Deaf-blindness" means the combination of hearing and visual impairments that causes such severe communication and other developmental and educational needs that the needs cannot be accommodated in special education programs solely for the hearing impaired or the visually impaired.

(p) "Deafness" means a hearing impairment that is so severe that it impairs a child's ability to process linguistic information through hearing, with or without amplification, and adversely affects the child's educational performance.

(q) "Developmental delay" means such a deviation from average development in one or more of the following developmental areas that special education and related services are required:

(1) Physical;

(2) cognitive;

(3) adaptive behavior;

(4) communication; or

(5) social or emotional development.

The deviation from average development shall be documented and measured by appropriate diagnostic instruments and procedures.

(r) "Department" means the state department of education.

(s) "Early identification and assessment of disabilities" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(t) "Educational placement" and "placement" mean the instructional environment in which special education services are provided.

(u) "Emotional disturbance" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(1) An inability to learn that cannot be explained by intellectual, sensory, or health factors;

(2) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(3) inappropriate types of behavior or feelings under normal circumstances;

(4) a general pervasive mood of unhappiness or depression; or

(5) a tendency to develop physical symptoms or fears associated with personal or school problems. The term shall include schizophrenia but shall not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

(v) "Evaluation" means a multisourced and multidisciplinary examination, conducted in accordance with applicable laws and regulations, to determine whether a child is an exceptional child and the nature and extent of the special education and related services that the child needs.

(w) "Exceptional children" means children with disabilities and gifted children.

(x) "Extended school year services" means special education and related services that are provided to a child with a disability under the following conditions:

(1) Beyond the school term provided to nondisabled children;

(2) in accordance with the child's IEP; and

(3) at no cost to the parent or parents of the child.

(y) "Federal law" means the individuals with disabilities education act, as amended, and its implementing regulations.

(z) "Free appropriate public education" and "FAPE" mean special education and related services that meet the following criteria:

(1) Are provided at public expense, under public supervision and direction, and without charge;

(2) meet the standards of the state board;

(3) include an appropriate preschool, elementary, or secondary school education; and

(4) are provided in conformity with an individualized education program.

(aa) "General education curriculum" means the curriculum offered to the nondisabled students of a school district.

(bb) "Gifted" means performing or demonstrating the potential for performing at significantly higher levels of accomplishment in one or more academic fields due to intellectual ability, when compared to others of similar age, experience, and environment.

(cc) "Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that does not constitute deafness as defined in this regulation.

(dd) "Homebound instruction" means the delivery of special education and related services in the home of a child with a disability.

(ee) "Hospital instruction" means the delivery of special education and related services to a child with a disability who is confined to a hospital for psychiatric or medical treatment.

(ff) "Independent educational evaluation" means an examination that is obtained by the parent of an exceptional child and is performed by an individual or individuals who are not employed by the agency responsible for the education of the child but who meet state and local standards to conduct the examination.

(gg) "Individualized education program" and "IEP" mean a written statement for each exceptional child that meets the requirements of K.S.A. 72-987, and amendments thereto, and the following criteria:

(1) Describes the unique educational needs of the child and the manner in which those needs are to be met; and

(2) is developed, reviewed, and revised in accordance with applicable laws and regulations.

(hh) "Individualized education program team" and "IEP team" mean a group of individuals composed of the following:

(1) The parent or parents of a child;

(2) at least one regular education teacher of the child, if the child is, or may be, participating in the regular education environment;

(3) at least one special education teacher or, if appropriate, at least one special education provider of the child;

(4) a representative of the agency directly involved in providing educational services for the child who meets the following criteria:

(A) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of exceptional children;

(B) is knowledgeable about the general curriculum; and

(C) is knowledgeable about the availability of resources of the agency;

(5) an individual who can interpret the instructional implications of evaluation results;

(6) at the discretion of the child's parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

(7) whenever appropriate, the exceptional child.

(ii) "Individualized family service plan" and "IFSP" mean a written plan, in accordance with section 1436 of the federal law, for providing early intervention services to an infant or toddler with a disability and the infant's or toddler's family.

(jj) "Infants and toddlers with disabilities" means children from birth through two years of age who have been determined to be eligible for early intervention services under the federal law.

(kk) "Interpreting services" means the following:

(1) For children who are deaf or hard of hearing, oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, including communication access real-time translation (CART), C-Print, and TypeWell; and

(2) special interpreting services for children who are deaf-blind.

(ll) "Least restrictive environment" and "LRE" mean the educational placement in which, to the maximum extent appropriate, children with disabilities, including children in institutions or other care facilities, are educated with children who are not disabled, with this placement meeting the requirements of K.S.A. 72-976, and amendments thereto, and the following criteria:

(1) Determined at least annually;

(2) based upon the student's individualized education program; and

(3) provided as close as possible to the child's home.

(mm) "Material change in service" means an increase or decrease of 25 percent or more of the duration or frequency of a special education service, related service, or supplementary aid or service specified on the IEP of an exceptional child.

(nn) "Medical services" means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(oo) "Mental retardation" means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

(pp) "Multiple disabilities" means coexisting impairments, the combination of which causes such severe educational needs that those needs cannot be accommodated in special education programs solely for one of the impairments. The term shall not include deaf-blindness.

(qq) "Native language" means the following:

(1) If used with reference to an individual of limited English proficiency, either of the following:

(A) The language normally used by that individual, or, in the case of a child, the language normally used by the parent or parents of the child, except as provided in paragraph (1) (B) of this subsection; or

(B) in all direct contact with a child, including evaluation of the child, the language normally used by the child in the home or learning environment.

(2) For an individual with deafness or blindness or for an individual with no written language, the mode of communication is that normally used by the individual, including sign language, braille, or oral communication.

(rr) "Occupational therapy" means the services provided by a qualified occupational therapist and shall include services for the following:

(1) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(2) improving the ability to perform tasks for independent functioning if functions are impaired or lost; and

(3) preventing, through early intervention, initial or further impairment or loss of function.

(ss) "Orientation and mobility services" means the services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to, and safe movement within, their environments at school, at home, and in the community. This term shall include teaching students the following, as appropriate:

(1) Spatial and environmental concepts and use of information received by the senses, including sound, temperature, and vibrations to establish, maintain, or regain orientation and line of travel;

(2) use of the long cane or a service animal to supplement visual travel skills or to function as a tool for safely negotiating the environment for students with no available travel vision;

(3) the understanding and use of remaining vision and distance low vision aids; and

(4) other concepts, techniques, and tools.

(tt) "Orthopedic impairment" means a severe orthopedic impairment that adversely affects a child's educational performance and includes impairments caused by any of the following:

(1) Congenital anomaly, including clubfoot or the absence of a limb;

(2) disease, including poliomyelitis or bone tuberculosis; or

(3) other causes, including cerebral palsy, amputation, and fractures or burns that cause contractures.

(uu) "Other health impairment" means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment and that meets the following criteria:

(1) Is due to chronic or acute health problems, including asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(2) adversely affects a child's educational performance.

(vv) "Parent" means any person described in K.S.A. 72-962(m) and amendments thereto.

(ww) "Parent counseling and training" means the following:

(1) Assisting parents in understanding the special needs of their child;

(2) providing parents with information about child development; and

(3) helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

(xx) "Physical education" means the development of the following:

(1) Physical and motor fitness;

(2) fundamental motor skills and patterns; and

(3) skills in aquatics, dance, and individual and group games and sports, including intramural and lifetime sports. The term shall include special physical education, adapted physical education, movement education, and motor development.

(yy) "Physical therapy" means therapy services provided by a qualified physical therapist.

(zz) "Private school children" means children with disabilities who are enrolled by their parents in private elementary or secondary schools.

(aaa) "Recreation" means leisure education and recreation programs offered in schools and by community agencies. The term shall include assessment of leisure function and therapeutic recreation services.

(bbb) "Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term shall also include any vocational rehabilitation services provided to a student with a disability under any vocational rehabilitation program funded under the rehabilitation act of 1973, as amended.

(ccc) "Related services" means developmental, corrective, and supportive services that are required to assist an exceptional child to benefit from special education.

(1) Related services shall include the following:

(A) Art therapy;

(B) assistive technology devices and services;

(C) audiology;

(D) counseling services;

(E) dance movement therapy;

(F) early identification and assessment of disabilities;

(G) interpreting services;

(H) medical services for diagnostic or evaluation purposes;

(I) music therapy;

(J) occupational therapy;

(K) orientation and mobility services;

(L) parent counseling and training;

(M) physical therapy;

(N) recreation, including therapeutic recreation;

(O) rehabilitation counseling services;

(P) school health services;

(Q) school nurse services;

(R) school psychological services;

(S) school social work services;

(T) special education administration and supervision;

(U) special music education;

(V) speech and language services;

(W) transportation; and

(X) other developmental, corrective, or supportive services.

(2) Related services shall not include the provision of any medical device that is surgically implanted, including a cochlear implant, the optim-

ization of the device's functioning, including mapping and maintenance of the device, and replacement of the device.

(ddd) "School age" means the following:

(1) For children identified as gifted, having attained the age at which the local board of education provides educational services to children without disabilities, through the school year in which the child graduates from high school; and

(2) for children with disabilities, having attained age three, through the school year in which the child graduates with a regular high school diploma or reaches age 21, whichever occurs first.

(eee) "School day" means any day, including a partial day, that all children, including children with and without disabilities, are in attendance at school for instructional purposes.

(fff) "School health services" means health services that are specified in the IEP of a child with a disability and that are provided by a school nurse or other qualified person.

(ggg) "School nurse services" means nursing services that are provided by a qualified nurse in accordance with the child's IEP.

(hhh) "School psychological services" means the provision of any of the following services:

(1) Administering psychological and educational tests, and other assessment procedures;

(2) interpreting assessment results;

(3) obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(4) consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests;

(5) planning and managing a program of psychological services, including psychological counseling for children and parents; and

(6) assisting in developing positive behavioral intervention strategies.

(iii) "School social work services" means services provided by a qualified social worker and shall include the provision of any of the following services:

(1) Preparing a social or developmental history on a child with a disability;

(2) group and individual counseling with the child and family;

(3) working in partnership with the parent or parents and others on those problems in a child's living situation, at home, at school, and in the community that affect the child's adjustment in school;

(4) mobilizing school and community resources to enable the child to learn as effectively as possible in the child's educational program; and

(5) assisting in developing positive behavioral intervention strategies.

(jjj) "Services plan" means a written statement for each child with a disability enrolled in a private school that describes the special education and related services that the child will receive.

(kkk) "Special education" means the following:

(1) Specially designed instruction, at no cost to the parents, to meet the unique needs of an exceptional child, including the following:

(A) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(B) instruction in physical education;

(2) paraeducator services, speech-language pathology services, and any other related service, if the service consists of specially designed instruction to meet the unique needs of a child with a disability;

(3) occupational or physical therapy and interpreter services for deaf children if, without any of these services, a child would have to be educated in a more restrictive environment;

(4) travel training; and

(5) vocational education.

(lll) "Specially designed instruction" means adapting, as appropriate to the needs of each exceptional child, the content, methodology, or delivery of instruction for the following purposes:

(1) To address the unique needs of the child that result from the child's exceptionality; and

(2) to ensure access of any child with a disability to the general education curriculum, so that the child can meet the educational standards within the jurisdiction of the agency that apply to all children.

(mmm) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term shall not include learning problems that are primarily the result of any of the following:

(1) Visual, hearing, or motor disabilities;

(2) mental retardation;

(3) emotional disturbance; or

(4) environmental, cultural, or economic disadvantage.

(nnn) "Speech-language pathology services" means the provision of any of the following services:

(1) Identification of children with speech or language impairments;

(2) diagnosis and appraisal of specific speech or language impairments;

(3) referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(4) provision of speech and language services for the habilitation or prevention of communicative impairments; and

(5) counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(ooo) "Speech or language impairment" means a communication disorder, including stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

(ppp) "State agency" means the secretary of social and rehabilitation services, the secretary of corrections, and the commissioner of juvenile justice.

(qqq) "State board" means the state board of education.

(rrr) "State institution" means any institution under the jurisdiction of a state agency.

(sss) "Substantial change in placement" means the movement of an exceptional child, for more than 25 percent of the child's school day, from a less restrictive environment to a more restrictive environment or from a more restrictive environment to a less restrictive environment.

(ttt) "Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes, other education-related settings, and extracurricular and nonacademic settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

(uuu) "Transition services" means a coordinated set of activities for a student with disabilities, designed within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to postschool activities, including postsecondary education, vocational education, integrated employment including supported employment, continuing and adult education, adult services, independent living, and community participation. The coordinated set of activities shall be based on the individual student's needs, taking into account the student's preferences and interests, and shall include the following:

(1) Instruction;

(2) related services;

(3) community experiences;

(4) the development of employment and other postschool adult living objectives; and

(5) if appropriate, acquisition of daily living skills and a functional vocational evaluation.

(vvv) "Transportation" means the following:

(1) Travel to and from school and between schools;

(2) travel in and around school buildings; and

(3) specialized equipment, including special or adapted buses, lifts, and ramps, if required to provide special transportation for a child with a disability.

(www) "Traumatic brain injury" means an acquired injury to the brain that is caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects educational performance. The term shall apply to open or closed head injuries resulting in impairments in one or more areas, including the following:

(1) Cognition;

(2) language;

(3) memory;

(4) attention;

(5) reasoning;

(6) abstract thinking;

(7) judgment;

(8) problem solving;

(9) sensory, perceptual, and motor abilities;

(10) psychosocial behavior;

(11) physical functions;

(12) information processing; and

(13) speech.

The term shall not include brain injuries that are congenital or degenerative or that are induced by birth trauma.

(xxx) "Travel training" means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to perform the following:

(1) Develop an awareness of the environment in which they live; and

(2) learn the skills necessary to move effectively

and safely from place to place within various environments, including at school, home, and work, and in the community.

(yyy) "Visual impairment" means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term shall include both partial sight and blindness.

(zzz) "Vocational education" means any organized educational program that is directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree. (Authorized by and implementing K.S.A. 2008 Supp. 72-963; effective May 19, 2000; amended March 21, 2008; amended July 23, 2010.)

**91-40-27. Parental consent.** (a) Except as otherwise provided in this regulation, each agency shall obtain parental consent before taking any of the following actions:

(1) Conducting an initial evaluation or any reevaluation of an exceptional child;

(2) initially providing special education and related services to an exceptional child; or

(3) making a material change in services to, or a substantial change in the placement of, an exceptional child, unless the change is made under the provisions of K.A.R. 91-40-33 through 91-40-38 or is based upon the child's graduation from high school or exceeding the age of eligibility for special education services.

(b) When screening or other methods used by an agency indicate that a child may have a disability and need special education services, the agency shall make reasonable and prompt efforts to obtain informed consent from the child's parent to conduct an initial evaluation of the child and, if appropriate, to make the initial provision of services to the child.

(c) Unless a judicial order specifies to the contrary, each agency shall recognize the biological or adoptive parent of an exceptional child who is a minor as the educational decision maker for the child if the parent exerts the parent's rights on behalf of the child, even if one or more other persons meet the definition of parent for the particular child.

(d) An agency shall not construe parental consent for initial evaluation as consent for the initial provision of special education and related services to an exceptional child.

(e) An agency shall not be required to obtain parental consent before taking either of the following actions:

(1) Reviewing existing data as part of an evaluation, reevaluation, or functional behavioral assessment; or

(2) administering a test or other evaluation that is administered to all children, unless before administration of that test or evaluation, consent is required of the parents of all children.

(f)(1) If a parent of an exceptional child who is enrolled or is seeking to enroll in a public school does not provide consent for an initial evaluation or any reevaluation, or for a proposed material change in services or a substantial change in the placement of the parent's child, an agency may, but shall not be required to, pursue the evaluation or proposed change by initiating due process or mediation procedures.

(2) If a parent of an exceptional child who is being homeschooled or has been placed in a private school by the parent does not provide consent for an initial evaluation or a reevaluation, or fails to respond to a request to provide consent, an agency shall not pursue the evaluation or reevaluation by initiating mediation or due process procedures.

(3) An agency shall not be in violation of its obligations for identification, evaluation, or reevaluation if the agency declines to pursue an evaluation or reevaluation because a parent has failed to provide consent for the proposed action.

(4) Each agency shall document its attempts to obtain parental consent for action proposed under this regulation.

(g) An agency shall not be required to obtain parental consent for a reevaluation or a proposed change in services or placement of the child if the agency has made attempts, as described in K.A.R. 91-40-17(e)(2), to obtain consent but the parent or parents have failed to respond.

(h) An agency shall not use a parent's refusal to consent to an activity or service to deny the parent or child other activities or services offered by the agency.

(i) If, at any time after the initial provision of special education and related services, a parent revokes consent in writing for the continued provision of all special education, related services, and supplementary aids and services, the following shall apply:

(1) The agency shall not continue to provide special education, related services, and supple-

mentary aids and services to the child but shall provide prior written notice in accordance with K.A.R. 91-40-26 before ceasing the provision of those services.

(2) The agency shall not use the procedures in K.S.A. 72-972a or K.S.A. 72-996, and amendments thereto, or K.A.R. 91-40-28, including the mediation procedures and the due process procedures, in order to obtain an agreement or a ruling that the services may be provided to the child.

(3) The agency shall not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education services, related services, and supplementary aids and services.

(4) The agency shall not be required to convene an IEP team meeting or develop an IEP under K.S.A. 72-987, and amendments thereto, or K.A.R. 91-40-16 through K.A.R. 91-40-19 for the child for further provision of special education, related services, and supplementary aids and services.

(j) If a parent revokes consent in writing for the child's receipt of all special education and related services after the child is initially provided special education and related services, the agency shall not be required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

(k) If a parent revokes consent for the continued provision of particular special education, related services, supplementary aids and services, or placements, or any combination of these, and the IEP team certifies in writing that the child does not need the service or placement for which consent is being revoked in order to receive a free appropriate public education, the following shall apply:

(1) The agency shall not continue to provide the particular special education, related services, supplementary aids and services, and placements for which consent was revoked but shall provide prior written notice in accordance with K.A.R. 91-40-26 before ceasing the provision of the particular special education, related services, supplementary aids and services, and placements.

(2) The agency shall not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the particular special education, related services, supplementary aids and services, or placements, or any combination, for which parental consent was revoked.

(l) If a parent who revoked consent for all special education, related services, and supplementary aids and services under subsection (i) subsequently requests that the person's child be reenrolled in special education, the agency shall conduct an initial evaluation of the child to determine whether the child qualifies for special education before reenrolling the child in special education. If the team evaluating the child determines that no additional data are needed to make any of the determinations specified in K.A.R. 91-40-8(c)(2), the agency shall give written notice to the child's parent in accordance with K.A.R. 91-40-8(e)(2). If the child is determined to be eligible, the agency shall develop an initial IEP. (Authorized by K.S.A. 2008 Supp. 72-963; implementing K.S.A. 2008 Supp. 72-988; effective May 19, 2000; amended May 4, 2001; amended March 21, 2008; amended July 23, 2010.)

## Agency 92

# Kansas Department of Revenue

*Articles*

92-12. Income Tax.
92-19. Kansas Retailers' Sales Tax.
92-24. Liquor Drink Tax.
92-26. Agricultural Ethyl Alcohol Producer Incentive.
92-28. Retail Dealer Incentive.
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### Article 12.—INCOME TAX

**92-12-66a. Abatement of final tax liabilities.** (a) General. The authority of the secretary to abate all or part of a final tax liability shall be exercised only in cases in which there is serious doubt as to either the collectability of the tax due or the accuracy of the final tax liability and the abatement is in the best interest of the state. This authority shall be exercised to effect the collection of taxes with the least possible loss or cost to the state and with fairness to the taxpayer. The determination of whether to abate all or part of a final tax liability shall be wholly discretionary.

(b) Definitions.

(1) "Assets" means the taxpayer's real and personal property, tangible and intangible.

(2) "Collectability" means the ability of the department of revenue to collect, and the ability of the taxpayer to pay, the tax liability.

(3) "Concealment of assets" means a placement of assets beyond the reach of the department of revenue, or a failure to disclose information relating to assets, that deceives the department with respect to the existence of the assets, whether accomplished by act, misrepresentation, silence, or suppression of the truth.

(4) "Final tax liability" means a tax liability that was established by the department to which the taxpayer has no further direct appeal rights.

(5) "Order denying abatement" means an order issued by the secretary that rejects a petition for abatement and refuses to abate any part of a final tax liability.

(6) "Order of abatement" means an order issued by the secretary that abates all or part of a final tax liability and states the reasons that this action was taken.

(7) "Parties" means either the person who requests an abatement of a final tax liability or the person's authorized representative, and either the secretary of revenue or the secretary's designee.

(8) "Secretary" means the secretary of the department of revenue or the designee of the secretary.

(9) "Serious doubt as to collectability" means the doubt that exists when a reasonable person, viewing the controlling circumstances objectively, would conclude that the likelihood of recovering the tax liability is less than probable.

(10) "Serious doubt as to liability" means the doubt that exists when a reasonable person, viewing the controlling circumstances objectively, would conclude that it is probable that the final tax liability previously established by the department is greater than the actual tax liability imposed by the Kansas tax imposition statutes.

(11) "Tax" means the particular tax owed by the taxpayer and shall include any related interest and penalty.

(c) Factors affecting abatement.

(1) No final tax liability shall be abated on the ground of serious doubt as to liability if the taxpayer's liability for the tax has been established on the merits by a court judgment or decision of the court of tax appeals. No final tax liability shall be abated on the ground of serious doubt as to liability if the taxpayer has filed tax returns, absent a showing of the reporting errors on the returns.

(2) No tax liability shall be abated by the secretary if the taxpayer has acted with intent to defraud or to delay collection of tax. Frivolous petitions and petitions submitted only to delay collection of a tax shall be immediately rejected.

(d) Procedures.

(1) Each petition for abatement shall be captioned "petition for abatement of a final tax liability" and shall be submitted to the secretary. The petition shall be signed by the petitioner and the taxpayer, if available, under the penalties of perjury and shall include the following:

(A) The reasons why all or part of the final tax liability should be abated;

(B) the facts that support the abatement; and

(C) a waiver of the taxpayer's right of confidentiality under the confidentiality provisions of chapter 79 of the Kansas statutes annotated and amendments thereto, conditioned upon the secretary's abatement of all or part of the final tax liability.

(2) If a petition alleges serious doubt as to collectability, the taxpayer shall submit a statement of financial condition that lists assets and liabilities, accompanied by an affidavit signed by the preparer under the penalties of perjury, attesting that the financial statement is true and accurate to the best of the preparer's knowledge.

(3) After a petition has been submitted, the taxpayer shall provide any additional verified documentation that is requested by the secretary. The petitioner or taxpayer may be required by the secretary to appear before the secretary and testify under oath concerning a requested abatement.

(4) A petition for abatement may be withdrawn by the taxpayer at any time before its acceptance. When a petition is denied, the taxpayer shall be notified in writing by the secretary within 30 days of the decision to deny.

(5) An order of abatement that abates all or part of a final tax liability may be issued by the secretary. The order may direct any remaining liability to be paid within 30 days. Each order of abatement shall set forth the reasons that the petition for abatement was granted and all relevant information, including the following:

(A) The names of all parties;

(B) the amount and type of tax, interest, and penalties that were abated;

(C) the amount of tax, penalty, and interest that remain to be paid on the date of the order; and

(D) the amount that has been paid, if any.

(6) The submission of a petition for abatement shall not prevent the collection of any tax.

(e) Effect of an order of abatement. Each order of abatement shall relate to the entire liability of the taxpayer with respect to which the order is made and shall conclusively settle the amount of liability. Once an order of abatement is issued, matters covered by the order shall not be reopened by court action or otherwise, except for one of the following reasons:

(1) Falsification of statements or concealment of assets by the taxpayer;

(2) mutual mistake of a material fact sufficient to cause a contract to be reformed or set aside; or

(3) serious doubt as to collectability arising after an abatement order is issued that is based on serious doubt as to liability.

(f) Effect of waiver of confidentiality. The issuance of an order of abatement for $5,000 or more shall make all reports of the abatement proceeding available for public inspection upon written request, in accordance with K.S.A. 79-3233b, and amendments thereto, and the taxpayer's express waiver of the right to confidentiality under the confidentiality provisions of chapter 79 of the Kansas statutes annotated, and amendments thereto.

(g) Annual report. On or before the last day of September of each year, a summary of each petition of abatement that was granted during the preceding state fiscal year that reduced a final tax liability by $5,000 or more shall be prepared for filing with the secretary of state, the division of post audit of the legislature, and the attorney general. Each summary shall include the following:

(1) The name of the taxpayer;

(2) a summary of the issues and the reasons for the abatement; and

(3) the amount of final tax liability, including penalties and interest, that was abated. (Authorized by K.S.A. 79-3236; implementing K.S.A. 2010 Supp. 79-3233, 79-3233a, and 79-3233b, as amended by 2011 SB 212, sec. 1; effective July 27, 2001; amended Oct. 28, 2011.)

**92-12-145. Transfer of tax credits.** (a) Any tax credits earned by a not-for-profit contributor not subject to Kansas income, privilege, or premiums tax may be transferred to any taxpayer that is subject to Kansas income, privilege, or premiums tax. These tax credits shall be transferred only one time. The transferee shall claim the tax credit against the transferee's tax liability in the tax year of the transfer.

(b) The transferor and transferee shall execute a written transfer agreement to transfer the tax credit. The agreement shall include the following information:

(1) The name and either the employer identi-

fication number or the social security number of the transferor;

(2) the name and either the employer identification number or the social security number of the transferee;

(3) the date of the transfer;

(4) the date the contribution was made by the transferor;

(5) the amount of tax credit transferred;

(6) the amount that will be received by the transferor for the tax credit transferred; and

(7) any other relevant information that the secretary requires.

(c) Each transfer agreement shall be reviewed by the secretary. If the transfer agreement is approved, a certificate of transfer shall be issued to the transferor and transferee indicating approval of the transfer. If the transfer agreement is denied, written notification of the denial shall be issued to the transferor and transferee. (Authorized by K.S.A. 79-32,113 and K.S.A. 2008 Supp. 79-32,261; implementing K.S.A. 2008 Supp. 79-32,261; effective June 20, 2008; amended May 22, 2009.)

## Article 19.—KANSAS RETAILERS' SALES TAX

**92-19-3.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 79-3602, 79-3607, 79-3609; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1988; amended June 26, 1998; revoked April 1, 2011.)

**92-19-3a. Credit sales, conditional sales, and other sales and service transactions that allow deferred payment.** (a) For purposes of this regulation, K.A.R. 92-19-3b, K.A.R. 92-19-3c, and K.A.R. 92-19-55b, the following definitions shall apply:

(1) "Conditional sale" means a sales transaction made pursuant to a written agreement that is treated as a sale of goods for federal income tax purposes in which the buyer gains immediate possession or control of the goods but the seller or a financial institution retains title to or a security interest in the goods to ensure its future receipt of full payment before clear title is transferred to the buyer in possession or control of the goods. Conditional sale contracts include "financing leases."

(2) "Credit charge" means interest, finance, and carrying charges from credit extended on the sale of goods or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the buyer.

(3) "Credit sale" means a sale of goods or services under an agreement that provides for the deferred payment of the purchase price. Credit sales shall include sales made under the following:

(A) An installment contract that transfers title and possession of the goods to the buyer at the time of purchase, but allows payment to be made in periodic installments; and

(B) a revolving credit contract that extends a line of credit to a buyer that allows purchases to be charged against the account and provides for periodic billing that requires payment of part of, and allows for payment of all of, the credit balance owed by the buyer.

(4) "Creditor" means an entity or person to whom money is owed.

(5) "Financial institution" means a bank, savings and loan, credit union, or other finance company licensed under the provisions of the Kansas uniform consumer credit code as specified in K.S.A. 79-3602, and amendments thereto, for isolated or occasional sales.

(6) "Financing lease" means a conditional-sale contract that is denominated a lease, but that is intended to finance a lessee's purchase of goods or its continued possession of goods under a sale-leaseback agreement. A lessor shall be presumed to have entered into a financing lease if the lessor accounts for the lease transaction as a financing agreement for federal income tax purposes. The term "capital lease" shall be considered synonymous with "financing lease."

(7) "Goods" has the same meaning as "tangible personal property," which is specified in K.S.A. 79-3602, and amendments thereto.

(8) "Invoice" means a paper or electronic bill of sale or similar dated document containing an itemized list of goods or services sold to the buyer that specifies the selling price of the goods or services and complies with the requirements of K.S.A. 79-3648 and amendments thereto, when an itemized charge is taxable.

(9) "Layaway sale" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order shall be deemed accepted for layaway by the seller when the seller removes

the property from normal inventory or clearly identifies the property as sold to the purchaser.

(10) "Operating lease" has the meaning specified in K.A.R. 92-19-55b.

(11) "Purchase price" has the meaning of "sales or selling price" specified in K.S.A. 79-3602, and amendments thereto.

(12) "Rain check" means that the seller allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock.

(13) "Repossessed goods" means goods sold on credit that a retailer or other creditor reclaims as allowed by law after a buyer or debtor defaults on installment payments.

(14) "Returned goods" means goods that a buyer returns to a retailer upon the parties' cancellation of the original sales contract when the retailer either credits or refunds the full selling price of the goods and associated sales tax to the buyer. Returned goods shall not include goods accepted in trade or barter, goods repossessed or recaptured by legal process, and goods secured pursuant to the consumer's abandonment of the sales contract or other voluntary surrender.

(15) "Sales tax" or "tax" means Kansas retailers' sales tax, Kansas retailers' compensating use tax, and any local retailers' sales or use tax that is levied in addition to the state tax.

(16) "Services" has the meaning specified in K.S.A. 79-3602, and amendments thereto.

(b) Nothing in this regulation, K.A.R. 92-19-3b, K.A.R. 92-19-3c, or K.A.R. 92-19-55b shall be construed as modifying any of the following:

(1) Any requirement of any Kansas certificate-of-title statute or supporting regulation;

(2) any provision of the retailers' sales tax act that allows a retailer to discount the selling price of goods or services based on a trade-in, coupon, or other price reduction that is allowed by a retailer and taken by a buyer on a sale; or

(3) any requirement imposed on creditors or consumers by the Kansas uniform consumer credit code, K.S.A. 16a-1-101 et seq., and amendments thereto.

(c)(1) When a retailer makes credit sales, the retailer may report and pay tax to the department on the total cash and other payments the retailer receives during each reporting period or, if the retailer's books and records are regularly kept on the accrual basis, on the total receipts accrued in its books and records during each reporting period. A retailer that has filed six or more sales tax returns using the same method of accounting that it uses for its federal income tax reporting shall be presumed to have knowingly elected to use that method of accounting for sales tax purposes and to have benefited from its election. Regardless of the reasons for electing to use one method of accounting, a retailer shall continue to use that method of accounting to report its credit and other retail sales unless the director of taxation authorizes the retailer in writing to change its method of accounting for all future sales tax returns or the internal revenue service directs or authorizes the retailer to change its method of accounting for federal income tax purposes.

(2) A retailer shall not be disqualified from reporting sales on a cash-receipts basis because it makes credit sales or has accounts receivable. However, when a retailer that reports credit sales on a cash-receipts basis sells, factors, assigns, or otherwise transfers an installment contract, account receivable, or similar instrument, sales tax shall become due on the total amount of the remaining payments and shall be reported on the return for the period in which the retailer is paid or credited for the contract or receivable.

(3) For the purposes of administering and enforcing the requirements of the Kansas retailers' sales tax act for retailers that report tax based on the total receipts accrued during a reporting period, the date contained on the invoice given to the buyer shall be presumed to be the date the retailer recognizes the receipts in its books and records as earned.

(4) If a retailer finds that it is a hardship to report and remit sales tax in accordance with the requirements in this subsection, the retailer may apply in writing to the director of taxation for permission to start reporting its sales using a different accounting method. The retailer shall fully explain the reasons for the request, and the director may identify reasonable requirements that the retailer shall meet as a condition to allowing the retailer to change the method of accounting it uses to report sales tax.

(d)(1) Each retailer that accounts for its credit sales on the accrual basis shall bill the buyer the full amount of tax that is due on the purchase price of the goods or services sold on credit and shall source and report the sale as if it were a cash sale. The purchase price shall not be reduced by any expense that the retailer attributes to the sale or service and recovers from the buyer even when

the retailer bills the expense as a separate line-item charge or on a separate invoice.

(2) When a credit sale is made, any credit charge that is paid by a buyer in addition to the purchase price of goods or services shall be deemed not to be part of the purchase price and shall not be subject to sales tax if both of the following conditions are met:

(A) The invoice, bill of sale, or similar document given to the buyer separately states the credit charge and the selling price of the goods or services that were sold on credit.

(B) The extension of credit was contracted for by the parties, provided for by standard industry custom or practice, or otherwise granted by the retailer, including by issuing an invoice that unilaterally informs the buyer that interest at a stated rate will be added each month to any outstanding credit balance.

(3) A retailer's charges for the extension of credit that meet the requirements of paragraph (d)(2) shall not be included in the retailer's report of gross receipts.

(4) A retailer that makes credit sales shall maintain records that separately show the selling price of the goods or services, the corresponding amount of sales tax charged, the customer's credit balance, and any interest, financing, or carrying charge that has been added to that balance.

(5) A retailer shall not collect sales tax on charges to customers for insufficient funds checks or closed-account checks. The receipts from these charges shall not be included in the retailers report of gross receipts.

(6) This subsection shall not apply to the types of charges related to credit-card use that are specified in subsection (e).

(e)(1) If a retailer increases the selling price of goods or services for a buyer who uses a credit card to compensate for interchange fees or other charges that the credit-card company will later deduct from the payment it forwards to the retailer's account, these increases shall be considered to be part of the selling price of the goods or services and shall be subject to tax.

(2) Interchange fees and other charges that a credit-card company deducts from a participating retailer's account shall be deemed charges for the financial services that the credit-card company has rendered for the retailer and shall not be deducted from the retailer's report of gross receipts or otherwise used to reduce the amount of sales tax being reported.

(f)(1) A progress payment shall mean a payment made to a contractor as work progresses on a construction project that may be conditioned on the percentage of work completed, the stage of work completed, the costs incurred by the contractor, a payment schedule, or some other basis. Each contractor who issues a bill or statement for a progress payment for a period in which the contractor performed taxable labor services shall report sales tax on the taxable services as part of its gross receipts.

(2) If a contractor reports sales tax on the cash basis, it shall report the taxable labor services it performed during the period covered by a progress payment on the return it files for the sales-tax reporting period in which it receives the progress payment. If a contractor reports sales tax on the accrual basis, it shall report the taxable services it performed during the period covered by a progress-billing statement on the return it files for the sales-tax reporting period in which it recognizes the charges on its progress-billing statement in its books and records as earned.

(g)(1) Unless otherwise provided by statute, each retailer that makes a layaway sale shall report sales tax on the total selling price of the goods sold on layaway when the final payment is made and the goods are delivered to the buyer. The tax rate that is applied to a layaway sale shall be the rate that is in effect at the time of delivery. An exemption may be claimed on a layaway sale only if the exemption is in effect at the time of delivery. If an unpaid balance remains when the goods are delivered, the transaction shall be reported as a credit sale that is consummated when the goods are delivered to the buyer.

(2) Sales tax shall be applied to a purchase made under a rain check in the same way that the tax is applied to a purchase made under a layaway sale.

(h)(1) Each retailer shall collect and remit tax in accordance with this subsection on any taxable sales of goods the retailer makes under a financing lease agreement or other conditional sale, unless the lease or sale satisfies one of the requirements listed in paragraphs (i)(2)(A) through (C).

(2) When an accrual-basis retailer sells goods at retail and the sale is financed under a financing lease, the retailer shall collect and remit sales tax at the time of sale on the full selling price of the goods. Sales tax shall be collected and remitted in this manner even if the retailer transfers title to the goods to a financial institution and possession of the goods to the third-party lessee or if the re-

tailer retains title to the goods and transfers possession to the lessee. Lease payments that a third-party lessee makes to a financial institution or retailer to discharge its loan-repayment obligations under a financing lease or other conditional sale shall not be subject to tax.

(3) A financial institution shall not claim a resale exemption for the purchase of goods that the financial institution is financing under a financing lease agreement.

(4) The transfer of title to the lessee upon completion of the lease payments required under a financing lease agreement shall not be subject to tax.

(i)(1) A contract shall be treated as a financing lease regardless of whether the underlying transaction is characterized as a lease or rental under generally accepted accounting principles, the internal revenue code, the uniform commercial code, K.S.A. 84-1-101 et seq. and amendments thereto, or any other provision of federal, state, or local law, if the contract requires the lessee to possess or control the goods under a security agreement or deferred payment plan that requires the transfer of possession or control of the goods to the lessee under either of the following:

(A) A security agreement or deferred payment plan that requires the transfer of title to the lessee upon completion of the required payments; or

(B) an agreement that requires the transfer of title upon completion of the required installment payments plus the additional payment of an option price, and the option price does not exceed the greater of $100 or 1% of the total required payments.

(2) Unless paragraph (i)(1) requires a contract to be treated as a financing lease, a contract shall be treated as an operating lease and not as a financing lease if the contract meets one of the following requirements:

(A) Contains a provision that allows the lessor to claim federal income tax depreciation benefits for the leased goods;

(B) allows the lessee to terminate the agreement at any time by returning the goods and making all lease payments due to the date of return; or

(C) qualifies as a Kansas consumer lease-purchase agreement under K.S.A. 50-680 et seq., and amendments thereto.

(j)(1) A late payment charge or penalty billed to a customer shall be exempt under this regulation only if the late payment charge or penalty is imposed for nonpayment of a credit balance that is owed under the parties' agreement for the extension of credit, a financing lease, or other conditional sale agreement.

(2) A late payment charge or penalty that is billed to a customer by a regulated utility, cable provider, telecommunications company, or other entity that operates under the authority granted by law or contract by a municipal, county, state, or federal governmental unit is not a credit charge imposed for the extension of credit and shall be subject to sales tax.

(3) A late payment charge or penalty imposed under an operating lease or rental agreement shall be subject to tax in accordance with subsection (d) of K.A.R. 92-19-55b. (Authorized by K.S.A. 2010 Supp. 75-5155 and K.S.A. 2010 Supp. 79-3618; implementing K.S.A. 2010 Supp. 75-5155, K.S.A. 2010 Supp. 79-3602, K.S.A. 2010 Supp. 79-3603, K.S.A. 2010 Supp. 79-3609, and K.S.A. 2010 Supp. 79-3618; effective April 1, 2011.)

**92-19-3b. Allowances for bad debts.** (a) General.

(1) For purposes of this regulation, "bad debt" shall mean any debt owed to or account receivable held by a retailer that can be claimed as a "wholly or partially worthless debt" deduction under 26 U.S.C. Section 166 that arose from the sale of goods or services upon which the retailer reported retailers' sales or use tax in a prior reporting period; and

(2)(A) A retailer shall be eligible to claim a bad debt allowance if the retailer meets the following conditions:

(i) Was the original seller of the taxable goods or services;

(ii) charged and remitted the retailers' sales or use tax on a sale that can be claimed as a worthless debt deduction under 26 U.S.C. Section 166; and

(iii) has written off the bad debt as worthless or uncollectible in its books and records.

(B) A certified service provider shall be eligible to claim a bad debt allowance on behalf of a retailer that meets the conditions in paragraph (a)(2)(A) if the provider meets the requirements in subsection (g).

(3) A claim for a bad debt allowance shall be considered to be filed with the department according to one of the following:

(A) On the due date of the return for the reporting period in which the bad debt is written off as uncollectible in the retailer's books and records,

when a deduction for the bad debt is taken on that return; or

(B) on the date that the retailer files a refund claim with the department, if part or all of a bad debt allowance is being claimed as a refund because the bad debt allowance was not taken as a deduction on the appropriate return or the deduction that was taken exceeded the amount of taxable gross receipts being reported on that return. The filing date for a refund claim provided by K.S.A. 79-3609, and amendments thereto, shall be the later of either the postmark date on the refund request or the postmark date on the required supporting documentation.

(4) Each claim by a retailer for a deduction, credit, or refund based on a bad debt allowance shall be made in accordance with this regulation. K.A.R. 92-19-3c shall control the treatment of goods that are repossessed by a retailer after the retailer has taken a bad debt allowance on the underlying credit sale of goods defaulted on by the retailers' customer.

(5) After a retailer sells, factors, assigns, or otherwise transfers an account receivable, installment contract, or other similar debt instrument for a discount of any kind that authorizes a third party to collect customer payments, the retailer shall not be eligible to claim a bad debt allowance, credit, or refund for bad debts that arise under an instrument that was sold or transferred at a discount. A third party that purchases or otherwise obtains a debt instrument from the retailer, and any person that subsequently purchases or otherwise obtains the debt instrument, shall not be eligible to claim a bad debt allowance, credit, or refund for an underlying credit sale of goods or services defaulted on by the retailer's customer.

(b) Determining the amount of a bad debt allowance.

(1) The bad debt allowance that may be claimed for sales tax purposes shall be the difference between the federal worthless debt deduction calculated for the sale or account pursuant to 26 U.S.C. Section 166(b) and the applicable adjustments and exclusions to the federal worthless debt deduction specified in K.S.A. 79-3674 and amendments thereto.

(2) No anticipatory or statistical sampling method of estimating the amount of a sales-tax bad debt allowance shall be allowed except as specified in K.S.A. 79-3674(h) and amendments thereto.

(3) If a retailer maintains a reserve account for bad debts, only charges against the bad debt reserve that have been written off the retailer's books and records may be claimed as a bad debt allowance.

(4) The amount of sales tax that is deducted, credited, or refunded under a bad debt allowance shall not exceed the difference between the tax that the retailer remitted to the department on a retail transaction and the tax that the retailer collected on the retail transaction.

(5) The amount of a bad debt allowance shall not include any finance charges, collection expenses, or repossession expenses that the retailer assigned to the consumer's account.

(6) Whenever the sales tax rate that was in effect at the time and place of the original sale is changed pursuant to a statutory rate change or the enactment or repeal of a local tax, the amount of the bad debt allowance shall be adjusted to account for the rate change before the bad debt allowance is claimed.

(7) In the absence of adequate records showing the contrary, it shall be presumed that the interest rate for financing charges that the retailer billed to a customer's delinquent account is the maximum rate of interest that the retailer charged on the same type of delinquent account during the same period that gave rise to the bad debt.

(8) No interest shall be paid by the department on any sales-tax bad debt deduction taken on a retailer's tax return. Interest on a refund claim filed to recover part or all of a bad debt allowance shall be computed as provided in subsection (e).

(c) How to claim a bad debt allowance.

(1)(A) A retailer that is required to file federal income tax returns shall claim a bad debt allowance as a deduction from the taxable gross receipts being reported on the return the retailer files for the reporting period in which the bad debt is charged off its books and records as uncollectible.

(B) A retailer that is not required to file federal income tax returns, including a church or other nonprofit entity, shall claim a bad debt allowance as a deduction from taxable gross receipts during the reporting period in which the bad debt is charged off its books and records, if the allowance would otherwise qualify for a worthless debt deduction under 26 U.S.C. Section 166 if the retailer were required to file federal income tax returns.

(2) If a retailer fails to timely claim a bad debt deduction on the return identified in paragraph (c)(1) or if a bad debt allowance exceeds the tax-

able gross receipts being reported on that return, the retailer shall file a refund request pursuant to K.S.A. 79-3609, and amendments thereto, to recover the bad debt allowance or the balance of the allowance. The retailer shall not claim a bad debt allowance as a deduction so that a negative balance is reported on a return, as a deduction on an amended return filed for an earlier reporting period, or as a deduction on a return filed for a later period.

(3) A refund request that is filed to recover a bad debt allowance shall not include any other type of refund claim. The supporting documentation shall clearly state that the refund request is based on a claim for a bad debt allowance and shall identify the sales tax reporting period in which the worthless debt deduction could have first been claimed for federal income tax purposes.

(4) A refund claim based on a bad debt allowance shall be denied if the due date of the return for the reporting period in which the retailer first became eligible to write off the worthless debt for federal income tax purposes is outside the limitation period specified in K.S.A. 79-3609, and amendments thereto, for filing refund claims.

(d) Substantiating documentation.

(1) The burden of establishing the right to and the validity of a sales-tax bad debt allowance shall be on the retailer. In order to verify each sales-tax bad debt allowance being claimed, the retailer shall retain records that show the following:

(A) The date when the retailer first became eligible to write off the worthless debt in the books and records that it maintains for federal income tax purposes;

(B) the amount of the worthless debt that was written off for federal income tax purposes and the amount of the worthless debt that is being claimed for Kansas sales tax purposes;

(C) any computations or adjustments made by the retailer to its federal worthless debt deduction to arrive at the bad debt allowance being claimed for Kansas sales tax purposes;

(D) any portion of the debt or worthless account that represents customer charges that were not taxed; and

(E) the amount of interest, finance charges, service charges, collection, and repossession costs that the retailer assigned to the debt or worthless account.

(2) The information specified in paragraphs (d)(1)(A) through (d)(1)(E) may be requested by the department at any time to substantiate a retailer's bad debt allowance claim.

(3) Any retailer that qualifies to claim a sales-tax bad debt allowance and whose volume and character of uncollectible or worthless accounts warrant an alternative method of substantiating the allowance may apply in writing to the director of taxation and ask to be allowed to maintain records other than those specified in this subsection. The retailer shall explain the reasons for the request, and the director may identify reasonable requirements that the retailer must meet as a condition to allowing the retailer to maintain records other than those specified in this subsection.

(e) A bad debt allowance submitted as a refund request. If a retailer claims a bad debt allowance by filing a refund request in accordance with paragraphs (c)(2) through (c)(4), the request shall be treated as the retailer's application for a refund. If a refund request based on a bad debt allowance is approved, either a credit memorandum or a refund payment may be issued by the department to the retailer for the approved amount. The amount credited or refunded shall not include interest, unless a credit memorandum or refund payment is not issued within the time provided for refunds by K.S.A. 79-3609, and amendments thereto. If a credit memo or refund payment is issued after the time provided for refunds, interest shall be computed from the later of either the filing date of the refund request or the filing date of the supporting documentation required by K.S.A. 79-3693, and amendments thereto.

(f) Recovery of allowances previously taken. If a retailer collects payment for goods or services or repossesses goods that were the basis of a bad debt allowance, the retailer shall apply the payment first proportionally to the selling price of the goods or services and the corresponding sales tax that remains unpaid and then to any other charges that are owed on the customer's account, including interest, service charges, and collection costs billed to the customer. The retailer shall report the payment amount that is apportioned to the selling price of the taxable goods or services as part of its taxable gross receipts for the period in which the payment is received.

(g) Certified service providers.

(1) If a retailer's filing responsibilities have been assumed by a certified service provider, the certified service provider may claim, on the retailer's behalf, any bad debt allowance that the retailer could claim under this regulation. The

certified service provider shall provide a credit or issue a refund to the retailer for the full amount of any bad debt allowance that the provider recovers. No person other than the retailer who reported the taxable transaction and reported tax to the department, or a retailer's certified service provider, shall be entitled to claim a bad debt allowance that is based on a worthless debt or uncollectible account.

(2) If the books and records of the retailer or certified service provider claiming a sales-tax bad debt allowance support an allocation of the sales-tax bad debts among the member states on a particular customer's uncollectible account, the allocation shall be allowed pursuant to K.S.A. 79-3674, and amendments thereto. (Authorized by K.S.A. 2010 Supp. 75-5155 and 79-3618; implementing K.S.A. 2010 Supp. 79-3609, 79-3674, and 79-3693; effective April 1, 2011.)

**92-19-3c. Repossessed goods.** (a) Each retailer that repossesses goods that were the basis of a bad debt allowance under K.A.R. 92-19-3b, and each financial institution that repossesses goods, shall account for the repossessed goods in accordance with this regulation.

(b) The recovery of goods being repossessed and the transfer of title to the goods from the debtor to the retailer or financial institution are not retail sales and shall not be taxed.

(c) When repossessed goods are resold by a retailer at retail, the receipts from the sale shall be reported as part of the retailer's gross receipts. When repossessed goods are resold by a retailer as a sale for resale, a retailer that previously claimed a bad debt allowance on the goods shall account for the receipts as an allowance recovery in accordance with K.A.R. 92-19-3b(f).

(d) When goods are repossessed by a financial institution, the resale of the goods by the financial institution and the transfer of title to the buyer shall be treated as nontaxable isolated or occasional sales.

(e) When a debtor satisfies the underlying debt after goods are repossessed, the return of goods and the transfer of title to the goods to the debtor are not retail sales and shall not be taxed. A retailer that previously claimed a bad debt allowance on the goods shall report the taxable gross receipts that are included in the payment from the debtor in accordance with K.A.R. 92-19-3b(f).

(f) When a retailer or financial institution uses repossessed goods other than for retention, demonstration, or display while holding the goods for resale in the regular course of business, the retailer or financial institution shall accrue sales tax on its use of the repossessed goods as the rental of the goods. (Authorized by K.S.A. 2009 Supp. 75-5155 and 79-3618; implementing K.S.A. 2009 Supp. 79-3602, K.S.A. 2009 Supp. 79-3603 as amended by L. 2010, Ch. 160, sec. 1, K.S.A. 2009 Supp. 79-3607 as amended by L. 2010, ch. 123, sec. 11, K.S.A. 2009 Supp. 79-3609 as amended by L. 2010, ch. 123, sec. 12, K.S.A. 2009 Supp. 79-3615, 79-3618 and 79-3674; effective April 1, 2011.)

**92-19-10.** (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 79-3602, 79-3603 as amended by L. 1987, Ch. 182, Sec. 108, K.S.A. 1986 Supp. 79-3607; effective, E-70-33, July 1, 1970; effective, E-71-8, Jan. 1, 1971; effective Jan. 1, 1972; amended May 1, 1988; revoked April 1, 2011.)

**92-19-16a. Gifts, premiums, prizes, coupons, and rebates.** (a) Each sale of tangible personal property shall be taxable if made to a person who will use the property as a prize or premium or who will give the property away as a gift. Donors of articles of tangible personal property shall be regarded as the users or consumers of the property. If a retailer donates property that was originally acquired for resale, the retailer shall accrue tax on the cost it paid for the property when the retailer files its next sales tax return, unless the retailer donates the property to an entity that is exempt from taxation on its purchases under K.S.A. 79-3606, and amendments thereto, or has provided the retailer with a resale exemption certificate.

(b) If a retailer making a retail sale that is subject to tax gives a premium or prize along with the item being sold, the transaction shall be regarded as the sale of both items to the purchaser if delivery of the premium or prize does not depend on chance.

(c) If the award of a premium or prize by a retailer depends on chance, the retailer's acquisition of the premium or prize shall be subject to sales tax. The retailer shall pay the tax at the time of acquisition of the premium or prize or, if the item is removed from resale inventory, shall accrue tax on the item's cost on its sales tax return.

(d) If a retailer accepts a coupon for a taxable product and will later be reimbursed by a manufacturer or other party for the reduction in selling

price, the total sales value, including the coupon amount, shall be subject to sales tax. If a retailer accepts a coupon and will not be reimbursed for the reduction in selling price, the reduction shall be considered a discount, and the taxable amount shall be the net amount paid by the customer after deducting the value of the coupon. If a retailer enhances the value of a manufacturer's coupon, the amount of the unreimbursed enhancement shall be treated as a discount that is not subject to sales tax.

(e) For purposes of this regulation, "rebate" shall mean a return of part of the amount paid for a product after the time of sale, which is commonly obtained by sending proof of purchase to the manufacturer. Like manufacturers' coupons, a manufacturer's rebate is a form of payment. Therefore, even if a manufacturer's rebate is assigned to a retailer at the time of sale, the rebate shall not reduce the amount that is subject to sales tax.

(f) Sales of gift certificates, meal cards, or other forms of credit that can be redeemed by the holder for the equivalent cash value shall not be subject to tax when sold. If the certificate or other form of credit is used as a cash equivalent to purchase taxable goods or services, the retailer who redeems the certificate or other form of credit shall charge sales tax on the selling price of the goods or services, which shall not be reduced by the amount of the certificate or other credit being redeemed.

(g) Sales of coupon books and similar materials that entitle the holder to a discount or other price advantage on the purchase of goods or services shall be presumed to have value in addition to the coupons or discounts contained in them and shall be taxable as sales of tangible personal property, except when the sale of this type of book is by a nonprofit organization that treats the receipts from the sales as a donation. If a coupon is redeemed from a coupon book or other material sold at retail, the retailer who redeems the coupon shall charge sales tax in accordance with the requirements for sales made with coupons that are specified in subsection (d).

(h) If a nonprofit organization treats receipts from the providing of coupon books and similar materials as donations, the nonprofit organization shall be liable for paying sales tax when it purchases the coupon books or other materials that are provided to a donor when a donation is made, unless the organization is otherwise exempted from paying tax on its purchases. If a coupon is redeemed, the retailer who redeems the coupon shall charge sales tax in accordance with the requirements for sales made with coupons that are specified in subsection (d). (Authorized by K.S.A. 2009 Supp. 75-5155 and 79-3618; implementing K.S.A. 2009 Supp. 79-3602 and K.S.A. 2009 Supp. 79-3603 as amended by L. 2010, ch. 160, sec. 1; effective July 27, 2001; amended April 23, 2007; amended April 1, 2011.)

**92-19-16b.** (Authorized by K.S.A. 2005 Supp. 75-5155 and K.S.A. 2005 Supp. 79-3618; implementing K.S.A. 2005 Supp. 79-3602, as amended by L. 2006, Ch. 202, Sec. 1, K.S.A. 2005 Supp. 79-3607, and K.S.A. 2005 Supp. 79-3609; effective April 13, 2007; revoked April 1, 2011.)

**92-19-40.** (Authorized by K.S.A. 79-3618, implementing K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective, E-80-26, Dec. 12, 1979; effective May 1, 1980; amended May 1, 1988; revoked April 1, 2011.)

**92-19-42.** (Authorized by K.S.A. 79-3618; implementing K.S.A. 1980 Supp. 79-3602, 79-3603, 79-3606; effective May 1, 1981; revoked April 1, 2011.)

**92-19-49b. Goods returned when a sale is rescinded.** (a)(1) When a retailer and consumer rescind a taxable sale of goods that the retailer reported on an earlier return, the retailer shall be entitled to deduct the original selling price of the returned goods from its current report of gross receipts, except as provided in paragraph (a)(2). A retail sale of goods shall be considered to be rescinded once the retailer accepts possession of the returned goods and the consumer accepts the repayment of all or part of the selling price and sales tax that was originally paid to buy the goods. This repayment to the consumer may be made by credit or refund.

(2) If a retailer reduces the amount credited or refunded to the consumer for the returned goods as compensation for depreciation, consumer usage, or any other reduction in the value of the goods, the amount of the reduction shall be considered a charge by the retailer for the consumer's use of the goods and shall be subject to sales tax as if it were a rental charge being billed to the consumer. Both the deduction from gross receipts taken by the retailer on its current return and the selling price credited or refunded to the consumer

shall be reduced by the amount taken as compensation for the reduced value of the goods. The amount of tax that is required to be credited or refunded to the consumer shall be reduced in a proportional amount.

(3) A retailer shall not be required to report its taxable receipts from a retail sale that is rescinded if the original sale, the acceptance of the returned goods by the retailer, and the full repayment to the consumer are all completed during one reporting period. If only partial repayment of the selling price and sales tax is made to the consumer, the retailer shall report the amount used as the reduced value of the goods as part of its gross receipts for that reporting period.

(4) If a retailer does not reduce the amount refunded to a consumer under paragraph (a)(2) or (a)(3) for a reduction in the value of the goods and charges a restocking or reshelving fee to the consumer after goods are returned, this fee shall not be taxable. A restocking or reshelving fee shall be defined as a fee charged by a retailer to cover the time and expense incurred returning goods to resale inventory if the consumer has not used the goods in a way that reduces their value.

(b) Each retailer shall maintain records that clearly establish and support its deduction claim when a sale is rescinded.

(c) Any retailer may take a deduction or credit for a refund claim on its sales tax return only if the deduction or credit has been authorized in writing by the department or is allowed under this regulation, K.A.R. 92-19-3b, K.A.R. 92-19-3c, or another department regulation. All other refund claims shall be made by submitting a written refund application to the department, in accordance with K.A.R. 92-19-49c.

(d) Repossessed goods shall be treated as specified in K.A.R. 92-19-3c.

(e) Despite any other provision of this regulation, any motor vehicle manufacturer, manufacturer's agent, or authorized dealer may apply to the department for a refund or take a deduction during the reporting period if a consumer returns a motor vehicle in accordance with K.S.A. 50-645, and amendments thereto, and is refunded the total amount that the consumer paid for the vehicle, including sales tax, less a reasonable allowance for the consumer's use of the vehicle, which shall include the sales tax associated with that use. The manufacturer, agent, or dealer shall maintain records that clearly reflect the acceptance of the returned vehicle under K.S.A. 50-645 and amendments thereto, the amount of the refund, and the amount of taxes refunded. (Authorized by K.S.A. 2009 Supp. 75-5155 and K.S.A. 2009 Supp. 79-3618; implementing K.S.A. 2009 Supp. 79-3607 as amended by L. 2010, ch. 123, sec. 11, and K.S.A. 2009 Supp. 79-3609 as amended by L. 2010, ch. 123, sec. 12; effective May 27, 2005; amended April 1, 2011.)

**92-19-55b. Operating leases.** (a) Definitions.

(1) "Financing lease" shall have the meaning specified in K.A.R. 92-19-3a.

(2) "Goods" shall have the meaning as specified in K.A.R. 92-19-3a. For purposes of this regulation, "equipment" may be substituted for the word "goods" whenever equipment rentals or leases are being considered.

(3) "Lease or rental" shall have the meaning specified in K.S.A. 79-3602, and amendments thereto. When used in this regulation, these two terms and their derivatives are synonymous.

(4) "Lessee" shall mean a person who acquires the right to possess or control goods under a lease or rental agreement.

(5) "Lessor" shall mean a person who is engaged in the business of leasing or renting goods to others.

(6) "Operating lease" shall mean a lease agreement that gives the lessee possession or control of goods for a fixed or indeterminate period, while the lessor retains all or substantially all of the risk and rewards of ownership of the goods. This term shall be synonymous with "true lease."

(7) "Primary property location" shall have the meaning specified in K.S.A. 79-3670, and amendments thereto.

(8) "Sales tax" or "tax" shall have the meaning specified in K.A.R. 92-19-3a.

(9) "Transportation equipment" shall have the meaning specified in K.S.A. 79-3670, and amendments thereto. When the term "motor vehicle" or "vehicle" is used, the term shall mean any passenger vehicle, truck, trailer, semitrailer, or truck tractor, as defined in K.S.A. 8-126 and amendments thereto, that is not classified as "transportation equipment" under K.S.A. 79-3670, and amendments thereto.

(b) Operating leases and rentals.

(1) Each agreement that is structured as a lease shall be treated as an operating lease unless the agreement meets the definition of a "financing lease" in K.A.R. 92-19-3a. Any operating-lease

agreement may contain a future option to purchase the goods that are being leased or to extend the agreement, or both. Each oral lease shall be treated as an operating lease.

(2) Each person who rents or leases goods at retail for use in Kansas under an operating lease shall be deemed a retailer doing business in this state and shall register with the department and report tax on its taxable receipts as provided in this regulation. If tax is not collected on a taxable charge for a rental or lease, the tax together with interest and penalty may be collected by the department from either the lessor or the lessee.

(3) Each lessor shall collect tax on every taxable rental or lease charge that it bills to its lessees. A lessor shall not forgo this collection duty and elect instead to pay sales tax when the lessor buys goods to rent or lease.

(4) Each recurring periodic payment made under a rental or lease agreement shall be treated as a payment for a separate sales transaction in time units defined by the agreement of the parties. Each recurring periodic payment period under an agreement shall be treated as a complete sale for purposes of determining the following:

(A) Whether tax is required to be collected or paid on a periodic payment because of the enactment of a new tax imposition or exemption;

(B) whether a change in the tax rate applies to a periodic payment;

(C) what the appropriate local tax jurisdiction is when the primary property location is changed from one local taxing jurisdiction in Kansas to another; and

(D) what the appropriate state tax jurisdiction is when the primary property location is changed to Kansas from another state or from Kansas to another state.

(5) If a lease or rental agreement does not require recurring periodic payments to be made, the lump-sum payment shall be treated as a complete sale for purposes of applying exemptions, tax rates, sourcing requirements, and other requirements of the sales tax act to the lease payment. No refund claim shall be allowed or assessment issued that is based on an enactment that takes effect after payment but during the term of this type of lease or rental, unless the enactment specifies otherwise.

(6) Each "rent-to-own" or "rental-purchase" agreement that is subject to the Kansas consumer lease-purchase agreement act, K.S.A. 50-680 et seq. and amendments thereto, shall be treated as an operating lease. A reinstatement fee charged under this type of an agreement shall be taxable.

(7) A rental or lease shall not qualify for exemption as an isolated or occasional sale of goods.

(c) Sourcing receipts from operating leases. Each receipt from the lease or rental of goods shall be sourced according to the following:

(1) Classification of the receipt as a down payment, recurring periodic payment, or a single payment for the entire lease or rental period; and

(2) the type of goods being leased or rented.

Each different type of receipt shall be sourced according to K.S.A. 79-3670 and amendments thereto.

(d) Computation of the tax.

(1) Sales tax shall be computed on the total amount of each lease charge billed to the lessee without any deduction for mandatory insurance, damage waiver fees, property taxes, maintenance, service, repair, pickup, delivery, and other handling charges, administrative charges, late payment charges or penalties, reinstatement fees, late return charges, fuel charges, surcharges, and other charges or expenses whether paid by the lessor or lessee. Each of these fees or expenses shall be considered to be part of a taxable lease charge, even when the fee or expense is separately stated on an invoice given to a lessee or when separate contracts are entered into for the rental or lease and for the payment of one or more of these fees or expenses.

(2) All payments of interest, financing, and carrying charges, and any other payment that a lessee makes to reimburse a lessor for the costs or expenses the lessee incurs under the lease, shall be subject to sales tax whether billed as a separate line-item charge or on a separate invoice.

(3) When a rental or lease agreement has been subject to sales tax, sales tax shall apply to any charge made for either of the following:

(A) The cancellation of the agreement; or

(B) the early return of the rented or leased goods.

(4) Each late return charge that is billed for a customer's failure to return goods to a rental company or other lessor within the agreed-upon rental or lease term shall be treated as a charge for the customer's continued possession or control of the goods. This charge shall be subject to sales tax regardless of whether the charge meets any of the following conditions:

(A) Is designated a late return charge, a penalty, or a credit charge;

(B) exceeds the standard rental charge; or

(C) is a flat charge that appears to be a fine.

(e) A lessor's purchase of goods to rent or lease.

(1) Any registered lessor that rents or leases goods may claim that the goods are purchased for resale when the lessor buys goods for the sole purpose of renting or leasing to others.

(2) A lessor that rents or leases equipment or other goods to others shall not claim the equipment or goods are purchased for resale when the lessor buys the equipment or goods if the lessor engages in a service business that does either of the following:

(A) Uses the equipment or other goods to perform services, in addition to renting or leasing the equipment or goods; or

(B) furnishes the equipment or goods to others with an operator.

(3) If a lessor paid tax when it purchased goods, the payment of tax shall not exempt any subsequent charges that the lessor bills for the rental or lease of the goods and shall not entitle the lessor to claim a credit for the taxes paid. Each lessor that is allowed to claim that goods are purchased for resale as provided in paragraph (e)(1) but paid tax on the purchase of the goods in error shall apply to the department for a refund of the tax.

(4) If a lessor that purchased goods solely for rental or lease later withdraws the goods from its rental or lease inventory for its own occasional use and then returns them to its inventory, the lessor shall accrue sales tax on the regular rental amount that the retailer would charge to a customer for use of the goods under a rental or lease agreement.

(f) Purchases of repair services and repair parts.

(1) A lessor's purchases of repair services and repair parts for incorporation into the goods or equipment that the lessor uses exclusively to rent or lease shall not be considered to be a retail sale. A lessor's purchases of oil, grease, filters, lubricants, and similar items that are purchased for use in equipment that the lessor uses exclusively to rent or lease shall not be considered to be a retail sale. Sales tax shall be collected on any charges for these items that are separately billed to a lessee.

(2) The sale of repair services, repair parts, oil, grease, filters, lubricants, and similar items to a rental or lease business for use in equipment in its rental or lease inventory shall be a retail sale if the business uses equipment from its inventory to perform services or if the business furnishes equipment from its inventory to others with an operator.

(g) Furnishing equipment with an operator.

(1) Each charge for furnishing equipment with an operator who will use the equipment to perform services shall be taxed as a service rather than a rental or lease and shall be subject to the impositions on services set forth in K.S.A. 79-3603, and amendments thereto.

(2) Each lessor shall charge and collect sales tax on each lease or rental charge that the lessor bills to a lessee who intends to use the equipment being rented or leased to perform services for others.

(3) When a lessee bills a customer for taxable services that it performed using leased equipment, the lessee shall not deduct or otherwise exclude the lease charges that it paid to the lessor when the lessee bills its customer for the taxable services.

(4) Equipment shall be considered to be leased or rented rather than provided with an operator if the only services the lessor provides are setup, inspection, or maintenance services that are performed on the leased equipment itself.

(h) Disposal of rental or lease inventory. When goods that were purchased for rental or lease are sold at retail, the lessor shall collect sales tax on the full selling price without regard to any tax that has been collected and remitted on receipts from the rental or lease of the goods. The sale of any goods that a retailer makes from its rental or lease inventory shall not qualify as an isolated or occasional sale.

(i) Real property considerations.

(1) If a contract for the rental or lease of real property requires goods, including furniture and restaurant equipment, to be provided to a tenant with real property, no sales tax shall be due on any amount that is separately charged to the tenant for the goods. When a business purchases or leases goods to use to furnish or equip an apartment, office, restaurant, or other real property that the business intends to lease or rent, the sale or lease of the goods to the business shall be considered a retail sale or lease, and the business shall pay sales tax on the purchase price or lease charges as the final user of the goods.

(2) Each rental or lease of goods, including computers, typewriters, and word processors, to a person who obtains the exclusive right to use the goods for a fixed term shall be subject to sales tax even though the goods are attached or affixed to

real property, unless the goods are being furnished with the rental or lease of a real property as specified in paragraph (i)(1).

(3) For purposes of determining the taxability of a rental or lease transaction that involves tangible personal property attached to realty, taxability shall be presumed if the property being leased or rented is considered "goods" pursuant to K.S.A. 84-2-107(2), and amendments thereto, unless the goods are being furnished with the rental or lease of real property as specified in paragraph (i)(1).

(j) Exemptions, discounts, and deductions. Any discount, deduction, or exemption may be claimed when a rental or lease of goods or services is entered into if the same discount, deduction, or exemption would be allowed when the same goods or services are sold at retail. When a lessee that makes recurring periodic payments claims entitlement to a new discount, deduction, or exemption that first takes effect during the term of a lease, any discount, deduction, or exemption may be applied to the periodic payments as provided in paragraph (b)(4).

(k) Conditional sales. Each financing lease and other financing transactions shall be taxed as provided in K.A.R. 92-19-3a. (Authorized by K.S.A. 2010 Supp. 75-5155 and 79-3618; implementing K.S.A. 2010 Supp. 79-3602, 79-3603, 79-3604, 79-3618, 79-3669, 79-3670, and 79-3702; effective April 1, 2011.)

**92-19-59. Private letter rulings.** (a) A "private letter ruling" shall mean a statement of the secretary of revenue or the secretary's authorized agent issued to an individual retailer and shall be of limited application. A private letter ruling interprets the statute or regulation to which the ruling relates. A private letter ruling is issued in response to a retailer's written request for clarification of the tax statute or regulation relating to a specified set of circumstances affecting the retailer's collections duties as they relate to a claim of exemption from sales tax.

(b) A retailer, consumer, or other person shall not rely upon a verbal opinion from the department of revenue. Only a written private letter ruling issued to a retailer that concerns the retailer's collection duties shall bind the department. Each retailer seeking a private letter ruling from the department shall submit a written request for the ruling to the department. The written request shall identify the retailer and state with specificity the facts and circumstances relating to the issue for which the ruling is sought. If insufficient facts are presented with a retailer's request for a ruling, a private letter ruling shall not be issued by the department. If material facts are misrepresented in a retailer's request for a ruling, a private letter ruling that is issued by the department shall be of no effect and shall not be binding on the department. Department correspondence that does not state that the correspondence is a "private letter ruling" shall not be considered or otherwise treated as a private letter ruling.

(c) Nothing contained in a private letter ruling shall be construed as altering any provision of the Kansas retailers' sales tax act or any department regulation or as otherwise meeting any of the following conditions:

(1) Having the force and effect of law;

(2) being a notice, revenue ruling, or other tax-policy statement that has been published by the department; or

(3) being a precedent that can be cited or relied upon by any person other than the retailer to whom the ruling is issued, except to identify a ruling that is being relied upon as support for a request for the reduction or waiver of penalty or interest.

(d) If a private letter ruling erroneously instructs an individual retailer that it is not required to collect sales tax under a specific set of facts and circumstances, that retailer shall be absolved of its statutory duty to collect sales tax under a comparable set of facts and circumstances, unless the ruling has been rescinded or was based on the retailer's misrepresentation of material facts. A consumer that did not pay the tax to the retailer shall continue to be liable for the uncollected tax. However, if the consumer belatedly pays or is later assessed the tax, penalty shall be waived, and any interest on the consumer's late payment may be waived or reduced, upon the consumer's request unless the consumer misrepresented material facts to either the retailer or the department.

(e) Each private letter ruling shall cease to be valid and shall be deemed to have been rescinded when any one of the following occurs:

(1) A statute or regulation that the department relied upon as a basis for the ruling is changed in any substantive part by the Kansas legislature or department of revenue.

(2) A substantive change in the interpretation of a statute or regulation that the department re-

lied upon as a basis for the ruling is made by a court decision.

(3) An interpretation that the department relied upon as a basis for the ruling is changed in any substantive part by a more recent department notice, guideline, revenue ruling, or other published policy directive that rescinds all prior published policy statements about issues that are discussed in the policy directive. Any policy statement that has been rescinded by the department may be cited as support for a taxpayer's request for the reduction or waiver of penalty or interest. (Authorized by K.S.A. 2009 Supp. 75-5155 and 79-3618; implementing K.S.A. 2009 Supp. 79-3604 and K.S.A. 79-3646; effective May 1, 1988; amended April 1, 2011.)

**92-19-73. Membership fees and dues.** (a) Each public or private club, organization, or business charging dues to members for the use of the facilities for recreation or entertainment shall collect sales tax on the gross receipts received from the dues, except for the following:

(1) Clubs and organizations that are exempt from property tax pursuant to the "eighth" paragraph of K.S.A. 79-201 and amendments thereto, including the American legion, the veterans of foreign wars, and certain other military veterans' organizations;

(2) clubs and organizations that are exempt from property tax pursuant to the "ninth" paragraph of K.S.A. 79-201 and amendments thereto, including the Y.M.C.A., Y.W.C.A., Boy Scouts, Girl Scouts, and certain other humanitarian community service organizations; and

(3) nonprofit organizations that support nonprofit zoos, if the organization is exempt pursuant to section 501(c)(3) of the federal internal revenue code of 1986 and the dues are used to support the operation of the zoo.

(b)(1) "Dues" means any charge that is a debt owed to the club, organization, or business by an existing member or prospective member in order for the member or prospective member to enjoy the use of the facilities of the club, organization, or business for recreation or entertainment, and, except as provided in paragraph (b)(2), shall include periodic or one-time special assessments, initiation fees, and entry fees charged to members by a nonprofit club or organization if a member's continued nonpayment of the assessment or fee will result in the loss of membership or membership rights.

(2) Dues shall not include the redeemable amount of a contribution required for membership in an equity country club or other equity entity organized for recreation or entertainment in which none of the net earnings inure to the benefit of any shareholder or other person, including organizations described by I.R.C. 501(c)(7), if the club or organization is obligated to repay the redeemable amount of the contribution, and the redeemable amount either is reflected as a liability owed to the member on the club's or organization's books and records or is required to be repaid to the member under a written contract. The repayment obligation may be conditioned upon the club's or organization's receipt of a membership contribution from a new member. The redeemable amount of a contribution required for membership shall include payments made by a member or prospective member for membership stock, certificates of membership, refundable deposits, refundable capital improvement surcharges, refundable special or one-time assessments, or similar membership payments in an amount equal to the amount that the club or organization is obligated to repay to the member. These payments to a club shall not be considered redeemable contributions if the club's repayment obligation is contingent solely on a club ceasing its operations as a nonprofit social organization sometime in the future.

(3) If all or part of a redeemable contribution paid to acquire or retain membership ceases to be carried as a liability on the books and records of a club that continues operation, or its successor, and the contribution has not been redeemed by a former member or former member's estate, the amount of the contribution that is no longer carried as a liability and can no longer be redeemed shall be subject to sales tax.

(c) "Recreation or entertainment" means any activity that provides a diversion, amusement, sport, or refreshment to the member. This term shall include the health, physical fitness, exercise, and athletic activities identified in K.A.R. 92-19-22b.

(d) An exemption for gas, fuel, or electricity shall not be allowed for a public or private club, organization, or other business that charges dues to members if the gas, fuel, or electricity is utilized for heating, cooling, or lighting a building, facility, or other area that is used for recreation or entertainment. An exemption shall not be allowed for water, cleaning supplies, toilet supplies, sanitary

supplies, and other consumables and supplies that are used by a public or private club, organization, or other business that enable dues-paying members or others to use the building or facility for recreation or entertainment. These exemptions shall not be allowed regardless of whether the business charges dues-paying members or others for admission or for participation in sports, games, or recreation. (Authorized by K.S.A. 2009 Supp. 75-5155 and K.S.A. 2009 Supp. 79-3618; implementing K.S.A. 2009 Supp. 75-5155, K.S.A. 2009 Supp. 79-3603 as amended by L. 2010, ch. 160, sec. 1 and K.S.A. 2009 Supp. 79-3618; effective May 1, 1988; amended July 27, 2001; amended April 1, 2011.)

## Article 24.—LIQUOR DRINK TAX

**92-24-23. Bond.** (a) Each applicant or licensee submitting an application for a new license or for renewal of an existing license shall post or have posted with the department of revenue a bond in an amount equal to three months' average liquor drink tax liability or $1000, whichever is greater, at the time of the application. Any new applicant who has no previous tax experience may estimate that person's expected liquor drink tax liability projected over a 12-month period and submit a bond in an amount equal to 25% of the projected tax liability or $1000, whichever is greater. A certificate of liquor drink tax registration shall not be issued until the bond requirement is satisfied.

(b) Bond requirements may be satisfied through surety bonds purchased from a corporate surety, escrow bond agreements, or the posting of cash bonds.

(c) An additional bond may be required by the secretary of revenue at any time if the existing bond is not sufficient to satisfy the three months' average liability of the licensee.

(d) The existing liquor drink tax bond requirement for any licensee may be waived by the secretary of revenue if the relief is requested in writing and the licensee has remained compliant with K.S.A. 79-41a01 et seq., and amendments thereto, for at least 24 consecutive months before the date of the request for bond relief. If, after the bond is released, the licensee becomes delinquent in filing and remitting the liquor drink tax, a bond shall be required for any subsequent renewal of the license. (Authorized by and implementing K.S.A. 2009 Supp. 79-41a03; effective, T-83-30, Oct. 25, 1982; effective May 1, 1983; amended, T-88-58, Dec. 16, 1987; amended May 1, 1988; amended Jan 4, 2002; amended Nov. 29, 2010.)

## Article 26.—AGRICULTURAL ETHYL ALCOHOL PRODUCER INCENTIVE

**92-26-1. Definitions.** As used in this article, these terms shall have the following meanings:

(a) "Agricultural commodities" shall mean all materials used in the production of agricultural ethyl alcohol, including grains and other starch products, sugar-based crops, fruits and fruit products, forage crops, and crop residue.

(b) "Director" shall mean the director of taxation of the department of revenue.

(c) "Fiscal year" means a period of time consistent with the calendar periods of July 1 through the following June 30.

(d) "Principal place of facility" means a plant or still located in the state of Kansas that produces or has the capacity to produce agricultural ethyl alcohol.

(e) "Production" means the process of manufacturing agricultural ethyl alcohol. For the purposes of this article, the terms "produce" and "produced" shall be consistent with the definition of "production."

(f) "Quarter" means a period of time consistent with the calendar periods of January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. For the purposes of this article, the term "quarterly" shall be consistent with the definition of "quarter."

(g) "Spirits" means an inflammable liquid produced by distillation.

(h) "Wine gallon" means 231 cubic inches measured at 60 degrees Fahrenheit. (Authorized by K.S.A. 2008 Supp. 79-34,163; implementing K.S.A. 2008 Supp. 79-34,161 and 79-34,163; effective, T-88-34, Sept. 17, 1987; amended May 1, 1988; amended Feb. 27, 2009.)

**92-26-4. Filing of quarterly reports; deadline.** (a)(1) Each ethyl alcohol producer producing agriculture ethyl alcohol in the state of Kansas shall file a Kansas qualified agricultural ethyl alcohol producer's report with the director of taxation within 30 days from the last day of each quarter. Each producer not filing a report within 30 days after the last day of any quarter in a fiscal year shall be barred from seeking one quarter of any payment due from the agricultural ethyl al-

cohol producer's fund for that fiscal year. Upon proof satisfactory to the secretary of extenuating circumstances preventing timely submission of the report by the producer, this penalty may be waived by the secretary.

(2) Production incentives shall be paid on a fiscal year basis from the new production account or the current production account in the agricultural ethyl alcohol producer incentive fund, whichever account is applicable. When the production incentive amount for the number of agricultural ethyl alcohol gallons sold by any producer to a qualified alcohol blender exceeds the balance in the applicable account at the time payment is to be made for that fiscal year's production, the incentive per gallon shall be reduced proportionately so that the current balance of the applicable account is not exceeded. Any amount remaining in the account following a fiscal year payment of producer incentives shall be carried forward in that account to the next fiscal year for payment of future production incentives, except when the current production account balance is required by K.S.A. 79-34,161, and amendments thereto, to be transferred to the new production account. The quarterly reports for a fiscal year shall be for the third and fourth quarters of one calendar year and the first and second quarters of the following calendar year.

(b) Each quarterly report shall be submitted on forms furnished by the director and shall contain the following information:

(1) The beginning inventory of denatured alcohol;

(2) the amount of alcohol produced and denaturant added;

(3) the amount of agricultural ethyl alcohol sold to qualified blenders;

(4) the amount of denatured alcohol sold to other than qualified blenders;

(5) the amount of denatured alcohol sold or used for miscellaneous purposes, including denatured alcohol that has been lost, destroyed, or stolen;

(6) the name of the liquid fuel carrier and the liquid fuel carrier's federal employer identification number;

(7) the mode of transportation;

(8) the point of origin, specifying city and state;

(9) the point of destination, specifying city and state;

(10) the name of the company to which the product was sold;

(11) the date the product was shipped;

(12) the identifying number from the bill of lading or manifest;

(13) the number of gross gallons sold; and

(14) the product code.

Each ethyl alcohol producer filing a quarterly report shall furnish all information required by the director before receiving the funds. (Authorized by K.S.A. 2008 Supp. 79-34,163; implementing K.S.A. 2008 Supp. 79-34,161 and 79-34,163; effective, T-88-34, Sept. 17, 1987; amended May 1, 1988; amended Nov. 12, 2004; amended Feb. 27, 2009.)

## Article 28.—RETAIL DEALER INCENTIVE

**92-28-1. Definition.** "Quarter" shall mean any of the following periods in each calendar year:

(a) January 1 through March 31;

(b) April 1 through June 30;

(c) July 1 through September 30; or

(d) October 1 through December 31.

For the purposes of this article, the term "quarterly" shall be consistent with the definition of "quarter" in this regulation. (Authorized by and implementing K.S.A. 2007 Supp. 79-34,174; effective Feb. 13, 2009.)

**92-28-2. Filing of quarterly reports; deadline.** (a)(1) Each Kansas retail dealer seeking a Kansas retail dealer incentive shall file a retail dealer's report with the secretary of revenue within 30 days after the last day of each quarter. Each retail dealer not filing a retail dealer's report within 30 days from the last day of the quarter shall be barred from seeking payment from the Kansas retail dealer's incentive fund for that quarter. Each retail dealer's report shall be filed in the same manner as that for the motor fuel retailers' informational return, with respect to filing for single or multiple locations.

(2) The Kansas retail dealer incentives shall be paid on a quarterly basis. If the retail dealer incentive amounts claimed, based on the number of gallons of renewable fuels or biodiesel fuel sold or dispensed by Kansas retail dealers, exceed the balance in the Kansas retail dealer incentive fund, the incentive per gallon shall be reduced proportionately so that the balance in the Kansas retail dealer incentive fund is not exceeded. If any amount remains in the Kansas retail dealer incentive fund following each quarterly payment of Kansas retail dealer incentives, that amount shall be carried for-

ward in the Kansas retail dealer incentive fund to the next quarter for the payment of future incentives.

(b) Each Kansas retail dealer filing a quarterly retail dealer's report shall be a licensed motor fuel retailer and shall have filed all monthly motor fuel retailers' informational returns and any other relevant information as required by the secretary of revenue before receiving any incentive funds.

(c) Each quarterly retail dealer's report shall be filed electronically with the department of revenue and shall include the following information:

(1) The total number of gallons of gasoline, gasohol, ethanol, diesel, and biodiesel sold;

(2) the total number of gallons of renewable fuel and biodiesel sold; and

(3) any other relevant information that the secretary of revenue requires in order to determine entitlement to and the amount of any incentive payment. (Authorized by and implementing K.S.A. 2007 Supp. 79-34,174; effective Feb. 13, 2009.)

**92-28-3. Record requirements.** (a) Each Kansas retail dealer shall maintain the following records for each quarter:

(1) The quantity and product type of all fuel received;

(2) the quantity and product type of all fuel sold or dispensed;

(3) the method of disbursement; and

(4) invoices and bills of lading.

(b) The records specified in subsection (a) shall contain sufficient information to allow the secretary of revenue to determine the quantity and product type of all fuel received, sold, or dispensed and the method of disbursement. Any retail dealer may use records prepared for other purposes if the records contain the information required by subsection (a).

(c) Each retail dealer shall retain the required records for at least three years. The records shall be available at all times during business hours and shall be subject to examination by the secretary of revenue or the secretary's designee. (Authorized by K.S.A. 2007 Supp. 79-34,174; implementing K.S.A. 2007 Supp. 79-3415 and 79-34,174; effective Feb. 13, 2009.)

**92-28-4. Funds erroneously paid; informal conferences.** (a) If the secretary of revenue determines from available reports and records that a Kansas retail dealer has erroneously received money from the Kansas retail dealer incentive fund, the retail dealer shall refund to the secretary of revenue the amount erroneously paid, within 30 days after receiving notification by the secretary.

(b) Each Kansas retail dealer who has a dispute concerning an incentive payment shall request resolution from the secretary of revenue or the secretary's designee through the informal conference process. (Authorized by K.S.A. 2007 Supp. 79-34,174; implementing K.S.A. 2007 Supp. 79-3420 and 79-34,174; effective Feb. 13, 2009.)

## Article 51.—TITLES AND REGISTRATION

**92-51-25a. Proof of valid license required for foreign vehicle dealers.** (a) For purposes of this regulation, the following terms shall have the meanings specified in this subsection:

(1) "Foreign vehicle dealer" shall mean a person holding a license to sell vehicles at retail or wholesale issued by a jurisdiction outside of the territorial limits of the United States. For purposes of this regulation, all states, protectorates, and trust territories administered by the federal government of the United States shall be considered part of the United States and shall be excluded from the definition of "foreign vehicle dealer."

(2) "Agent of a foreign vehicle dealer" shall mean a person who is authorized by a foreign vehicle dealer to purchase vehicles for import and resale by the foreign vehicle dealer at the foreign vehicle dealer's authorized place of business in the foreign country.

(3) "Vehicle dealer" has the meaning specified in K.S.A. 8-2401, and amendments thereto.

(b) Before permitting a foreign vehicle dealer to purchase a vehicle, each vehicle dealer shall require proof that the foreign vehicle dealer holds a foreign dealer license and shall retain a copy of the dealer license from the foreign dealer's country of origin.

(c) Each vehicle dealer who sells a vehicle to a foreign vehicle dealer shall stamp in red ink on the back of the title in all unused dealer reassignment spaces the words "For Export Out of Country Only" and the vehicle dealer's state-assigned vehicle dealer number. The stamp shall also be placed on the front of the title in a manner that does not obscure any names, dates, or mileage statements. The stamp shall be at least two inches wide, and all words shall be clearly legible.

(d) If the purchaser is a foreign vehicle dealer,

the vehicle dealer shall obtain the following documents before the sale and shall maintain these documents in the vehicle dealer's sales file for each vehicle:

(1) A copy of the foreign vehicle dealer's license issued by the appropriate governmental entity of the foreign government to the foreign vehicle dealer;

(2) a copy of any identification documentation issued by the appropriate foreign governmental entity indicating that the person claiming to be a foreign vehicle dealer is, in fact, a resident of the foreign country. These documents shall include a driver's license, passport, voter registration documents, or any official identification card if the card contains a picture of the person and lists a residential or business address;

(3) a completed "Kansas motor vehicle sales tax exemption certificate for vehicles taken out of the state" for each vehicle sold to the foreign vehicle dealer, indicating that the vehicle has been purchased for export;

(4) a copy of the front and back of the title to the vehicle, showing the "For Export Out of Country Only" stamp and the seller's assigned vehicle dealer number used by the auction or dealership; and

(5) for any agent of a foreign vehicle dealer, a copy of documentation supporting the person's claim to be acting as an agent for the foreign vehicle dealer. (Authorized by K.S.A. 8-2423; implementing K.S.A. 8-2402 and K.S.A. 8-2403; effective Sept. 10, 2010.)

# Agency 94

# Kansas Court of Tax Appeals

**Editor's Note:**
The State Court of Tax Appeals was created pursuant to Substitute for House Bill 2018, which became effective July 1, 2008. The State Court of Tax Appeals is the successor in authority to the State Board of Tax Appeals, which has been abolished.

*Articles*


94-2. *Proceedings Before The Court. (Not in active use)*
94-3. Economic Development Revenue Bonds.
94-5. Proceedings Before the Court.


## Article 2.—PROCEEDINGS BEFORE THE COURT

**94-2-1 through 94-2-3.** (Authorized by and implementing K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13; effective May 1, 1981; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; revoked Oct. 29, 2010.)

**94-2-4.** (Authorized by and implementing K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13; effective May 1, 1981; amended May 1, 1987; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; amended, T-94-8-28-03, Aug. 28, 2003; amended Dec. 5, 2003; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; revoked Oct. 29, 2010.)

**94-2-5.** (Authorized by and implementing K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13; effective May 1, 1981; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; revoked Oct. 29, 2010.)

**94-2-6 and 94-2-7.** (Authorized by and implementing K.S.A. 74-2437; effective May 1, 1981; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; revoked Oct. 29, 2010.)

**94-2-8.** (Authorized by and implementing K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13; effective May 1, 1981; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; revoked Oct. 29, 2010.)

**94-2-9.** (Authorized by K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13; implementing K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13, and 74-2437a, as amended by 2008 HB 2018, sec. 14; effective May 1, 1981; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; revoked Oct. 29, 2010.)

**94-2-10.** (Authorized by and implementing K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13; effective May 1, 1981; amended May 1, 1987; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; revoked Oct. 29, 2010.)

**94-2-11.** (Authorized by and implementing K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13; effective May 1, 1981; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; revoked Oct. 29, 2010.)

**94-2-12.** (Authorized by K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13; implementing K.S.A. 74-2426, as amended by 2008 HB 2018, sec. 1, and K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13; effective May 1, 1981; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; revoked Oct. 29, 2010.)

**94-2-13 through 94-2-16.** (Authorized by and implementing K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13; effective Aug. 15, 1997; amended May 24, 2002; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; revoked Oct. 29, 2010.)

**94-2-17.** (Authorized by K.S.A. 74-2437; implementing K.S.A. 74-2437, K.S.A. 2000 Supp. 79-213, K.S.A. 79-213a, K.S.A. 79-1409, K.S.A. 2000 Supp. 79-1609, K.S.A. 2000 Supp. 79-1702, K.S.A. 2000 Supp. 79-2005; effective Aug. 15, 1997; amended May 24, 2002; revoked Oct. 29, 2010.)

**94-2-18.** (Authorized by K.S.A. 74-2437; implementing K.S.A. 79-1426, K.S.A. 79-1409; effective Aug. 15, 1997; amended May 24, 2002; revoked Oct. 29, 2010.)

**94-2-19 and 94-2-20.** (Authorized by and implementing K.S.A. 74-2437, as amended by 2008 HB 2018, sec. 13; effective May 24, 2002; amended, T-94-8-28-03, Aug. 28, 2003; amended Dec. 5, 2003; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; revoked Oct. 29, 2010.)

**94-2-21.** (Authorized by and implementing K.S.A. 2007 Supp. 74-2438a, as amended by 2008 HB 2018, sec. 17; effective, T-94-8-28-03, Aug. 28, 2003; effective Dec. 5, 2003; amended, T-94-5-27-04, May 27, 2004; amended Oct. 1, 2004; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; revoked Oct. 29, 2010.)

## Article 3.—ECONOMIC DEVELOPMENT REVENUE BONDS

**94-3-2. Filing, fees, and forms.** Each informational statement required to be filed pursuant to the act shall be governed by the following procedures:

(a) Filing procedures.

(1) The informational statement, together with the fees required in paragraph (b)(1), shall be deemed filed and the requisite seven-day filing period shall commence upon the date the informational statement and fees are received in the office of the court. Each applicant shall address or deliver all communications, documents, information, and inquiries to the office of the secretary, court of tax appeals.

(2) Each applicant shall file one informational statement for each proposed issuance of bonds.

(3) If the informational statement is not complete as originally filed, the applicant shall be notified of the incomplete filing. The applicant shall correct the deficiency in writing within 14 days.

(4) If the chief judge finds, following a review of the informational statement, that all information and documents required to be filed are complete and, based upon the proposed date of issuance of the bonds, that the statement has been filed in a timely manner, an order or letter indicating that finding shall be rendered by the chief judge to the appropriate government officials and bond counsel.

(5) The following disclaimer shall appear in boldface type upon the second page of each preliminary offering document:

"THE CHIEF JUDGE OF THE KANSAS COURT OF TAX APPEALS HAS NOT REVIEWED ANY INFORMATION OR DOCUMENT FILED PURSUANT TO THIS INFORMATIONAL FILING FOR THE ADEQUACY OR ACCURACY OF THE DISCLOSURE THEREIN. THIS INFORMATIONAL FILING DOES NOT CONSTITUTE A RECOMMENDATION OR AN ENDORSEMENT BY THE CHIEF JUDGE OR THE COURT."

Evidence that this disclaimer appears in boldface type upon the second page of each preliminary offering document shall be filed contemporaneously with the certificate of issuance required by K.S.A. 12-1744c, and amendments thereto.

(6) The certificate of issuance required to be filed by K.S.A. 12-1744c, and amendments thereto, shall include the court of tax appeals' filing number.

(b) Fees.

(1) All fees shall accompany the application and shall be paid by check or money order made payable to the court of tax appeals. A cash remittance shall not be accepted. If the chief judge receives notice of refusal of payment of the check or money order presented in payment of these fees, the application shall be deemed to be incomplete and not timely filed as required by the act.

(2) Copies of documents filed and recorded in the office of the court of tax appeals shall be available upon request. Postage and copy fees shall be paid in advance and in conformity with K.S.A. 45-219, and amendments thereto.

(c) Forms. The informational statement shall be submitted on forms approved by the chief judge. (Authorized by K.S.A. 2010 Supp. 12-1744a, K.S.A. 2010 Supp. 12-1744b, and K.S.A. 2010

Supp. 74-2437; implementing K.S.A. 2010 Supp. 12-1744a and K.S.A. 2010 Supp. 74-2437; effective May 1, 1983; amended, T-85-38, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended Aug. 15, 1997; amended May 24, 2002; amended, T-94-6-25-08, July 1, 2008; amended Oct. 24, 2008; amended Sept. 16, 2011.)

## Article 5.—PROCEEDINGS BEFORE THE COURT

**94-5-1. Court regulations and procedures.** (a) To the extent that the Kansas administrative procedure act or procedures prescribed by other statutes do not specifically apply, the Kansas code of civil procedure, and amendments thereto, shall apply in all proceedings before the regular division of the court.

(b) Directives guiding the court's internal affairs, access to litigants, and practice before the court may be issued by the court if the directives do not conflict with this article or other applicable provisions of Kansas law.

(c) The regulations, policies, procedures, and directives of the court shall be construed to secure expeditious determinations of all issues presented to the court. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-2. Definitions.** (a) "Counsel" means legal counsel admitted to practice before the supreme court of the state of Kansas or legal counsel duly licensed and admitted to practice law in another state, if counsel has complied with the Kansas supreme court rules governing admissions *pro hac vice*.

(b) "Court" means the court of tax appeals of the state of Kansas.

(c) "Judge" means any tax law judges or the chief hearing officer serving as a judge pro tempore pursuant to K.S.A. 74-2433, and amendments thereto.

(d) "Party" means any of the following:

(1) A taxpayer, appellant, or applicant bringing or defending an action;

(2) a governmental unit bringing or defending an action;

(3) an intervenor permitted to intervene by the court; or

(4) a necessary person or entity joined by the court.

(e) "Party's attorney" means the counsel who signed the initial pleading, application, or appeal form, or has filed an entry of appearance, on behalf of a party.

(f) "Presiding officer" means any of the following:

(1) A panel of judges;

(2) the judge assigned pursuant to K.S.A. 77-514, and amendments thereto, to conduct a status conference, prehearing conference, oral arguments, hearing, or any similar proceeding; or

(3) a court staff attorney conducting a status conference or prehearing conference to which the staff attorney has been assigned.

(g) "Secretary" means the person serving as secretary of the court pursuant to K.S.A. 74-2435, and amendments thereto. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-3. Service.** (a) All court filings, including pleadings, motions, briefs, orders, decisions, notices, appearances, and any other similar documents relating to a case, shall be served on each of the parties. Service may be made by mail, facsimile, or electronic mail, unless a specific statute requires another manner of service. Postage or cost of service shall be borne by the person effecting service.

(b) Service on an attorney of record shall be deemed to be service on the party represented by that attorney. Service by mail shall be deemed complete upon mailing.

(c) The party responsible for effecting service shall endorse a certificate of mailing or service showing proof of compliance with these regulations. In the absence of this proof of compliance, a filing may be disregarded and deemed null and void.

(d) The court shall be notified within seven days of a change of mailing address of any party, any party's attorney, or any party's duly authorized representative. A separate notice of address change shall be filed for each case affected by the address change. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-4. Commencement of action; pleadings.** (a) Each action shall be initiated through the filing of a notice of appeal or other pleading with the court.

(b) Except as provided in subsection (c), all notices of appeal and other pleadings shall be prepared on forms approved by the court, signed by

the party or the party's attorney, and filed with all information and supporting documentation requested in the forms. If a pleading is filed with insufficient information or is otherwise deficient, the pleading may be rejected by the court or may be accepted by the court, with supplementation by the parties required by the court.

(c) Each pleading initiating an appeal from a final action of the secretary of the Kansas department of revenue or the secretary's designee may be prepared on forms approved by the court or may be typewritten on 8½ × 11-inch white paper, with at least one-inch margins on all sides and with type appearing on only one side of the paper. Each typewritten pleading prepared pursuant to this subsection shall contain at least the following:

(1) The heading "BEFORE THE COURT OF TAX APPEALS OF THE STATE OF KANSAS" centered at the top of the page;

(2) the court docket number, if one has been assigned;

(3) a brief description of the nature of the action and citation to the specific statute under which the action is authorized;

(4) pertinent allegations of fact and law in concise and direct terms set forth in numbered paragraphs;

(5) a concise and complete statement of all relief sought;

(6) the signature of the party filing the pleading or the party's attorney; and

(7) the address and telephone number of the party and, if the party is represented by counsel, the party's attorney. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-5. Signatures of parties or counsel.** The signature of a party or the party's attorney on any pleading shall constitute a certification by the signer of all of the following:

(a) The signer has reviewed the pleading.

(b) To the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the pleading is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(c) The pleading is not for any improper purpose, including to harass or cause unnecessary delay or needless increase in costs. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-6. Authorized representation.** (a) In the regular division of the court, counsel may enter an appearance either by signing the pleading or by filing an entry of appearance.

(b) In the absence of an entry of appearance by counsel, a party shall be deemed to appear on the party's own behalf. Any individual may represent that person and participate fully in matters before the court. Any corporation or other artificial entity may participate by and through a duly authorized representative, including an authorized officer of the corporation, an authorized member or partner of the entity, or an authorized employee of the corporation or entity. Any estate or trust may participate by a fiduciary of the estate or trust. Any county, city, or other taxing district may participate by an elected or appointed official or a designee of the official.

(c) All persons authorized to represent entities as specified in this regulation shall be identified in writing.

(d) A duly authorized representative of an individual or an artificial entity who is not a lawyer shall not engage in the unauthorized practice of law. The participation of any duly authorized representative other than a lawyer shall be limited to providing fact and opinion testimony or other evidence deemed competent by the court.

(e) Any corporation, county, or other artificial entity may be required by the court to participate by counsel. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-7. Information and assistance to self-represented litigants.** (a) Information concerning the court's rules of practice and procedures shall be made available by the court to litigants. Court staff shall be available to assist self-represented litigants concerning general matters of court procedure and access to court services. Court staff shall observe the rules prohibiting ex parte communications.

(b) All communications and filings with the court shall be directed to the offices of the court in Topeka and shall meet the requirements in these regulations and the Kansas supreme court rules of judicial conduct. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-8. Filing fees.** (a) Subject to subsections (f) and (g), the following fees shall apply to applications and appeals filed with the regular division of the court:

(1) Economic development exemption applications filed pursuant to Kansas constitution article 11, §13 for property with a total valuation in excess of $1,000,000 ..... $1,000.00

(2) Economic development exemption applications filed pursuant to Kansas constitution article 11, §13 for property with a total valuation of $1,000,000 or less ..... $500.00

(3) Industrial revenue bond exemption applications filed pursuant to K.S.A. 79-201a Second, and amendments thereto, for property with a total valuation in excess of $1,000,000 ..... $1,000.00

(4) Industrial revenue bond exemption applications filed pursuant to K.S.A. 79-201a Second, and amendments thereto, for property with a total valuation of $1,000,000 or less ..... $500.00

(5) Industrial revenue bond information statements filed pursuant to K.S.A. 12-1744a, and amendments thereto ..... $500.00

(6) Tax exemption applications for real property and tax exemption applications for oil leases filed pursuant to K.S.A. 79-201t, and amendments thereto ..... $400.00

(7) Tax exemption applications for personal property except tax exemption applications for oil leases filed pursuant to K.S.A. 79-201t, and amendments thereto ..... $100.00

(8) Tax grievance applications filed pursuant to K.S.A. 79-332a, 79-1422, 79-1427a, or 79-1702, and amendments thereto ..... $25.00

(9) Equalization appeals filed pursuant to K.S.A. 79-1609, and amendments thereto, and payment-under-protest appeals filed pursuant to K.S.A. 79-2005, and amendments thereto, involving real estate other than single-family residential properties and farmsteads for the following valuations:
$250,000 or less ..... $125.00 per parcel
$250,001 through $1,000,000 ..... $200.00 per parcel
$1,000,001 through $5,000,000 ..... $300.00 per parcel
$5,000,001 through $10,000,000 .... $400.00 per parcel
more than $10,000,000 ..... $500.00 per parcel

(10) Equalization appeals filed in the regular division of the court pursuant to K.S.A. 79-1609, and amendments thereto, and payment-under-protest appeals filed in the regular division of the court pursuant to K.S.A. 79-2005, and amendments thereto, involving single-family residential properties and farmsteads ..... $25.00 per parcel

(11) Equalization appeals filed pursuant to K.S.A. 79-1609, and amendments thereto, and payment-under-protest appeals filed pursuant to K.S.A. 79-2005, and amendments thereto, involving personal property ..... $150.00

(12) Appeals of mortgage registration fees filed pursuant to K.S.A. 79-3107c, and amendments thereto ..... $25.00

(13) Appeals from final decisions of the director, or the director's designee, of the Kansas department of revenue, division of property valuation, involving real estate other than single-family residential properties and farmsteads for the following valuations:
$250,000 or less ..... $125.00 per parcel
$250,001 through $1,000,000 ..... $200.00 per parcel
$1,000,001 through $5,000,000 ..... $300.00 per parcel
$5,000,001 through $10,000,000 ... $400.00 per parcel
more than $10,000,000 ..... $500.00 per parcel

(14) Appeals from final decisions of the secretary, or the secretary's designee, of the Kansas department of revenue, excluding homestead property tax refund appeals under K.S.A. 79-4501 et seq., and amendments thereto, and food sales tax refund appeals under K.S.A. 79-3632 et seq., and amendments thereto, for the following amounts in controversy:
$1,000 or less ..... $100.00
$1,001 through $10,000 ..... $150.00
$10,001 through $100,000 ..... $300.00
more than $100,000 ..... $500.00

(15) No-fund warrants, temporary notes or bond applications, requests to exceed the adopted budget, and mill levy disagreements filed pursuant to K.S.A. 79-2938, 79-2939, 79-2941, 79-2951, 79-5023, 12-110a, 12-1662 et seq., or 19-2752a, and amendments thereto, or any other related statute ..... $150.00

(16) Applications by school districts to levy an ad valorem tax pursuant to K.S.A. 72-6441 or 72-6451, and amendments thereto ..... No fee

(17) Requests for reappraisal and complaints filed pursuant to K.S.A. 79-1413a, 79-1479, or 79-1481, and amendments thereto ..... $2,000.00

(18) Appeals by board of county commissioners of any county of the final ratios determined for the county by the director, or the director's designee, of the Kansas department of revenue, division of property valuation, filed pursuant to K.S.A. 79-1489, and amendments thereto ..... $2,000.00

(b) Subject to subsections (f) and (g), the following fees shall apply to applications and appeals filed with the small claims and expedited hearings division of the court:

(1) Equalization appeals filed pursuant to K.S.A. 79-1609, and amendments thereto, and payment-under-protest appeals filed pursuant to K.S.A. 79-2005, and amendments thereto, involving appeals of the valuation or classification of single-family residential properties and farmsteads ..... No fee

(2) All other equalization appeals filed pursuant to K.S.A. 79-1609, and amendments thereto, and payment-under-protest appeals filed pursuant to K.S.A. 79-2005, and amendments thereto, for the following valuations:
$250,000 or less ..... $100.00 per parcel
$250,001 through $1,000,000 ..... $150.00 per parcel
$1,000,001 through $1,999,999 ..... $200.00 per parcel

(3) Appeals from final decisions of the secretary, or the secretary's designee, of the Kansas department of revenue, excluding those final decisions addressed in paragraph (b)(5), for the following amounts in controversy:
Less than $500 ..... No fee
at least $500 but less than $10,001 ..... $50.00
$10, 001 through $14,999 ..... $150.00

(4) Appeals from final decisions of the director, or the director's designee, of the Kansas department of revenue, division of property valuation, involving real estate other than single-family residential properties and farmsteads for the following valuations:
Less than $500 ..... No fee
at least $500 but less than $250,001 ..... $100.00 per parcel
$250,001 through $1,000,000 ..... $150.00 per parcel
$1,000,001 through $1,999,999 ..... $200.00 per parcel

(5) Appeals from final decisions of the secretary, or the secretary's designee, of the Kansas department of revenue involving homestead property tax refund appeals under K.S.A. 79-4501 et seq., and amendments thereto, and food sales tax refund appeals under K.S.A. 79-3632 et seq., and amendments thereto ..... No fee

(c) For purposes of this regulation, the following definitions shall apply:

(1) "Single-family residential property" means any parcel containing a residential structure or any portion of the structure that is designed for occupancy by no more than one family, regardless of whether the boundary of the parcel is ground, shared walls, or other structural elements. A parcel containing a structure designed to accommodate more than one family, including an apartment building, is not single-family residential property.

(2) "Valuation" means the value shown on the county notice of valuation or the value at the time of the filing of the appeal if the value has been reduced by the county appraiser at the informal hearing, by a local hearing officer panel, or by the small claims division of the court.

(d) Except as specified in this subsection, each application and appeal listed in subsections (a) and (b) shall be accompanied by the applicable filing fee in the form of a check or money order made payable to the "Court of Tax Appeals." If the fee does not accompany the filed application or appeal, the fee shall be received by the court within seven business days of the receipt of the application or appeal. If the fee is not received within this time period, the application or appeal shall be considered not properly filed with the court, and the application or appeal shall be dismissed.

(e)(1) A filing fee may be waived by the court if an applicant or taxpayer by reason of financial hardship is unable to pay the fee and has filed an affidavit stating this reason, with any accompanying supporting documentation that may be deemed appropriate by the court.

(2) Filing fees may be abated by the court as prescribed in this paragraph upon written motion demonstrating that multiple appeals or applications involving multiple properties filed by a taxpayer or applicant should be consolidated into a single matter. For multiple applications or appeals involving contiguous parcels owned by the same person or entity that together comprise a single economic unit, the consolidated filing fee shall be the fee for the parcel with the highest valuation plus $25.00 for each additional parcel within the economic unit. If multiple applications or appeals do not involve contiguous parcels but involve substantially similar issues that, in the interest of administrative economy, should be heard and decided together, the filing fee may be abated by the court to reflect the administrative cost savings anticipated from consolidating the multiple filings for decision. If, after a filing fee has been remitted, the court determines that abatement is appropriate under this paragraph, the abated portion of the fee shall be refunded by the court.

(f) Public school districts ..... No fee

(g) Each not-for-profit organization shall be charged a fee of $10 for any appeal if the valuation of the property that is the subject of the controversy does not exceed $100,000, excluding all governmental entities except as provided in subsection (f). There shall be no filing fee reduction under this subsection (g) for property owned by a not-for-profit organization with a valuation exceeding $100,000. (Authorized by and implementing K.S.A. 2010 Supp. 74-2438a; effective Oct. 29, 2010; amended Sept. 16, 2011.)

**94-5-9. Filing procedures; time limitations.** (a) Each party filing any action with the court shall file the application or appeal and shall pay any applicable fees required by K.A.R. 94-5-8. Each pleading or other document filed with the court shall be deemed to have been filed when actually received and file-stamped by the secretary or the secretary's designee, and the action shall commence on that date, if the document is in a form prescribed by these regulations or by statute.

(b) In computing any period of time prescribed

by the Kansas administrative procedure act, the computation shall be made pursuant to K.S.A. 77-503(c), and amendments thereto. In computing any period of time not prescribed by the Kansas administrative procedure act, the computation shall be made pursuant to K.S.A. 60-206, and amendments thereto.

(c) When by these regulations or by notice given by the court, an act is required to be completed within a specified time, the time for completing the act may be extended by the court if a motion is filed before the expiration of the specified time. A motion for extension of time filed after the time limit has expired may be granted only if failure to act within the time limit was the result of excusable neglect.

(d) Any individual or entity may file documents at the court's office between the hours of 8:00 a.m. and 5:00 p.m. on any business day. Each document, whether mailed, hand-delivered, or sent by facsimile machine or electronically, shall be received by 5:00 p.m. in order to be file-stamped and considered filed on that date. The time of receipt shall be that time shown by the court's time clock, the time printed by the court's facsimile machine on the final page of the facsimile-received document, or the time shown as received by the court's electronic mail system or other electronic docketing system. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-10. Electronic mail filings.** (a) Each document filed through electronic mail shall be sent to the court's central electronic mail address in order to be considered filed with the court. Electronic mail sent to any electronic mail address other than the court's central electronic mail address shall be ignored and shall not be considered filed with the court.

(b) All pleadings filed by electronic mail shall be followed by any applicable filing fees.

(c) Each electronic mail filing shall include a return electronic mail address along with the name and telephone number of the individual sending the electronic mail.

(d) Each document filed with the court by electronic mail and in accordance with these regulations shall have the same effect as if the document had been filed by any other means and in accordance with these regulations. All requirements for pleadings and other filings with the court shall apply to pleadings and other filings transmitted by electronic mail. Only one copy of the pleading or document shall be transmitted. An electronic signature or the symbol "/s/" on the signature line in place of a signature shall have the same effect as that of an original signature.

(e) Electronic mail received in the court's office at the central electronic mail address on or before 5:00 p.m. shall be deemed filed on that date. Electronic mail received after 5:00 p.m. shall be deemed to be filed on the following regular workday of the court. The time of receipt shall be the time shown by the court's electronic mail system. Electronic mail received on a Saturday, Sunday, or legal holiday shall be deemed filed on the following regular workday of the court.

(f) If an electronic mail message indicates that there is an attachment but an attachment is not included or the attachment cannot be opened, the sender shall be notified by the court of the deficiency, with the court's request that the electronic mail be re-sent and the deficiency corrected. The date and time of the filing shall be the date and time the electronic mail is re-sent without deficiency. Each attachment shall be sent in a format that meets the court's specifications.

(g) The sender of an electronic mail filing may petition the court for an order filing the document *nunc pro tunc* if the electronic mail document is not filed with the court because of either of the following reasons:

(1) An error in the transmission of the document, the occurrence of which was unknown to the sender at the time of transmission; or

(2) a failure to process the electronic mail document when received by the court.

(h) Each petition filed pursuant to subsection (g) shall be accompanied by the transmission record, a copy of any document included in the transmission, and an affidavit of transmission by electronic mail as prescribed by Kansas supreme court rule 119, appendix B.

(i) Each party who files a document by electronic mail shall retain a copy of that document in the party's possession or control during the pendency of the action and shall produce the document upon request pursuant to K.S.A. 60-234, and amendments thereto, by the court or any party to the action. Failure to produce the document may result in the document being stricken from the record and may result in sanctions pursuant to K.S.A. 60-211, and amendments thereto. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-11. Facsimile filing.** (a) The court's facsimile machine shall be available on a 24-hour basis, seven days each week. This requirement shall not prevent the court from sending documents by fax or from making repairs to and maintaining the facsimile machine.

(b) Each complete facsimile filing received in the court's office at or before 5:00 p.m. on a regular workday shall be deemed filed on that day. Each filing received after 5:00 p.m. shall be filed as if received on the next regular court workday. The time of receipt shall be the time printed by the court's facsimile machine on the final page of the facsimile-received document. Each filing received on a Saturday, Sunday, or legal holiday shall be filed as if received on the next regular court workday. Each pleading filed by facsimile shall be followed by any applicable filing fees.

(c) Each pleading or other document filed by facsimile transmission shall have the same effect as that of any pleading or other document filed with the court by other means. A facsimile signature shall have the same effect as that of an original signature. Only one copy of the pleading or other document shall be transmitted.

(d) Each certificate of service shall state the date of service and the facsimile telephone numbers of both the sender and the receiver.

(e) The sender may petition the court for an order filing a document *nunc pro tunc* if a facsimile filing is not filed with the court because of either of the following:

(1) An error in transmission of the document, the occurrence of which was unknown to the sender at the time of transmission; or

(2) a failure to process the facsimile filing when received by the court.

(f) The petition specified in subsection (e) shall be accompanied by the transmission record, a copy of the document transmitted, and an affidavit of transmission by fax as specified in Kansas supreme court rule 119 relating to district courts, appendix B. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-12. Confidentiality.** (a) Each document filed and all evidence received by the court shall be a public record, unless a protective order is issued by the court designating all or portions of the record confidential.

(b) Any party may file a motion for a protective order, or a motion and agreed order may be jointly submitted by the parties, showing cause why specifically identified information in the record or information likely to become part of the record should be kept confidential. The motion shall state a legally valid basis for the protective order and shall include sworn statements or affidavits supporting the motion.

(c) If a motion for protective order is granted, any measures permitted by law may be taken by the court to protect the confidential information. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-13. Intervention; joinder.** Each petition or request to intervene shall be governed by K.S.A. 77-521, and amendments thereto. Each joinder of any party needed for just adjudication shall be governed by K.S.A. 60-219, and amendments thereto. Each permissive joinder of any party shall be governed by K.S.A. 60-220, and amendments thereto. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-14. Consolidation.** If two or more cases involve the same or substantially similar issues or if joint presentation of the evidence or legal arguments would be economical, a written order of consolidation may be issued by the court either on its own motion or on a motion by one or more parties. If cases are consolidated, orders may be issued by the court in a consolidated format. In the absence of a formal written order of consolidation, individual cases shall be deemed separate, unconsolidated matters. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-15. Motion practice.** (a) Each motion shall include the heading information required of court pleadings, as well as the following information:

(1) Reference to the provision of statute, regulation, or other procedural authority upon which the motion is based;

(2) a concise statement of the pertinent facts and legal authorities;

(3) a concise statement of the relief sought;

(4) a request for oral argument, if desired; and

(5) a proposed form of order to be adopted by the court if the motion is granted.

(b) Each response to a motion shall be filed not later than 10 days from the date of service of the motion, or within any shorter or longer period that

the court may allow. Each reply, if any, shall be filed within seven days of service of the response or within any shorter or longer period that the court may allow.

(c) Regular times for hearings on motions shall be established by the court at intervals sufficiently frequent for the prompt dispatch of business.

(d) Notwithstanding subsections (a), (b) and (c), all motions for summary judgment shall be governed by the court rules governing motions for summary judgment in state district court actions, including K.S.A. 60-256 and amendments thereto, and Kansas supreme court rule 141, as amended. Motion for summary judgment shall be specially set by the court for oral argument. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-16. Discovery.** (a) All discovery matters, including disputes and requests for sanctions, shall be governed by the Kansas administrative procedure act and the Kansas code of civil procedure.

(b) Discovery shall be completed expeditiously. The parties and counsel shall conduct orderly discovery and shall freely exchange discoverable information and documents.

(c) The parties and counsel shall make all reasonable efforts to resolve discovery disputes before involving the court in these matters. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-17. Subpoenas.** (a) Any party may issue a subpoena or subpoena *duces tecum* in a court proceeding. Each subpoena shall be prepared by the requesting party and shall be in substantial compliance with this regulation and any published court forms.

(b) Each subpoena shall state the following information:

(1) The name of the witness;

(2) the address where the witness can be served;

(3) the location where the witness is required to appear and the date and time of the appearance;

(4) the matter in which the witness is required to testify; and

(5) for a subpoena *duces tecum*, a detailed listing of the documents or other material to be produced.

(c) A subpoena may be used for the purpose of discovery or for the purpose of securing evidence for a hearing. The duties of the person responding to a subpoena shall be those specified in K.S.A. 60-245(d), and amendments thereto.

(d) Each subpoena issued under the authority of the court shall be signed by the secretary or a judge under the seal of the court. Upon request, the secretary shall issue a blank subpoena bearing the seal of the court with the secretary's signature or a facsimile of the signature. The party to whom a blank subpoena has been issued shall be solely responsible for preparing the substance of the subpoena. Subpoenas shall not be prepared by the court.

(e) Service of each subpoena shall be the responsibility and at the cost of the party requesting the subpoena and shall be made in accordance with K.S.A. 77-522, and amendments thereto. Witness fees and mileage shall be allowed pursuant to K.S.A. 28-125, and amendments thereto.

(f) Any person subject to a subpoena issued by the court may seek appropriate protection as provided under K.S.A. 60-245(c), and amendments thereto. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-18. Stipulations.** (a) The parties and counsel shall to the fullest extent possible stipulate to facts, issues, and other matters that are not the subject of reasonable dispute.

(b) Any stipulation may be made either by written stipulation or by oral statement shown upon the hearing record. All stipulations shall be binding upon all parties so stipulating and may be regarded by the court as conclusive evidence of the fact stipulated.

(c) Each stipulation that finally and conclusively settles an appeal involving the valuation of county-assessed property shall be made by means of a fully executed order of stipulation and dismissal. Each order shall be filed within 30 days from the date the parties notify the court of the pending stipulation. All stipulations executed by county officials shall be presumed by the court to have been made in keeping with the legal duties and obligations of those county officials.

(d) Each settlement negotiation shall be confidential, unless all participants to the negotiation agree otherwise in writing. Facts disclosed, offers made, and all other aspects of negotiation shall not be part of the record. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-19. Prehearing conferences.** A pre-

hearing conference may be held by the court for purposes of narrowing the issues and facts in dispute, simplifying the presentation of evidence, and otherwise assisting the parties and counsel in their preparation for trial. Each prehearing conference shall be conducted in accordance with K.S.A. 77-516 and K.S.A. 77-517, and amendments thereto. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-20. Continuances.** (a) Any hearing scheduled on the court's calendar may be continued by the court upon a written motion filed at least 30 days before the date of the scheduled hearing. This requirement may be waived by the court at its discretion upon a showing of good cause. Before requesting a continuance, the moving party shall consult with all other parties and shall state in the motion the position of the other parties with respect to the continuance request. Each motion for continuance shall clearly state the reason for the requested continuance. Parties and counsel shall not contact court staff in an attempt to reschedule a matter before the court. These requests shall be filed in writing as specified in this subsection. All necessary rescheduling shall be initiated by the court after a motion has been received.

(b) A motion to continue a hearing shall be granted only in exceptional and unforeseen circumstances. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-21. Exchange of evidence and witness lists.** Unless otherwise ordered by the court, the following deadlines for the exchange of evidence and witness lists shall apply:

(a) At least 10 calendar days before a scheduled hearing involving single-family residential property, each party shall have exchanged copies of each document, photograph, or other evidence that the party intends to present at the hearing.

(b) At least 20 calendar days before a scheduled hearing except a hearing involving single-family residential property as specified in subsection (a), each party shall have exchanged copies of each document, photograph, or other evidence that the party intends to present at the hearing, along with a listing of all witnesses expected to be called at the hearing. At least 10 calendar days before the scheduled hearing, each party shall have exchanged copies of any rebuttal evidence, along with a listing of any rebuttal witnesses.

(c) In computing the time periods specified in subsections (a) and (b), the day of the scheduled hearing shall not be included. If the 10th or 20th calendar day before the hearing falls on a Saturday, Sunday, or legal holiday, the last business day before the day shall be the deadline for the exchange of evidence.

(d) If the parties fail to comply with the deadlines specified in this regulation or with any modified deadline ordered by the court, the presiding officer may take appropriate measures in the interest of preserving a fair hearing, which may include barring or limiting the presentation of evidence. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-22. Hearings.** (a) Each hearing shall be open to the public and shall be conducted in accordance with the Kansas administrative procedure act. Each hearing shall be recorded by a certified shorthand reporter selected by the court or by audio or video recording systems. The court's record shall be the only official record of the proceedings.

(b) The use of recording, photographic, or television devices during any hearing shall be permitted only if the use of these devices is not disruptive.

(c) The cost of obtaining a transcript of any hearing shall be borne by the person requesting the transcript. A certified shorthand reporter shall be selected by the court to transcribe the official record of the proceedings. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-23. Evidence.** (a) Unless otherwise limited by a specific statutory or regulatory provision, the presentation of evidence shall be governed by K.S.A. 60-401 et seq., and amendments thereto, and by K.S.A. 77-524, and amendments thereto.

(b) Evidence may be received in writing instead of through oral presentation, in accordance with K.S.A. 77-524(d) and amendments thereto. However, the filing of a document shall not signify its receipt into evidence. Only those documents that have been received into evidence shall be considered as evidence in the official record.

(c) Whenever an evidentiary objection is made, the grounds relied upon shall be stated briefly when the evidence is offered. Any evidentiary ob-

jection may be ruled upon by the court, or the objection may be taken under advisement by the court. Evidence may be received by the court, subject to a motion to strike at the conclusion of the hearing.

(d) The discontinuation of the presentation of evidence may be ordered by the court upon its own motion if the evidence is cumulative, irrelevant, or otherwise objectionable. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-24. Failure to appear.** (a) Failure of any party to appear at the time and place appointed by the court may result in dismissal or a default judgment.

(b) Within 10 days after service of an order of dismissal or default, the party against whom the order was entered may file a written objection requesting that the order be vacated and stating the specific grounds relied upon. The written objection shall be served on all parties in accordance with these regulations. An entry of dismissal or default may be set aside by the court, for good cause.

(c) If all parties agree to waive the right to a hearing and submit stipulated facts and written arguments, a hearing may be waived. However, the parties' waiver may be rejected by the court at its discretion, and the parties may be required by the court at its discretion to appear for hearing if the court deems the action necessary or proper under the circumstances. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

**94-5-25. Petitions for reconsideration.** Each petition for reconsideration of a final order of the court shall be filed pursuant to K.S.A. 77-529, and amendments thereto. Each response to a petition for reconsideration shall be filed with the court within 11 calendar days after the petition for reconsideration is filed with the court. (Authorized by and implementing K.S.A. 2009 Supp. 74-2437; effective Oct. 29, 2010.)

## Agency 97

# Kansas Commission on Veterans' Affairs

*Articles*

97-1. Soldiers' Home; Membership.
97-2. Rules Governing Members.
97-3. Discharges; Termination of Membership.
97-4. Veteran Memorial Donations to the Kansas Commission on Veterans' Affairs for the Construction and Maintenance of Capital Improvement Projects.
97-7. Vietnam War Era Medallion Program.

### Article 1.—SOLDIERS' HOME; MEMBERSHIP

**97-1-1.** (Authorized by K.S.A. 76-1908; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 2009.)

**97-1-1a. Definitions.** As used in these regulations, the following terms shall have the meanings specified in this regulation: (a) "Applicant" means a person who has submitted to the Kansas commission on veterans' affairs a completed application packet and military discharge papers.

(b) "Commission" means the body of commissioners appointed by the governor to oversee the Kansas commission on veterans' affairs (KCVA).

(c) "Discharge" means the permanent removal by the commission of a member from a KCVA home.

(d) "Executive director" means the person who serves as executive director of the KCVA.

(e) "Furlough" means the temporary eviction of a member by the respective superintendent or designee, for any infraction of these regulations.

(f) "KSH" means Kansas soldiers' home at Fort Dodge, Kansas.

(g) "KVH" means Kansas veterans' home in Winfield, Kansas.

(h) "Licensed medical authority" means a person who is authorized by law to diagnose mental diseases or disorders.

(i) "Pass" means a superintendent's prior written permission for the voluntary, temporary absence of the veteran or nonveteran member from the home for a period in excess of 23 hours, as specified in K.A.R. 97-3-3a. An approved pass shall not affect the eligibility status of the member.

(j) "Release" means a voluntary separation granted by a superintendent upon request of a veteran or nonveteran member. The member leaves the home in good standing, and this departure does not affect the member's standing or subsequent KCVA or United States department of veterans affairs benefits.

(k) "Residence hall" means a domiciliary, including cottages, or long-term health care facility.

(l) "State" means the state of Kansas.

(m) "Superintendent" means the person appointed by the KCVA as superintendent for the KSH or KVH.

(n) "USDVA" means United States department of veterans affairs.

(o) "Weapon" means any of the following:

(1) Bludgeon, sand club, metal knuckles, throwing star, dagger, dirk, billy, or blackjack;

(2) any firearm; or

(3) (A) Any knife that is more than four inches long or opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife; or

(B) any knife having a blade that opens, falls, or is ejected into position by the force of gravity or by outward, downward, or centrifugal thrust or movement. (Authorized by and implementing K.S.A. 76-1904, 76-1927, 76-1951, and 76-1955; effective May 1, 2009.)

**97-1-2.** (Authorized by K.S.A. 76-1908; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 2009.)

**97-1-2a. Administrative oversight.** These regulations shall apply to the Kansas soldiers' home and the Kansas veterans' home, which are administered by the commission. (Authorized by

K.S.A. 76-1927 and 76-1955; implementing K.S.A. 76-1904, 76-1927, 76-1951, and 76-1955; effective May 1, 2009.)

**97-1-3.** (Authorized by K.S.A. 76-1908; effective Jan. 1, 1966; amended Jan. 1, 1969; amended May 1, 1980; revoked May 1, 2009.)

**97-1-3a. Eligibility.** (a) General. Eligibility for admission shall be based upon K.S.A. 76-1908 and K.S.A. 76-1954, and amendments thereto.

(b) Mental illness, legal incompetence, alcohol abuse, and drug abuse.

(1) Mental illness. No person who has been diagnosed by a licensed medical authority as being mentally ill shall be admitted to the KSH or KVH unless the illness is managed by medication prescribed by a licensed medical authority and that medical authority certifies both of the following:

(A) With the prescribed medication, the individual will not be a threat to that person, any other person, or the property of others.

(B) The individual can be cared for and medicated by KSH or KVH staff with medication that is reasonably available through the KSH or KVH.

(2) Legal incompetence. No person who meets any of the following conditions and has not been restored to competency by the court pursuant to the applicable act shall be admitted unless the person's guardian or conservator, or both, or curator is available to make the legal, financial, and medical decisions on behalf of the person:

(A) Has been adjudged in need of a guardian or conservator, or both, by a court in this state pursuant to the act for obtaining a guardian or a conservator, or both, K.S.A. 59-3050 et seq. and amendments thereto;

(B) has been adjudged in need of a curator pursuant to the curators for veterans act, K.S.A. 73-501 et seq. and amendments thereto; or

(C) has been adjudged by a court of competent jurisdiction in another state or the District of Columbia pursuant to an act similar to either of the acts specified in paragraphs (b)(2)(A) and (B).

(3) "Abuse" shall mean a person's lack of self-control in the use or ingestion of alcohol or drugs or a person's use or ingestion of alcohol or drugs to the extent that the person's health is substantially impaired or endangered or the person's social or economic functioning is substantially disrupted.

(4) Alcohol abuse. No person who is abusing alcohol and not participating in a program conducted, managed, or operated by an alcohol treatment facility licensed under the alcoholism and intoxication treatment act, K.S.A. 65-4001 et seq. and amendments thereto, shall be admitted to the KSH or KVH. A member who abuses alcohol may be furloughed and may be considered for discharge by the commission.

(5) Drug abuse. No person who is abusing drugs and not participating in a program conducted, managed, or operated by a drug treatment facility licensed under the drug abuse treatment facilities act, K.S.A. 65-4601 et seq. and amendments thereto, shall be admitted to the KSH or KVH unless the abuse is the result of the use of a legally prescribed medication. A member who abuses drugs, prescription or illegal, may be furloughed and may be considered for discharge by the commission.

(6) Removal from the KSH or KVH. Any member who becomes mentally ill or legally incompetent or who becomes addicted to or abuses alcohol or drugs as specified in this regulation may be subject to furlough or discharge.

(c) Children. Only minor children shall be eligible for admission to the KSH and the KVH. No minor child shall be eligible for admission unless accompanied by a member parent or member guardian. No child who is 16 years of age or older shall be admitted to or reside in the KSH or KVH unless the child is incapable of self-support and the superintendent makes such a declaration. Determination of eligibility of dependent children shall be in accordance with federal laws and USDVA regulations applicable to state veterans' homes.

(d) Dependents. No person shall be admitted as the spouse of the applicant unless the marriage is valid under the laws of the state of Kansas. (Authorized by K.S.A. 76-1927 and 76-1955; implementing K.S.A. 76-1904, 76-1908, 76-1928, 76-1931, 76-1951, 76-1954, and 76-1955; effective May 1, 2009.)

**97-1-4.** (Authorized by K.S.A. 76-1908; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 2009.)

**97-1-4a. Application for membership.** (a) Processing and approval. No application for membership shall be considered until the person has submitted a complete application packet on forms furnished by the KSH or KVH.

(1) Application packets may be obtained at and returned to any KCVA field office or service organizational office. The application packet shall be

submitted by the office to the superintendent at the KSH or KVH, as applicable, for review of completeness. If the application packet is not complete, the application packet shall be returned to the applicant, with an indication of the portions that are incomplete. Upon determination of completeness, the superintendent shall forward the application packet to the executive director.

(2) Except for applications submitted by individuals with felony convictions, each complete application shall be required to be approved by the executive director before the applicant may be admitted to the KSH or KVH.

(3) For each applicant with a felony conviction, that applicant's completed application shall be evaluated by the commission regarding the rehabilitation of the applicant and current degree of dangerousness to the applicant, other persons, and the property of others before the applicant may be admitted to the KSH or KVH.

(4) Each spouse or dependent who desires membership in the KSH or KVH shall complete the appropriate forms in the application packet.

(5) Each applicant shall include a certification of inability to provide self-support without additional aid.

(b) Investigation of applicants. The information on each application shall be verified by a staff member, as directed by the superintendent.

(c) False applications; procedure. An applicant may be denied admission or a member may be discharged if the commission ascertains that the applicant or member has committed either of the following:

(1) Has misrepresented the age of a minor child. The veteran or veteran's spouse, or both, shall be responsible for ensuring the accuracy of the information in the application of a minor child; or

(2) has misrepresented any other material matter for the purpose of obtaining admission, continuing membership, or obtaining any other benefits of either home. (Authorized by K.S.A. 76-1927 and 76-1955; implementing K.S.A. 76-1908 and 76-1954; effective May 1, 2009.)

**97-1-5.** (Authorized by K.S.A. 76-1908; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 2009.)

**97-1-5a. Priority for admission.** (a) Priority criteria. Admission shall be granted pursuant to K.S.A. 76-1908(g) and K.S.A. 76-1954(g)(1), and amendments thereto.

(1) The first priority for admission shall be given to veterans who have no adequate means of support. Within this group, priority shall be based on the severity of medical care required and the ability to pay for health care.

(2) The second priority for admission shall be given to a veteran's spouse or surviving spouse, parents, or children who have no adequate means of support, with priority based on the criteria specified in paragraph (a)(1) of this regulation.

(3) The third priority shall be given to veterans who have a means of support.

(4) The fourth priority shall be given to a veteran's spouse or surviving spouse, parents, or children who have a means of support.

(b) Residence halls. The superintendent of the KSH or KVH shall consult with that person's medical staff to assist in the prioritization of members.

(c) Cottages.

(1) Cottages, which are located only at the KSH, shall be available to eligible members, including those in need of domiciliary care.

(A) If domiciliary care is needed, the veteran member shall show that the care will be provided by that member's spouse, parent, or child. If a family member can not provide domiciliary care, the KSH superintendent shall be so notified, and the veteran member shall be directed to undergo a medical evaluation to determine whether that person can reside alone.

(B) If the KSH superintendent suspects that an applicant or a veteran member needs domiciliary care, the superintendent may direct that applicant or veteran member to undergo a medical evaluation to determine whether that person can reside alone.

(C) If the medical staff determines that the veteran member needs domiciliary care and resides alone, the KSH superintendent may direct that the veteran member be placed in the domiciliary unit for care until a permanent arrangement is made.

(2) No cottage shall be initially assigned to the spouse, parent, or child of a deceased veteran member. If the veteran member dies, the surviving spouse, parent, or child shall have 180 days to vacate the premises. Before the end of the 180-day period, any surviving nonveteran spouse may move to a domiciliary unit or a one-bedroom cottage, if available, at the rental rate established for nonveterans. If a one-bedroom cottage is not available, the superintendent may allow the non-

veteran spouse to remain by exception in the two-bedroom cottage past the 180-day period, contingent upon pending admissions. (Authorized by K.S.A. 76-1927 and 76-1955; implementing K.S.A. 76-1908 and 76-1954; effective May 1, 2009.)

**97-1-6a. Approval or denial of application, notification to applicant, and right of reconsideration; right of hearing; final decision.** (a) Approval of application. If an applicant qualifies for admission, the application shall be approved if there is space available in the KSH or KVH or shall be conditionally approved until space is available. Each applicant shall be notified in writing by the appropriate superintendent or by the executive director, whether the application is approved or denied.

(b) Denial of application.

(1) If an applicant is denied admission, written notification shall be sent to the last known address of the applicant by the appropriate superintendent, the executive director, or the commission. The notification shall state the reason or reasons for the denial.

(2) Within 30 days of the date of the decision, the applicant may file at the office of the executive director a written request for reconsideration by the commission. The request shall state the reasons supporting approval of the application. If no timely request is filed, the notification of denial shall become the final decision.

(3) Unless waived by the applicant, a hearing shall be set upon receipt of a request for reconsideration. The hearing shall be scheduled at the earliest available commission docket. The applicant shall be notified by the executive director of the date, time, and place of the hearing. The notice shall be mailed to the last known address of the applicant at least 10 days before the hearing.

(4) At the hearing, notice may be taken by the commission of its administrative records and files, and any other relevant evidence and arguments offered by the applicant, employees of the KCVA, or other interested persons may be heard by the commission. The applicant may appear in person, through telephone, by an attorney, or any combination of these.

(5) If the applicant fails to attend the hearing, the commission's decision may be made based upon the KCVA's records, files, and any other evidence that was presented at the hearing. The commission's decision shall be determined by a majority vote. A written decision shall be filed by the commission with the executive director, setting forth the facts and reasons for the commission's decision. Within 30 days after the hearing, a copy of the decision shall be sent by the executive director to the applicant at the applicant's last known address. The filed decision shall be considered the final agency action. (Authorized by K.S.A. 76-1927 and 76-1955; implementing K.S.A. 76-1908 and 76-1954; effective May 1, 2009.)

## Article 2.—RULES GOVERNING MEMBERS

**97-2-1.** (Authorized by and implementing K.S.A. 76-1927; effective Jan. 1, 1966; amended May 1, 1980; amended May 1, 1984; revoked May 1, 2009.)

**97-2-1a. Charges.** Charges to each member shall be based on the member's ability to pay and shall not exceed the applicable KSH or KVH per diem cost of care for the prior year or the charges made to patients pursuant to K.S.A. 59-2006 and amendments thereto, whichever is less. Each member shall notify the superintendent, within five business days, of any increase or decrease in income or assets. The business manager shall submit an annual accounting to the superintendent, or designee, of each member's resources to determine the member's appropriate charges. (Authorized by K.S.A. 76-1927 and 76-1955; implementing K.S.A. 76-1904a and 76-1952; effective May 1, 2009.)

**97-2-2.** (Authorized by K.S.A. 76-1932; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 2009.)

**97-2-2a. Comfort money.** Comfort money shall mean a protected amount of each member's income that is not used in determining the member's charges and is held for the member's use, benefit, and burial. The amount of comfort money shall be annually determined by the commission at its November meeting and shall become effective on February 1 of the following year. Each member shall be given written notice by that member's superintendent, within 45 days after the commission's November meeting, of the amount of comfort money authorized by the commission. (Authorized by K.S.A. 76-1927 and 76-1955; implementing K.S.A. 76-1904a, 76-1935, 76-1952, and 76-1956; effective May 1, 2009.)

**97-2-3.** (Authorized by K.S.A. 76-1927; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 2009.)

**97-2-4.** (Authorized by K.S.A. 76-1927; effective Jan. 1, 1966; revoked May 1, 2009.)

**97-2-5.** (Authorized by and implementing K.S.A. 76-1927; effective Jan. 1, 1966; amended May 1, 1980; amended May 1, 1984; revoked May 1, 2009.)

**97-2-6.** (Authorized by K.S.A. 76-1906, 76-1927; effective Jan. 1, 1966; amended Jan. 1, 1969; amended May 1, 1980; revoked May 1, 2009.)

**97-2-7.** (Authorized by K.S.A. 76-1927; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 2009.)

**97-2-8.** (Authorized by and implementing K.S.A. 76-1927; effective Jan. 1, 1966; amended May 1, 1980; amended May 1, 1984; revoked May 1, 2009.)

## Article 3.—DISCHARGES; TERMINATION OF MEMBERSHIP

**97-3-1.** (Authorized by K.S.A. 76-1908; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 2009.)

**97-3-1a. Personal conduct; guests.** (a) Personal conduct. The following actions by any member or any member's guest while at the KSH or KVH shall be prohibited:

(1) Violating any state statute, state regulation, or lawful order of any superintendent or designee of the superintendent;

(2) brandishing a weapon;

(3) cursing, swearing, quarreling, or using violent, profane, vulgar, or threatening language or conduct that tends to arouse alarm or anger, disturbs others, or provokes an assault or other breach of the peace;

(4) intentionally or willfully damaging or destroying any property of another person or entity, the KSH or KVH, or the state;

(5) being under the influence of alcohol or illegal drugs, or both; and

(6) engaging in any activity or behavior not otherwise specified in this subsection that interferes with the orderly conduct of the KSH or KVH.

(b) Guests. Each member shall be responsible for informing that member's guest of the personal conduct prohibited by this regulation. No member of the KSH or KVH shall house any person as an overnight guest without the prior approval of the superintendent. (Authorized by K.S.A. 76-1927 and 76-1955; implementing K.S.A. 76-1904, 76-1927, 76-1951, and 76-1955; effective May 1, 2009.)

**97-3-2.** (Authorized by K.S.A. 76-1908; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 2009.)

**97-3-2a. Pets and service or therapeutic animals; hunting prohibition.** (a) No animals may be kept on the premises of the KSH or KVH by members, guests, or employees, except as specified in this regulation.

(b) As used in this regulation, "pet" shall mean a domesticated cat weighing 25 pounds or less or a domesticated dog weighing 80 pounds or less.

(c)(1) Horses may be kept on the grounds at the KSH or KVH as designated by prior written authorization from the superintendent.

(2) Any guest may have a pet on the premises of the KSH or KVH, for not more than a six-hour period between 7 a.m. and 10 p.m.

(3) Each pet at the KSH or KVH shall meet the following requirements:

(A) Have current vaccinations;

(B) be restrained with a leash and wear a collar with a tag identifying its owner while in public or open areas of the KSH or KVH;

(C) be properly maintained;

(D) not become a nuisance or threat to staff, members, or guests; and

(E) not interfere with the normal conduct and operation of the KSH or KVH.

(d)(1) Only an employee or member living in a cottage at the KSH may be allowed to maintain more than one pet if the requirements in paragraph (c)(3) are met and prior approval for each pet has been given by the superintendent.

(2) Each employee or member living in a cottage at the KSH who utilizes a service or therapeutic animal shall notify the superintendent that the animal is maintained at that employee's or member's cottage.

(e) Only service and therapeutic animals shall be allowed to be maintained by employees or members living in residential halls other than the cottages at the KSH and KVH.

(f) Hunting shall not be allowed on the premises of the KSH or KVH. (Authorized by K.S.A. 76-1927 and 76-1955; implementing K.S.A. 76-

1904, 76-1927, 76-1951, and 76-1955; effective May 1, 2009.)

**97-3-3.** (Authorized by K.S.A. 76-1927; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 2009.)

**97-3-3a. Passes.** (a) Absences.

(1) Twenty-three hours or less. Each member who desires to be absent from the KSH or KVH for 23 hours or less shall obtain the prior written approval of the superintendent or the superintendent's designee.

(2) More than 23 hours. Each member shall be required to obtain a pass from the superintendent for any absence longer than 23 hours. No pass shall exceed a total of three months in any 12-month period.

(3) Absences by members residing in cottages at the KSH. Each cottage member who is absent for more than 30 days with a pass shall pay an additional rent payment at the rate prescribed in K.A.R. 97-1-1a.

(4) Extensions. Any pass may be extended once by the superintendent for not more than 30 days.

(5) Early return. Each member who is absent with a pass or pass extension and who wants to return before the expiration of the pass or pass extension shall notify the superintendent at least 10 days before the date on which the member desires to return to the KSH or KVH.

(b) Medical pass. A veteran member shall request that the superintendent issue a medical pass for the purpose of being hospitalized or domiciled in a USDVA medical center. During the period that the veteran member is absent with a medical pass, the status of the veteran member's dependents shall remain unchanged. The veteran member shall be readmitted by the superintendent under the same terms and conditions as those under which the veteran member was originally admitted. (Authorized by K.S.A. 76-1927 and 76-1955; implementing K.S.A. 76-1904, 76-1927, 76-1951, and 76-1955; effective May 1, 2009.)

**97-3-4.** (Authorized by K.S.A. 76-1929; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 2009.)

**97-3-5.** (Authorized by K.S.A. 76-1929; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 2009.)

**97-3-6.** (Authorized by and implementing K.S.A. 76-1927; effective Jan. 1, 1966; amended May 1, 1984; revoked May 1, 2009.)

**97-3-7.** (Authorized by K.S.A. 76-1929; effective Jan. 1, 1966; amended May 1, 1980; revoked May 1, 2009.)

**97-3-8.** (Authorized by K.S.A. 76-1929; effective Jan. 1, 1966; revoked May 1, 2009.)

**97-3-9.** (Authorized by K.S.A. 76-1927; effective Jan. 1, 1966; revoked May 1, 2009.)

## Article 4.—VETERAN MEMORIAL DONATIONS TO THE KANSAS COMMISSION ON VETERANS' AFFAIRS FOR THE CONSTRUCTION AND MAINTENANCE OF CAPITAL IMPROVEMENT PROJECTS

**97-4-1a. Disciplinary actions; discharge.** (a) Complaints. Any person may make a verbal or written complaint to the superintendent alleging a violation of any statute or regulation.

(b) Investigation. Upon receipt of a complaint, the superintendent shall conduct an investigation. If the investigation reveals reasonable grounds to believe that a member has violated a statute or regulation, no warning has been given for prior offenses in the past 12 months, and the current offense did not cause property damage or bodily injury, the superintendent may advise the member of the violation and warn the member that if the conduct or activity does not cease, proceedings will be commenced to discharge the member. As an alternative, a report by the superintendent may be sent to the KCVA detailing the investigation of the complaint, identifying the regulation that was violated, and recommending discharge of the member.

(c) Notice. Upon recommendation that a member be discharged, a hearing shall be scheduled at the earliest available commission docket. The member shall be notified by the executive director of the factual allegations of the complaint, the applicable statute or regulation, and the date, time, and place of the hearing. The notice shall be mailed to the last known address of the member at least 10 days before the hearing.

(d) Proceedings. At the hearing, notice may be taken by the commission of its administrative files and records, and any other relevant evidence and arguments offered by the member, staff, employees of KCVA, or any other interested persons may be heard by the commission. The member may

appear in person, through telephone, by an attorney, or any combination of these. If the member fails to attend, the decision may be made by the commission based upon its files and records and any other evidence that was presented at the hearing.

(e) Final decision. A written decision shall be filed by the commission with the executive director. The written decision shall set forth the facts and reasons for the commission's decision. A copy of the decision shall be sent by the executive director to the member at the member's last known address. The filed decision shall be considered the final agency action.

(f) Vacating premises. If the decision is adverse to the member, the member shall vacate the residence or cottage within 30 days of the date on which a copy of the commission's decision was sent to the member. The member may ask the superintendent for an additional 14 days due to unusual and extenuating circumstances. As used in this subsection, "unusual and extenuating circumstances" shall mean any condition that is caused by an unexpected event that is beyond the member's control and that is sufficiently extreme in nature to result in the inability or inadvisability to vacate the premises by the deadline specified. (Authorized by K.S.A. 76-1927 and 76-1955; implementing K.S.A. 76-1928, 76-1931, 76-1932, and 76-1955; effective May 1, 2009.)

## Article 7.—VIETNAM WAR ERA MEDALLION PROGRAM

**97-7-1. Definitions.** As used in L. 2009, ch. 62, secs. 1 through 6 and amendments thereto and these regulations, each of the following terms shall have the meaning specified in this regulation:

(a) (1) "Active service" and "active duty" shall include the following:

(A) For a member of an active component of the armed forces of the United States, the time served on active duty for which the member has received or is eligible to receive the Vietnam war era medallion for service related to the Vietnam war; and

(B) for a member of the armed forces of the United States, time served on active duty for the support of operations in the Vietnam war whether or not that service was in the country of Vietnam.

(2) These terms shall include any time spent in a hospital as a result of service-connected wounds, diseases, or injuries sustained on active service. Proof of this service shall be the official military records of the United States or other evidence as deemed sufficient by the director of veteran services.

(3) These terms shall not include time served on active duty for annual training or schooling, except for training and schooling in preparation for active duty in the Vietnam war.

(b) "Director of veteran services" means the designated director of the veteran services program for the Kansas commission on veterans' affairs, who is appointed by the executive director of the Kansas commission on veterans' affairs.

(c) "Parent" shall include the following:

(1) The natural or adoptive parent of a veteran; and

(2) any person who, for a period of at least one year, acted in the capacity of a foster parent to a veteran immediately before the veteran attained 18 years of age.

(d) "Program" means the Vietnam war era medallion program.

(e) "Spouse or eldest living survivor of a deceased veteran" means any of those individuals listed in K.A.R. 97-7-4. (Authorized by and implementing L. 2009, ch. 62, sec. 2; effective March 12, 2010.)

**97-7-2. Veteran status.** (a) To be considered a veteran for purposes of the program, each applicant shall establish both of the following to the satisfaction of the director of veteran services:

(1) The person for whom the application under the program is submitted is a veteran.

(2) The person for whom the application under the program is submitted meets the requirements specified in L. 2009, ch. 62, sec. 1, and amendments thereto.

(b) In addition to meeting the requirements in subsection (a), the applicant shall certify that the person for whom the application under the program is submitted meets both of the following requirements:

(1) Was not, at any time during the Vietnam war, separated from the armed forces under other than honorable conditions, including a bad conduct discharge or dishonorable discharge, or an administrative discharge under other than honorable conditions; and

(2) has never renounced United States citizenship. (Authorized by L. 2009, ch. 62, sec. 2; implementing L. 2009, ch. 62, sec.1 and sec. 2; effective March 12, 2010.)

**97-7-3. Legal resident status.** (a) Proof of residence. In addition to establishing the veteran status of the person for whom an application under the program is submitted as specified in K.A.R. 97-7-2, the applicant shall establish to the satisfaction of the director of veteran services that the person was a legal resident of Kansas during the person's active service within the period beginning February 28, 1961 and ending May 7, 1975. The proof of residence shall be the official records of the United States or other evidence deemed sufficient by the director of veteran services.

A legal resident of Kansas shall mean an individual for whom Kansas was the state of domicile while serving in the United States armed forces or a reserve component of the United States armed forces within the period specified in this subsection and who did not claim legal residence in any other state during that period of active service, without regard to the place of enlistment, commission, or induction. A service member's legal residence shall not change by virtue of military assignment to another state.

(b) Home of record in Kansas shown in official military records. Each veteran whose home of record is listed as Kansas in official military records showing qualifying active service within the period beginning February 28, 1961 and ending May 7, 1975 shall be considered a legal resident without regard to the veteran's place of enlistment, commission, or induction.

(c) Home of record in Kansas not shown in official military records. In making a determination of legal residence if official military records do not show Kansas as the veteran's home of record for the period of active service, the director of veteran services shall apply a rebuttable presumption that the veteran was not a legal resident of Kansas. The applicant may rebut this presumption by showing facts and circumstances establishing that Kansas was the veteran's legal residence because Kansas was the veteran's permanent place of abode to which the veteran intended to return.

(d) Documentation. If an applicant is unable to document the veteran's legal residence in Kansas by means of official military records showing a home of record in Kansas during the period of active service, the director of veteran services may consider the following documentation when determining whether sufficient evidence exists to show that the veteran was a legal resident of Kansas who did not claim legal residence in any other state at that time:

(1) Voter registration records for the period beginning February 28, 1961 and ending May 7, 1975;

(2) proof of payment of state income tax as a resident for the period beginning February 28, 1961 and ending May 7, 1975;

(3) (A) Kansas driver's license or Kansas identification card; and

(B) any similar documentation for the period beginning February 28, 1961 and ending May 7, 1975;

(4) other proof of a Kansas residential address for the period beginning February 28, 1961 and ending May 7, 1975, including a high school diploma or attendance record for a Kansas high school, real estate records, utility receipts, and any other records showing residence in Kansas; and

(5) an affidavit of residence submitted by the applicant under penalty of law in which the applicant swears or affirms that the veteran on whose behalf the application under the program is submitted remained a legal resident of Kansas and did not claim legal residence in any other state for any purpose during the period of active service occurring within the period beginning February 28, 1961 and ending May 7, 1975. (Authorized by L. 2009, ch. 62, sec. 2; implementing L. 2009, ch. 62, sec. 1 and sec. 2; effective March 12, 2010.)

**97-7-4. Applicants on behalf of deceased veterans.** (a) The following individuals shall be eligible to apply under the program on behalf of eligible deceased veterans. Eligible deceased veterans shall include eligible veterans who died in performance of active service or as a result of service-connected wounds, diseases, or injuries and veterans who would, but for their death before submission of an application, be eligible to apply under the program based on active service. Applicants shall be considered in the following order:

(1) The surviving spouse of the eligible veteran, unless the surviving spouse was living separate and apart from the veteran when the veteran commenced active service. The proof of spousal status required shall be the same as the proof that would be accepted by the United States department of veterans affairs. The surviving spouse shall certify that the individual was not living separate and apart from the eligible veteran when the veteran commenced active service. If a surviving spouse qualifies under the program, the Vietnam war era

medallion, medal, and certificate of appreciation shall be awarded to the surviving spouse at the time of the veteran's death;

(2) survivor, which shall mean the eldest surviving child of the eligible veteran if there is no eligible surviving spouse. The eldest surviving child shall certify that there is no eligible surviving spouse, as part of the application; and

(3) the surviving parents of the eligible veteran, if there are no eligible surviving spouse and no eligible surviving children. The surviving parents shall certify that there are no eligible surviving spouse and no eligible surviving children, as part of the application.

(b) If the eligibility of a surviving spouse, surviving child, or surviving parents is disputed, the director of veteran services shall defer awarding the Vietnam war era medallion, medal, and certificate of appreciation until the parties resolve the dispute or a court of competent jurisdiction issues an order making a determination on the issue. (Authorized by L. 2009, ch. 62, sec. 2; implementing L. 2009, ch. 62, secs. 3, 4, and 5; effective March 12, 2010.)

**97-7-5. Application procedures.** (a) Forms. Each application for benefits under the program shall be submitted on a form provided by the Kansas commission on veterans' affairs.

(b) Submission. Each application shall be submitted to the address designated by the Kansas commission on veterans' affairs on the application form.

(c) Additional documentation. Each application shall be accompanied by the required number of copies, as stated on the application, of supporting documentation from official military records of the United States armed forces or its reserve components, including DD form 214 or similar documentation showing periods of active service, and documentation of the veteran's home of record. If the application is submitted on behalf of a deceased veteran, a copy of the death certificate shall be attached.

(d) Review of applications. The director of veteran services shall conduct a review of each application for completeness. If the application is deemed complete, the director shall review the application to determine eligibility.

(e) Incomplete applications. Each incomplete application shall be returned to the applicant. (Authorized by L. 2009, ch. 62, sec. 2, and implementing L. 2009, ch. 62, sec. 2 and sec. 5; effective March 12, 2010.)

**97-7-6. Reconsideration of denied applications.** Any applicant who is dissatisfied with the disposition of the application may ask the Kansas commission on veterans' affairs to reconsider the disposition. Each request for reconsideration shall meet the following requirements:

(a) Be submitted within 30 days of receipt of the initial disposition of the application;

(b) be in the form of a letter or memorandum;

(c) state why the applicant is dissatisfied with the disposition; and

(d) state the reasons, including facts and circumstances, the applicant believes the disposition should be altered. (Authorized by L. 2009, ch. 62, sec. 2; implementing L. 2009, ch. 62, sec. 5; effective March 12, 2010.)

## Agency 99

# Kansas State Department of Agriculture—Division of Weights and Measures

*Articles*

99-25. Technical Requirements for Weighing and Measuring Devices.
99-26. Fees.

### Article 25.—TECHNICAL REQUIREMENTS FOR WEIGHING AND MEASURING DEVICES

**99-25-1. Adoption by reference, exceptions; availability of copies.** (a) Except for the codes pertaining to grain moisture meters, secs. 5.56(a) and 5.56(b), and the use requirements for ticket printers on vehicle-tank meters, sec. 3.31.UR.2.2, "specifications, tolerances, and other technical requirements for weighing and measuring devices, as adopted by the 94th national conference on weights and measures 2009," including the appendices, published by the national institute of standards and technology (NIST), Gaithersburg, MD, as the 2010 edition of NIST handbook 44, is hereby adopted by reference and shall apply to commercial, data-gathering, and weighing and measuring devices in the state.

(b) Each vehicle-mounted metering system manufactured on or after January 1, 1995 shall be equipped with a ticket printer. A copy of the ticket issued by the vehicle-mounted metering system shall be given to the customer at the time of delivery or as otherwise specified by the customer.

(c) Copies of the handbook adopted by this regulation or pertinent portions from it shall be available from the office of weights and measures, Kansas department of agriculture, Topeka, Kansas. (Authorized by K.S.A. 83-207; implementing K.S.A. 2009 Supp. 83-202; effective May 1, 1979; amended May 1, 1981; amended May 1, 1986; amended Aug. 14, 1989; amended Oct. 21, 1991; amended March 6, 1998; amended March 5, 1999; amended Jan. 18, 2002; amended Aug. 26, 2005; amended Feb. 8, 2008; amended Sept. 3, 2010.)

**99-25-5. Technical representative license application and renewal.** (a) Each person applying for a technical representative license or renewal of a license shall submit an application on a form provided by the department of agriculture ("department").

(b)(1) Each license shall be issued or renewed if the technical representative performs the following:

(A) Completes and submits the application form provided by the department;

(B) successfully completes the continuing education seminar conducted by the department in approved subjects during the effective period of the technical representative's license;

(C) pays an attendance fee of $20 for the continuing education seminar; and

(D) obtains a score of at least 80 percent on the examination administered by the department.

(2) Each technical representative license shall expire annually on June 30.

(c) Each service company shall verify and maintain records documenting that each technical representative employed by the service company has satisfactorily completed the required training. (Authorized by K.S.A. 83-207; implementing K.S.A. 2008 Supp. 83-302 and K.S.A. 2008 Supp. 83-404; effective March 6, 1998; amended May 8, 2009.)

**99-25-9. Adoption by reference.** Except as specified in subsection (c), the following uniform regulations published by the national institute of standards and technology (NIST), Gaithersburg, MD, in the 2009 edition of NIST handbook 130, titled "uniform laws and regulations in the areas of legal metrology and engine fuel quality, as adopted by the 93rd national conference on weights and measures 2008," are hereby adopted by reference and shall apply to weighing and measuring devices in the state: (a) "Uniform packaging and labeling regulation";

(b) "uniform regulation for the method of sale of commodities"; and

(c) "uniform engine fuels and automotive lubricants regulation," except for the following sections:

(1) 2.1, 2.1.1, and 2.1.2. The amendments to section 2, which consist of secs. 2.1, 2.1.1, 2.1.2, and 2.1.3, were adopted by NIST's 94th national conference on weights and measures in July 2009, and became effective January 1, 2010, are hereby adopted by reference;

(2) 2.15, which pertains to the testing standard for B100 biodiesel;

(3) 2.16, which pertains to the testing standard for biodiesel blends; and

(4) 3.2.6, which pertains to oxygenates.

Copies of the adopted material or the pertinent portions of it shall be available from the office of weights and measures, Kansas department of agriculture, Topeka, Kansas. (Authorized by K.S.A. 55-442 and K.S.A. 83-207; implementing K.S.A. 55-442 and K.S.A. 2009 Supp. 83-202; effective Jan. 18, 2002; amended Aug. 26, 2005; amended Feb. 8, 2008; amended Sept. 3, 2010.)

**99-25-12. Adoption by reference.** The document titled "checking the net contents of packaged goods, as adopted by the 89th national conference on weights and measures 2004," including the appendices, published by the national institute of standards and technology (NIST), Gaithersburg, MD in January 2005 as NIST handbook 133 is hereby adopted by reference. (Authorized by and implementing K.S.A. 83-207 and K.S.A. 2009 Supp. 83-202; effective Sept. 3, 2010.)

## Article 26.—FEES

**99-26-1. Fees.** (a) The following fees and other necessary and incidental expenses incurred shall be charged for requested services rendered by the secretary or the secretary's authorized representative in conjunction with the testing, proving, or evaluation of weights, measures, and devices, at the following rates:

(1) The testing and proving of mass, volume, length, and other standards by the metrology laboratory at the rate of $50.00 per hour or fraction thereof;

(2) the testing and proving of a grain hopper scale and any weights, measures, and other related devices at the rate of $50.00 per hour or fraction thereof; and

(3) conducting or assisting with an evaluation for a national conference on weights and measures certificate of conformance at the rate of $95.00 per hour or fraction thereof.

(b) In addition to the hourly rates specified in subsection (a), expenses incurred by personnel, including meals, lodging, transportation, and mileage to and from their duty station to the point of testing, equipment, and other necessary and incidental expenses, may be charged. (Authorized by K.S.A. 83-207 and K.S.A. 2008 Supp. 83-214; implementing K.S.A. 2008 Supp. 83-214; effective, T-83-25, Sept. 1, 1982; effective May 1, 1983; amended, T-99-11-14-90, Nov. 14, 1990; amended Jan. 14, 1990; amended June 9, 2000; amended Jan. 18, 2002; amended May 8, 2009.)

## Agency 100

# Kansas State Board of Healing Arts

*Articles*


100-11. FEES.
100-28a. PHYSICIAN ASSISTANTS.
100-29. PHYSICAL THERAPY.
100-49. PODIATRY.
100-54. OCCUPATIONAL THERAPY.
100-55. RESPIRATORY THERAPY.
100-69. ATHLETIC TRAINING.
100-72. NATUROPATHY.
100-73. RADIOLOGIC TECHNOLOGISTS.


### Article 11.—FEES

**100-11-1. Amount.** The following fees shall be collected by the board:

(a) Application for license ..... $ 300.00

(b)(1) Annual renewal of active or federally active license:

(A) Paper renewal ..... $ 330.00

(B) On-line renewal ..... $ 320.00

(2) Annual renewal of inactive license:

(A) Paper renewal ..... $ 150.00

(B) On-line renewal ..... $ 150.00

(3) Annual renewal of exempt license:

(A) Paper renewal ..... $ 150.00

(B) On-line renewal ..... $ 150.00

(c)(1) Conversion from inactive to active license ..... $ 175.00

(2) Conversion from exempt to active license ..... $ 175.00

(d)(1) Late renewal of active or federally active license:

(A) Paper late renewal ..... $ 350.00

(B) On-line late renewal ..... $ 339.00

(2) Late renewal of inactive license:

(A) Paper late renewal ..... $ 175.00

(B) On-line late renewal ..... $ 165.00

(3) Late renewal of exempt license:

(A) Paper late renewal ..... $ 175.00

(B) On-line late renewal ..... $ 165.00

(e) Institutional license ..... $ 200.00

(f) Biennial renewal of institutional license ..... $ 200.00

(g) Visiting clinical professor license ..... $ 150.00

(h) Annual renewal of visiting clinical professor license ..... $ 115.00

(i) Limited permit ..... $ 30.00

(j) Annual renewal of limited permit ..... $ 15.00

(k) Reinstatement of limited permit .. $ 30.00

(l) Visiting professor license ..... $ 25.00

(m) Postgraduate training permit ..... $ 50.00

(n) Reinstatement of cancelled license ..... $ 400.00

(o) Reinstatement of revoked license ..... $ 1000.00

(p) Temporary permit ..... $ 50.00

(q) Special permit ..... $ 30.00

(r) Certified statement of license ..... $ 15.00

(s) Duplicate license ..... $ 15.00

(t) Written verification of license or permit ..... $ 25.00

(Authorized by K.S.A. 65-2865; implementing K.S.A. 2008 Supp. 65-2809, K.S.A. 65-2852, and K.S.A. 65-28,125; effective Jan. 1, 1966; amended Jan. 1, 1970; amended Feb. 15, 1977; amended May 1, 1979; amended May 1, 1980; amended May 1, 1981; amended, T-83-33, Nov. 10, 1982; amended May 1, 1983; amended, T-85-50, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-42, Dec. 19, 1986; amended May 1, 1987; amended, T-88-11, May 18, 1987; amended May 1, 1988; amended, T-100-4-24-89, April 24, 1989; amended Aug. 21, 1989; amended June 24, 1991; amended, T-100-7-1-92, July 1, 1992; amended Aug. 10, 1992; amended Dec. 27, 1993; amended May 1, 1998; amended Aug. 4, 2000; amended, T-100-6-27-02, Aug. 1,

2002; amended Nov. 15, 2002; amended, T-100-4-27-04, April 27, 2004; amended July 23, 2004; amended Aug. 17, 2007; amended, T-100-10-16-08, Oct. 16, 2008; amended Feb. 13, 2009; amended May 21, 2010.)

## Article 28a.—PHYSICIAN ASSISTANTS

**100-28a-1. Fees.** The following fees shall be collected by the board:

(a) Application for license ..... $200.00
(b) Annual renewal of license:
(1) Paper renewal ..... $150.00
(2) On-line renewal ..... $150.00
(c) Late renewal of license:
(1) Paper late renewal ..... $215.00
(2) On-line late renewal ..... $208.00
(d) License reinstatement ..... $250.00
(e) Copy of license certificate ..... $15.00
(f) Certified statement of licensure .. $15.00
(g) Temporary license ..... $30.00

(Authorized by and implementing K.S.A. 2007 Supp. 65-28a03; effective, T-100-2-13-01, Feb. 13, 2001; effective June 1, 2001; amended Nov. 15, 2002; amended Nov. 19, 2004; amended Nov. 26, 2007; amended, T-100-10-16-08, Oct. 16, 2008; amended Feb. 13, 2009.)

**100-28a-2. Application.** (a) Each application for licensure as a physician assistant shall be submitted on a form provided by the board. The form shall contain the following information:

(1) The applicant's full name;

(2) the applicant's home address and, if different, the applicant's mailing address;

(3) the applicant's date and place of birth;

(4) the applicant's social security number, individual tax identification number, or nondriver identification number, if the applicant is advised that providing a social security number is voluntary pursuant to K.S.A. 74-139 and 74-148, and amendments thereto, and that if the social security number is provided, the agency may provide this number to the Kansas department of social and rehabilitation services for child support enforcement purposes and to the Kansas department of revenue's director of taxation;

(5) the issue date; state, territory, the District of Columbia, or other country of issuance; and the identifying number on any license, registration, or certification issued to the applicant to practice any health care profession;

(6) documentation of any prior acts constituting unprofessional conduct as defined in K.A.R. 100-28a-8;

(7) the applicant's daytime telephone number;

(8) the names of all educational programs recognized under K.A.R. 100-28a-3 that the applicant attended, including the program from which the applicant graduated, the degree awarded to the applicant, and the date of graduation;

(9) notarized certification that the applicant has completed a physician assistant program from a postsecondary school recognized under K.A.R. 100-28a-3;

(10) a list of all attempts to gain board certification recognized under K.A.R. 100-28a-4 and an official copy of the applicant's board certification; and

(11) a notarized release authorizing the board to receive any relevant information, files, or records requested by the board in connection with the application.

(b) Each applicant shall submit the following with the application:

(1) The fee required by K.A.R. 100-28a-1;

(2) an official transcript from an educational program approved by the board as provided in K.A.R. 100-28a-3 that specifies the degree awarded to the applicant;

(3) a verification from each state, country, territory, or the District of Columbia where the applicant has been issued any license, registration, or certification to practice any health care profession;

(4) a photograph of the applicant measuring two inches by three inches and showing the head and shoulder areas only. The photograph shall be taken within 90 days before the date of application; and

(5) evidence provided directly to the board from the national commission on certification of physician assistants that the applicant has passed the physician assistant national certifying examination.

(c) The applicant shall sign the application under oath and shall have the application notarized. (Authorized by and implementing K.S.A. 2008 Supp. 65-28a03; implementing K.S.A 65-28a04; effective, T-100-2-13-01, Feb. 13, 2001; effective June 1, 2001; amended Jan. 4, 2010.)

**100-28a-10. Supervision and direction; adequacy.** Direction and supervision of the physician assistant shall be considered to be adequate if the responsible physician meets all of the fol-

lowing requirements: (a) At least annually, reviews and evaluates the professional competency of the physician assistant;

(b) at least annually, reviews any drug prescription protocol and determines if any modifications, restrictions, or terminations are required. Each of these changes shall be conveyed to the physician assistant and set forth in all copies of the protocol required by K.A.R. 100-28a-9 to be maintained and provided;

(c) engages in the practice of medicine and surgery in this state;

(d) ensures that the physician assistant has a current license issued by the board. The responsible physician shall obtain a certified copy of the license or verification of licensure from the board;

(e) within 10 days, reports to the board any knowledge of disciplinary hearings, formal hearings, public or private censure, or other disciplinary action taken against the physician assistant by any state's licensure or registration authority or any professional association;

(f) within 10 days, reports to the board any litigation or the termination of responsibility by the responsible physician alleging conduct by the physician assistant that would constitute grounds for disciplinary action under the physician assistant licensure act;

(g) at least every 14 days, reviews all records of patients treated by the physician assistant and authenticates this review in the patient record;

(h) reviews patient records and authenticates the review in each patient record within 48 hours of treatment provided by the physician assistant if the treatment provided in an emergency exceeded the authority granted to the physician assistant by the responsible physician request form required by K.A.R. 100-28a-9;

(i) provides for a designated physician to provide supervision and direction on each occasion when the responsible physician is temporarily absent, is unable to be immediately contacted by telecommunication, or is otherwise unavailable at a time the physician assistant could reasonably be expected to provide professional services; and

(j) delegates to the physician assistant only those acts that constitute the practice of medicine and surgery that the responsible physician believes or has reason to believe can be competently performed by the physician assistant, based upon the physician assistant's background, training, capabilities, skill, and experience. (Authorized by K.S.A. 2008 Supp. 65-28a03; implementing K.S.A. 65-28a02; effective, T-100-2-13-01, Feb. 13, 2001; effective June 1, 2001; amended May 15, 2009.)

## Article 29.—PHYSICAL THERAPY

**100-29-1. Applications.** (a) Each applicant for licensure as a physical therapist or certification as a physical therapist assistant shall submit a completed application on a form provided by the board. The application shall include the following information in legible writing:

(1) The applicant's full name;

(2) the applicant's social security number, driver's license number, nondriver identification number, or individual tax identification number if the applicant is advised that providing a social security number is voluntary pursuant to K.S.A. 74-139 and 74-148, and amendments thereto, and that if the social security number is provided, the agency may provide this number to the Kansas department of social and rehabilitation services for child support enforcement purposes and to the Kansas department of revenue's director of taxation;

(3) the applicant's mailing address. If the applicant's mailing address is different from the applicant's residential address, the applicant shall also provide the residential address;

(4) the applicant's daytime telephone number;

(5) the applicant's date and place of birth;

(6) the names of all educational programs recognized under K.A.R. 100-29-2 that the applicant attended, including the program from which the applicant graduated, the degree awarded to the applicant, and the date of graduation;

(7) information regarding any licenses, registrations, or certifications issued to the applicant to practice any healthcare profession;

(8) information regarding any prior acts specified in K.S.A. 65-2912, and amendments thereto, that could constitute grounds for denial of the application;

(9) a notarized release authorizing the board to receive any relevant information, files, or records requested by the board in connection with the application; and

(10) the number of times the applicant has taken the examination required by the board for licensure or certification and the date that the applicant passed the examination.

(b) Each applicant shall submit the following with the application:

(1) The fee required by K.A.R. 100-29-7;

(2) an official transcript that specifies the degree awarded from an educational program recognized by the board under K.A.R. 100-29-2;

(3) a verification on a form provided by the board of each license, registration, or certification issued to the applicant by any state or the District of Columbia relating to any healthcare profession;

(4) a current photograph, three by four inches in size, of the applicant's head and shoulders taken within 90 days before the date the application is received by the board; and

(5) evidence provided directly to the board from the testing entity recognized and approved under K.A.R. 100-29-4 that the applicant has passed the examination.

(c) The applicant shall sign the application under oath and have the application notarized.

(d) The physical therapy advisory council shall consider the application from each person who has not been engaged in an educational program recognized by the board and has not engaged in the practice of physical therapy during the five years preceding the date of the application. The council shall then submit its written recommendation to the board. (Authorized by K.S.A. 2009 Supp. 65-2911; implementing K.S.A. 2009 Supp. 65-2903, 65-2906, and 65-2912; effective March 21, 1997; amended May 26, 2006; amended May 14, 2010.)

**100-29-3a. Examination of written and oral English communication.** (a) For each applicant who received training in a school at which English was not the language of instruction, the examinations required and approved by the board to demonstrate the ability to communicate in written and oral English shall be the test of English as a foreign language (TOEFL), the test of written English (TWE), and the test of spoken English (TSE), as developed and administered by the educational testing service (ETS).

(b) To successfully pass the test of English as a foreign language, each applicant who is required to take this examination shall attain a score of at least 24 in writing, 26 in speaking, 21 in reading, and 18 in listening.

(c) To successfully pass the test of spoken English, each applicant who is required to take this examination shall attain a score of at least 5.0.

(d) To successfully pass the test of written English, each applicant who is required to take this examination shall attain a score of at least 4.5. (Authorized by K.S.A. 2008 Supp. 65-2911; implementing K.S.A. 2008 Supp. 65-2906 and 65-2909; effective Sept. 11, 1998; amended Jan. 4, 2010.)

**100-29-16. Supervision of physical therapist assistants and support personnel.** (a) Each physical therapist shall be responsible for the following:

(1) The physical therapy services provided to a patient or client by any physical therapist assistant working under the direction of the physical therapist; and

(2) the tasks relating to the physical therapy services provided to a patient or client by any support personnel working under the personal supervision of the physical therapist or by the physical therapist assistant acting under the direction of the physical therapist.

(b) Each physical therapist and each physical therapist assistant acting under the direction of a physical therapist shall provide personal supervision of the support personnel during any session in which support personnel are utilized to carry out a task.

(1) "Personal supervision" shall mean oversight by a physical therapist or by a physical therapist assistant acting under the direction of the physical therapist who is on-site and immediately available to the support personnel.

(2) "Support personnel" shall mean any person other than a physical therapist or physical therapist assistant. Support personnel may be designated as or describe themselves as physical therapy aides, physical therapy technicians, physical therapy paraprofessionals, rehabilitation aides, or rehabilitation technicians.

(3) "Task" shall mean an activity that does not require the formal education or training of a physical therapist or a physical therapist assistant.

(c) The determination by the physical therapist to utilize a physical therapist assistant for selected components of physical therapy interventions shall require the education, expertise, and professional judgment of the physical therapist. Before delegating an intervention by a physical therapist to a physical therapist assistant and before delegating a designated task to support personnel, the physical therapist shall consider the following:

(1) The education, training, experience, and skill level of the physical therapist assistant;

(2) the complexity and acuteness of the patient's or client's condition or health status;

(3) the predictability of the consequences;

(4) the setting in which the care is being delivered to the patient or client; and

(5) the frequency of reexamination of the patient or client.

(d) Only a physical therapist may perform any of the following:

(1) Interpretation of a referral;

(2) performance and documentation of an initial examination, testing, evaluation, diagnosis, and prognosis;

(3) development or modification of a plan of care that is based on a reexamination of the patient or client that includes the physical therapy goals for intervention;

(4) determination of the qualifications of support personnel performing an assigned task;

(5) delegation of and instruction about the service to be rendered by the physical therapist assistant;

(6) timely review of documentation, reexamination of the patient or client, and revision of the plan of care when indicated;

(7) establishment and documentation of the discharge plan and discharge summary; and

(8) oversight of all documentation for services, including documents for billing, rendered to each patient or client under the care of the physical therapist.

(e) In all practice settings, the performance of selected interventions by the physical therapist assistant and the delegation of designated tasks to support personnel shall be consistent with the safe and legal practice of physical therapy and shall be based on the following factors:

(1) The complexity and acuteness of the patient's or client's condition or health status;

(2) the physical therapist's proximity and accessibility to the patient or client;

(3) the supervision available for all emergencies or critical events;

(4) the type of setting in which the physical therapy intervention is provided;

(5) the ability of the physical therapist assistant to perform the selected interventions or the support personnel to perform designated tasks; and

(6) an assessment by the physical therapist of the ability of the support personnel to perform designated tasks.

(f) Except as specified in this subsection, a physical therapist shall not have more than four physical therapist assistants working concurrently under the direction of that physical therapist. A request by a physical therapist to supervise additional physical therapist assistants may be granted by the board if it finds that significant hardship to the health and welfare of the community will occur if the physical therapist's request to supervise more than four physical therapist assistants is not granted.

(g) Each physical therapist wishing to provide personal supervision to more than four physical therapist assistants in a clinic or hospital setting shall provide a written and signed request to the physical therapy council with the following information:

(1) The name of each physical therapist assistant to whom the physical therapist proposes to provide personal supervision;

(2) the reason for the request; and

(3) a written statement from the clinic or hospital director documenting the hardship and the plan for alleviating future staffing shortages of physical therapists.

(h) The physical therapy council shall review each request granted by the board pursuant to subsection (f) at least every six months to determine whether a significant hardship to the health and welfare of the community will exist if the request is no longer granted. The physical therapy council shall prepare and submit a written recommendation of each review to the board. A determination of whether the exemption should be renewed for another six-month period shall be made by the board at the recommendation of the physical therapy council.

(i) Failure to meet the requirements of this regulation shall constitute unprofessional conduct. (Authorized by K.S.A. 2008 Supp. 65-2911; implementing K.S.A. 2008 Supp. 65-2912; effective July 14, 2006; amended July 17, 2009.)

## Article 49.—PODIATRY

**100-49-4. Fees.** The following fees shall be collected by the board:

(a) Application for license ..... $300.00

(b) Examination ..... $450.00

(c) (1) Annual renewal of active or federally active license:

(A) Paper renewal ..... $330.00

(B) On-line renewal ..... $320.00

(2) Annual renewal of inactive license:

(A) Paper renewal ..... $150.00

(B) On-line renewal .....$150.00

(3) Annual renewal of exempt license:

(A) Paper renewal ..... $150.00

(B) On-line renewal ..... $150.00

(d) (1) Conversion from exempt to active license ..... $175.00

(2) Conversion from inactive to active license ..... $175.00

(e) (1) Late renewal of active or federally active license:

(A) Paper late renewal ..... $350.00

(B) On-line late renewal ..... $339.00

(2) Late renewal of inactive license:

(A) Paper late renewal ..... $175.00

(B) On-line late renewal ..... $165.00

(3) Late renewal of exempt license:

(A) Paper late renewal ..... $175.00

(B) On-line late renewal ..... $165.00

(f) Temporary license ..... $50.00

(g) Duplicate license ..... $15.00

(h) Temporary permit ..... $50.00

(i) Certified statement of license ..... $15.00

(j) Postgraduate permit ..... $50.00

(k) Reinstatement of revoked license ..... $1,000.00

(l) Reinstatement of canceled license ..... $300.00

(m) Written verification of license or permit ..... $25.00

(Authorized by K.S.A. 2009 Supp. 65-2012 and K.S.A. 65-2013; implementing K.S.A. 2009 Supp. 65-2012; effective May 1, 1980; amended May 1, 1981; amended May 1, 1983; amended May 1, 1984; amended May 1, 1987; amended April 24, 1989; amended Aug. 21, 1989; amended, T-100-12-28-89, Dec. 28, 1989; amended April 9, 1990; amended Dec. 27, 1993; amended May 1, 1998; amended Aug. 4, 2000; amended, T-100-6-27-02, Aug. 1, 2002; amended Nov. 15, 2002; amended Aug. 13, 2004; amended Aug. 17, 2007; amended, T-100-6-2-09, June 2, 2009; amended Sept. 11, 2009; amended May 21, 2010.)

## Article 54.—OCCUPATIONAL THERAPY

**100-54-1. Application.** (a) Each applicant for licensure as an occupational therapist or occupational therapy assistant shall submit the application on a form provided by the board. The form shall include the following information in legible writing:

(1) The applicant's full name;

(2) the applicant's social security number, nondriver identification number, or individual tax identification number if the applicant is advised that providing a social security number is voluntary pursuant to K.S.A. 74-139 and 74-148, and amendments thereto, and that if the social security number is provided, the agency may provide this number to the Kansas department of social and rehabilitation services for child support enforcement purposes and to the Kansas department of revenue's director of taxation;

(3) the applicant's mailing address. If the applicant's mailing address is different from the applicant's residential address, the applicant shall also provide the residential address;

(4) the applicant's daytime telephone number;

(5) the applicant's date and place of birth;

(6) the names of all educational programs recognized under K.A.R. 100-54-2 that the applicant attended, including the program from which the applicant graduated, the degree awarded to the applicant, and the date of graduation;

(7) information regarding licenses, registrations, or certifications issued to the applicant to practice any healthcare profession;

(8) information regarding any prior acts that could constitute grounds for denial of the application, as specified in K.S.A. 65-5410 and amendments thereto;

(9) a notarized release authorizing the board to receive any relevant information, files, or records requested by the board in connection with the application; and

(10) certification that the applicant has completed an occupational therapy program or occupational therapy assistant program from a postsecondary school recognized under K.A.R. 100-54-2.

(b) Each applicant shall submit the following with the application:

(1) The fee required by K.A.R. 100-54-4;

(2) an official transcript from an educational program recognized by the board under K.A.R. 100-54-2 that specifies the degree awarded to the applicant;

(3) a verification on a form provided by the board of each license, registration, or certification issued to the applicant by any state or the District of Columbia relating to any healthcare profession;

(4) a current photograph of the applicant taken within 90 days of the date the application is received by the board; and

(5) the results of a written examination recognized and approved by the board under K.A.R. 100-54-3, which shall be provided directly to the board from the testing entity.

(c) The applicant shall sign the application under oath and have the application notarized.

(d) The occupational therapist council shall consider every application from persons who have been neither engaged in an educational program recognized by the board nor engaged in the practice of occupational therapy during the five years preceding the date of the application. The council shall then make its recommendation to the board. (Authorized by K.S.A. 65-5405; implementing K.S.A. 65-5404, K.S.A. 65-5406, and K.S.A. 2008 Supp. 65-5410; effective, T-88-17, July 1, 1987; effective May 1, 1988; amended Jan. 15, 1999; amended Sept. 23, 2005; amended Nov. 20, 2009.)

**100-54-8. Continuing education; expired, canceled, and revoked licenses.** (a) If the license has expired but has not been canceled, no continuing education shall be required in addition to the continuing education that would have been necessary if the license had been renewed before its expiration.

(b) Each applicant who wishes to reinstate a license that has been canceled shall submit proof of continuing education as follows:

(1) If the applicant has continuously held an active license in another state or the District of Columbia since the date on which the Kansas license was canceled or the applicant currently holds a license that has been active for at least two years in any state that has licensing and continuing education requirements at least as strict as those of Kansas, the applicant shall submit proof of the applicant's current license, registration, or certification from that jurisdiction.

(2) If the time since the license was canceled has been one year or less, no continuing education in addition to the continuing education that would have been necessary if the license had been renewed before cancellation shall be required.

(3) If the time since the license was canceled has been more than one year but less than two years, the applicant shall complete a minimum of 20 contact hours.

(4) If the time since the license was canceled has been at least two years but less than three years, the applicant shall complete 40 contact hours.

(5) If the time since the license was canceled has been at least three years or the applicant has not held an active license in another state that has licensing and continuing education requirements at least as strict as those of Kansas, the applicant shall complete an educational program related to continued competency based on a written recommendation by the occupational therapist council and approved by the board.

(c) An occupational therapist or an occupational therapy assistant whose license has been reinstated within one year of a renewal date when evidence of continuing education must be submitted shall not be required to submit evidence of satisfactory completion of a program of continuing education for that first renewal period. Each licensee whose license has been reinstated for more than one year but less than two years from a renewal date when continuing education must be submitted shall be required to submit evidence of satisfactory completion of at least 20 contact hours of continuing education.

(d) Each applicant seeking reinstatement of a revoked license shall be required to successfully complete a program approved by the board. (Authorized by K.S.A. 65-5405; implementing K.S.A. 2008 Supp. 65-5412; effective, T-88-17, July 1, 1987; effective May 1, 1988; amended Jan. 15, 1999; amended Nov. 21, 2003; amended Sept. 23, 2005; amended July 6, 2007; amended Nov. 20, 2009.)

## Article 55.—RESPIRATORY THERAPY

**100-55-1. Application.** (a) Each applicant for licensure as a respiratory therapist shall submit a completed application on a form provided by the board. The application shall contain the following information in legible writing:

(1) The applicant's full name;

(2) the applicant's mailing address. If the applicant's mailing address is different from the applicant's residential address, the applicant shall also provide the residential address;

(3) the applicant's social security number, driver's license number, nondriver identification number, or individual tax identification number if the applicant is advised that providing a social security number is voluntary pursuant to K.S.A. 74-139 and 74-148, and amendments thereto, and that if the social security number is provided, the agency may provide this number to the Kansas department of social and rehabilitation services for child support enforcement purposes and to the Kansas department of revenue's director of taxation;

(4) information on any licenses, registrations, or

certifications issued to the applicant to practice any health care profession;

(5) information on any prior acts constituting unprofessional conduct, as defined in K.A.R. 100-55-5, that could constitute grounds for denial of the application;

(6) the applicant's daytime telephone number;

(7) the applicant's date and place of birth;

(8) the name of each educational program recognized under K.A.R. 100-55-2 that the applicant attended, including the program from which the applicant graduated, the degree awarded to the applicant, and the date of graduation;

(9) the number of times the applicant has taken the examination required by the board for licensure and the date that the applicant passed the examination; and

(10) a notarized release authorizing the board to receive any relevant information, files, or records requested by the board in connection with the application.

(b) Each applicant shall submit the following with the application:

(1) The fee required by K.A.R. 100-55-4;

(2) an official transcript that specifies the degree awarded from an educational program recognized by the board under K.A.R. 100-55-2;

(3) a verification on a form provided by the board of each license, registration, or certification issued to the applicant by any state or the District of Columbia relating to any health care profession;

(4) a current photograph, two by three inches in size, of the applicant's head and shoulders taken within 90 days before the date the application is received by the board; and

(5) evidence provided directly to the board from the testing entity recognized and approved under K.A.R. 100-55-3 that the applicant has passed the examination.

(c) The applicant shall sign the application under oath and have the application notarized. (Authorized by K.S.A. 65-5505; implementing K.S.A. 65-5506; effective, T-88-17, July 1, 1987; effective May 1, 1988; amended Jan. 3, 1997; amended June 30, 2000; amended June 4, 2010.)

**100-55-7. Continuing education; license renewal.** (a) Each licensee shall submit documented evidence of completion of at least 12 contact hours of continuing education since April 1 of the previous year, before or with the request for renewal.

(b) Any licensee who suffered an illness or injury that made it impossible or extremely difficult to reasonably obtain the required contact hours may be granted an extension of not more than six months.

(c) Each respiratory therapist initially licensed after September 30 and before the following March 31 shall be exempt from the continuing education required by subsection (a) for the first renewal period.

(d) A contact hour shall be 50 minutes of instruction or its equivalent.

(e) The purpose of continuing education shall be to provide evidence of continued competency in the advancing art and science of respiratory therapy. All program objectives, curricular content, presenter qualifications, and outcomes shall be subject to review. Contact hours shall be determined based on program content, outcomes, and participant involvement.

(f) Continuing education shall be acquired from the following:

(1) Offerings approved by the American association of respiratory care. Any licensee may obtain all contact hours from any continuing education offerings approved by the American association of respiratory care and its state affiliates, subject to the limitations specified in paragraphs (f)(2) through (f)(8).

(2) Seminars and symposiums. At least six contact hours shall be obtained each reporting year from seminars or symposiums that provide for direct interaction between the speakers and the participants. A seminar shall mean directed advanced study or discussion in a specific field of interest. A symposium shall mean a conference of more than a single session organized for the purpose of discussing a specific subject from various viewpoints and by various speakers.

(3) Nontraditional or alternative educational programs. A nontraditional or alternative educational program shall be defined as one that is not presented in the typical conference setting. Educational programs may be provided by any print medium or presented through the internet or other electronic medium. The licensee shall submit proof of successful completion of a test administered as part of the nontraditional or alternative educational program. A maximum of six contact hours each reporting year may be obtained from nontraditional or alternative educational programs.

(4) Clinical instruction. Clinical instruction shall mean the education and evaluation of a respira-

tory therapy student in the clinical setting. A maximum of three contact hours may be given for clinical instruction.

(5) Presentations of a seminar or a nontraditional or alternative program. Each licensee who presents a continuing education seminar or a nontraditional or alternative educational program shall receive two contact hours for each hour of presentation. No credit shall be granted for any subsequent presentations on the same subject content.

(6) Academic coursework. Successful completion of academic coursework shall mean obtaining a grade of at least C or the equivalent in any courses on respiratory care or other health-related field of study in a bachelor's degree program or higher educational degree program. One credit hour of academic coursework shall be equal to one contact hour of continuing education. A maximum of six contact hours may be obtained through academic coursework each reporting year.

(7) Advanced lifesaving courses. Contact hours shall be restricted to first-time attendees of advanced lifesaving courses and the associated instructor courses. Advanced lifesaving courses shall include neonatal resuscitation provider (NRP), pediatric advanced life support (PALS), neonatal advanced life support (NALS), and advanced cardiac life support (ACLS).

(8) Voluntary recredentialing. Each licensee who completes voluntary recredentialing shall receive the number of contact hours approved by the American association for respiratory care.

(g) The following shall not be eligible for continuing education credit:

(1) Learning activities in the work setting designed to assist the individual in fulfilling employer requirements, including in-service education and on-the-job training; and

(2) basic life support courses and cardiopulmonary resuscitation courses. (Authorized by K.S.A. 65-5505; implementing K.S.A. 2008 Supp. 65-5512; effective, T-88-17, July 1, 1987; effective May 1, 1988; amended Jan. 3, 1997; amended June 30, 2000; amended July 17, 2009; amended May 21, 2010.)

**100-55-9. Special permits.** (a) Each student who holds a special permit shall be identified as a student respiratory therapist or "student R.T." by a name tag that includes the student's job title.

(b) A special permit shall be valid for a period not to exceed 24 months and shall not be extended without additional proof that the student continues to be enrolled in an approved school of respiratory therapy.

(c) During February of each year, each student who holds a special permit shall provide the following to the board:

(1) Verification of current enrollment in an approved school of respiratory therapy; and

(2) a statement of the anticipated graduation date.

(d) Each special permit issued to a student who fails to meet the requirements under subsection (c) shall expire on March 31 of the year in which the verification and statement were to be provided.

(e) Each applicant for a special permit shall have a task proficiency list verified and submitted directly to the board by the school of respiratory therapy. The task proficiency list may be updated at the end of each session by the school of respiratory therapy. Each holder of a special permit shall perform only those tasks verified on the most recent task proficiency list that has been submitted directly to the board.

(f) Before engaging in any clinical assignments, each holder of a special permit shall present the current task proficiency list to the employer.

(g) Each licensed respiratory therapist responsible for the supervision of a student holding a special permit shall meet the requirements for supervision specified in K.A.R. 100-55-11(d). (Authorized by K.S.A. 65-5505; implementing K.S.A. 65-5508; effective Jan. 3, 1997; amended June 30, 2000; amended May 23, 2003; amended May 15, 2009.)

## Article 69.—ATHLETIC TRAINING

**100-69-10. License renewal; continuing education.** (a) As a condition of renewal, each licensed athletic trainer shall submit, in addition to the annual application for renewal of licensure, evidence of satisfactory completion of a minimum of 20 hours of continuing education within the preceding year.

(b) Any licensee who suffered an illness or injury during the 12-month period before the expiration date of the license that made it impossible or extremely difficult to reasonably obtain the required continuing education hours may be granted an extension of not more than six months.

(c) Each athletic trainer initially licensed within

one year of the expiration date of the license shall be exempt from the continuing education required by subsection (a) for that first renewal period.

(d) All continuing education shall be related to the field of athletic training and shall be presented by providers approved by the board.

(e) One hour shall be 60 minutes of instruction or the equivalent.

(f) All continuing education shall meet the requirements of subsection (g).

(g) The categories of continuing education experiences shall be the following:

(1) Category A. The number of hours for all category A continuing education experiences shall be granted upon receipt of documented evidence of attendance or documented evidence of satisfactory completion issued by a national, state, or local organization with standards that are at least as stringent as the standards of the board. Category A continuing education experiences shall include the following:

(A) Symposium. "Symposium" shall mean a conference of more than a single session organized for the purpose of discussing a specific subject from various viewpoints and by various speakers.

(B) Seminar. "Seminar" shall mean directed advanced study or discussion in a specific field of interest.

(C) Workshop. "Workshop" shall mean a series of meetings designed for intensive study, work, or discussion in a specific field of interest.

(D) Conference. "Conference" shall mean a formal meeting of a number of people for a discussion in a specific field of interest.

(E) Home study course. "Home study course" shall mean a correspondence course designed for advanced study in a specific field of interest.

(2) Category B. Category B continuing education experiences shall include the following:

(A) Leadership activities. The number of hours granted for leadership activities shall be the following:

(i) 10 hours for a speaker at a clinical symposium where the primary audience is allied health care professionals;

(ii) five hours for a panelist at a clinical symposium where the primary audience is allied health care professionals;

(iii) 20 hours for participating in the United States Olympic committee's two-week volunteer training center; and

(iv) five hours for serving as an examiner or patient model for an examination approved by the board for athletic trainers.

(B) Publication activities. The number of hours granted for writing a professional publication shall be the following:

(i) Five hours to author an article in a non-refereed journal;

(ii) 15 hours to author an article in a refereed journal;

(iii) 10 hours to coauthor an article in a refereed journal;

(iv) 40 hours to author a published textbook;

(v) 20 hours to coauthor a published textbook;

(vi) 10 hours for being a contributing author of a published textbook;

(vii) 10 hours to author a refereed or peer-reviewed poster presentation; and

(viii) five hours to coauthor a poster presentation.

(3) Category C. The number of hours assigned to category C continuing education experiences shall be the following:

(A) 10 hours for each credit hour for postcertification education; and

(B) classes in one of the six domains of athletic training:

(i) Prevention of athletic injuries;

(ii) recognition, evaluation, and assessment of athletic injuries;

(iii) treatment, rehabilitation, and reconditioning of athletic injuries;

(iv) health care administration;

(v) professional development and responsibility; and

(vi) immediate care of athletic injuries.

(4) Category D. Five hours shall be granted for satisfactory completion of CPR courses provided by the American red cross, American heart association, national safety council, and the international affiliates of each of these organizations.

(5) Category E. The number of hours granted upon receipt of documented evidence of satisfactory completion for category E continuing education experiences shall be the following:

(A) One hour shall be granted for each hour of attendance at continuing education program activities that are not approved by the board for category A or category B, but that are related to specific athletic training and sports medicine topics.

(B) One hour shall be granted for each hour of listening to continuing education program audio-

tapes or other multimedia products related to specific athletic training and sports medicine topics.

(h) Continuing education requirements shall be obtained by participation in two or more of the categories listed in subsection (g).

(i) No credit shall be granted for making any repeated presentations of the same subject matter.

(j) No credit shall be granted for reiteration of material or information obtained from attendance at a continuing education program.

(k) To provide evidence of satisfactory completion of continuing education, the following shall be submitted to the board:

(1) Documented evidence of attendance at category A and category E activities;

(2) proof of participation in category B activities, which shall include a copy of any professional publication or any presentation, or a certification of leadership activity;

(3) receipt and personal verification of self-instruction from home study courses;

(4) a copy of each transcript or grade report for category C activities;

(5) a copy of the CPR card or certificate for a category D course; and

(6) personal verification of listening to or viewing continuing education program videotapes, audiotapes, or other multimedia products. (Authorized by K.S.A. 2007 Supp. 65-6905; implementing K.S.A. 2007 Supp. 65-6905 and 65-6909; effective Jan. 9, 1998; amended Nov. 15, 2002; amended Sept. 9, 2005; amended May 15, 2009.)

**100-69-12. Application.** (a) Each applicant for licensure as an athletic trainer shall submit a completed application on a form provided by the board. The application shall include the following information in legible writing:

(1) The applicant's full name;

(2) the applicant's mailing address. If the applicant's mailing address is different from the applicant's residential address, the applicant shall also provide the residential address;

(3) the applicant's social security number, driver's license number, nondriver identification number, or individual tax identification number if the applicant is advised that providing a social security number is voluntary pursuant to K.S.A. 74-139 and 74-148, and amendments thereto, and that if the social security number is provided, the agency may provide this number to the Kansas department of social and rehabilitation services for child support enforcement purposes and to the Kansas department of revenue's director of taxation;

(4) information on any licenses, registrations, or certifications issued to the applicant to practice any health care profession;

(5) information on any prior acts constituting unprofessional conduct, as defined in K.A.R. 100-69-7, that could constitute grounds for denial of the application;

(6) the applicant's daytime telephone number;

(7) the applicant's date and place of birth;

(8) the name of each educational program recognized under K.A.R. 100-69-1 that the applicant attended, including the program from which the applicant graduated, the degree awarded to the applicant, and the date of graduation;

(9) the number of times the applicant has taken the examination required by the board for licensure and the date that the applicant passed the examination; and

(10) a notarized release authorizing the board to receive any relevant information, files, or records requested by the board in connection with the application.

(b) Each applicant shall submit the following with the application:

(1) The fee required by K.A.R. 100-69-5;

(2) an official transcript that specifies the degree awarded from an educational program recognized by the board under K.A.R. 100-69-1;

(3) a verification on a form provided by the board of each license, registration, or certification issued to the applicant by any state or the District of Columbia relating to any health care profession;

(4) a current photograph, two by three inches in size, of the applicant's head and shoulders taken within 90 days before the date the application is received by the board; and

(5) evidence provided directly to the board from the testing entity recognized and approved under K.A.R. 100-69-3 that the applicant has passed the examination.

(c) The applicant shall sign the application under oath and have the application notarized. (Authorized by K.S.A. 2008 Supp. 65-6905; implementing K.S.A. 2008 Supp. 65-6906; effective June 4, 2010.)

## Article 72.—NATUROPATHY

**100-72-1. Fees.** The following fees shall be collected by the board:

(a) Application for registration ..... $165.00
(b) registration renewal ..... $125.00
(c) registration late renewal additional fee ..... $20.00
(d) registration reinstatement ..... $155.00
(e) certified copy of registration ..... $15.00
(f) temporary registration ..... $30.00
(g) acupuncture certification ..... $20.00

(Authorized by K.S.A. 65-7203; implementing K.S.A. 65-7207 and K.S.A. 65-7213; effective, T-100-1-2-03, Jan. 2, 2003; effective May 23, 2003; amended, T-100-10-16-08, Oct. 16, 2008; amended Feb. 13, 2009.)

**100-72-2. Application.** (a) Each individual who desires to register as a naturopathic doctor shall submit an application on a form provided by the board. The form shall contain the following information:

(1) The applicant's full name;

(2) the applicant's social security number, individual tax identification number, driver's license number, or nondriver identification number, if the applicant is advised that providing a social security number is voluntary pursuant to K.S.A. 74-139 and 74-148, and amendments thereto, and that if the social security number is provided, the agency may provide this number to the Kansas department of social and rehabilitation services for child support enforcement purposes and to the Kansas department of revenue's director of taxation;

(3) the applicant's mailing address. If the applicant's mailing address is different from the applicant's residential address, the applicant shall also provide the residential address;

(4) the applicant's date and place of birth;

(5) the applicant's daytime phone number;

(6) the names of all educational programs recognized under K.A.R. 100-72-4 that the applicant attended, including the program from which the applicant graduated, the degree awarded to the applicant, and the date of graduation;

(7) notarized certification that the applicant has completed a program in naturopathy from a postsecondary school recognized under K.A.R. 100-72-4;

(8) the issue date; state, territory, the District of Columbia, or other country of issuance; and the identifying number on any license, registration, or certification issued to the applicant to practice any health care profession;

(9) documentation of any prior acts constituting unprofessional conduct as defined in K.S.A. 65-7208, and amendments thereto, and K.A.R. 100-72-3;

(10) the number of times the applicant has taken the examination required by the board for licensure and the date the applicant passed the examination; and

(11) a notarized release authorizing the board to receive any relevant information, files, or records requested by the board in connection with the application.

(b) Each applicant shall submit the following with the application:

(1) The fee required by K.A.R. 100-72-1;

(2) an official transcript for the applicant from an educational program approved by the board, as provided in K.A.R. 100-72-4, that specifies the degree awarded to the applicant;

(3) a verification from each state, country, territory, or the District of Columbia where the applicant has been issued any license, registration, or certification to practice any health care profession;

(4) a photograph of the applicant measuring two inches by three inches and showing the head and shoulder areas only. The photograph shall be taken within 90 days before the date of application; and

(5) evidence provided directly to the board from the testing entity recognized and approved under K.A.R. 100-72-5 that the applicant has passed the examination.

(c) The applicant shall sign the application under oath and shall have the application notarized. (Authorized by K.S.A. 65-7203; implementing K.S.A. 65-7203, 65-7204, and K.S.A. 2008 Supp. 65-7208; effective, T-100-1-2-03, Jan. 2, 2003; effective May 23, 2003; amended June 4, 2010.)

**100-72-7. Registration renewals; continuing education.** (a) Each registration initially issued or renewed by the board on or after January 1, 2009 and through December 31, 2009 shall expire on December 31, 2010.

(b) Each registration initially issued or renewed by the board on or after January 1, 2010 shall expire on December 31 of the year of issuance.

(c) Each registered naturopath who wishes to renew the registration shall meet the following requirements:

(1) Submit an application for renewal of registration and the registration renewal fee; and

(2) for the second and each subsequent renewal

and for each renewal after reinstatement, submit evidence of satisfactory completion of at least 50 hours of continuing education since the registration was last renewed or was reinstated, whichever is more recent. At least 20 of these hours shall be taken in a professionally supervised setting, and not more than 30 of these hours may be taken in a non-supervised setting.

(d) Continuing education activities shall be designed to maintain, develop, or increase the knowledge, skills, and professional performance of persons registered to practice as a naturopathic doctor. All continuing education shall deal primarily with the practice of naturopathy. Each continuing education activity that occurs in a professionally supervised setting shall be presented by a provider.

(e) One hour shall mean 60 minutes of instruction or the equivalent.

(f) The content of each continuing education activity shall have a direct bearing on patient care.

(g) An activity occurring in a "professionally supervised setting" shall mean any of the following:

(1) Lecture, which means a discourse given before an audience for instruction;

(2) panel discussion, which means the presentation of a number of views by several professional individuals on a given subject;

(3) workshop, which means a series of meetings designed for intensive study, work, or discussion in a specific field of interest;

(4) seminar, which means directed, advanced study or discussion in a specific field of interest;

(5) symposium, which means a conference that consists of more than a single session and is organized for the purpose of discussing a specific subject from various viewpoints and by various speakers; or

(6) other structured, interactive, and formal learning methods approved by the board on a case-by-case basis.

(h) An activity occurring in a "non-supervised setting" shall mean any of the following:

(1) Teaching health-related courses to practicing naturopathic doctors or other health professionals;

(2) presenting a scientific paper to an audience of health professionals, or publishing a scientific paper in a medical or naturopathic journal;

(3) engaging in self-instruction, including journal reading and the use of television and other audiovisual materials;

(4) receiving instruction from a medical or naturopathic consultant;

(5) participating in programs concerned with review and evaluation of patient care;

(6) spending time in a self-assessment examination, not including examinations and quizzes published in journals; or

(7) engaging in meritorious learning experiences that provide a unique educational benefit to the registrant.

(i) To provide evidence of satisfactory completion of continuing education, each registrant shall submit the following to the board, as applicable:

(1) Documented evidence of attendance at each activity occurring in a professionally supervised setting; and

(2) proof of participation in each activity occurring in a non-supervised setting, which shall include a copy of any professional publication, the certification of a teaching activity, or the personal verification of any other activity occurring in a non-supervised setting. (Authorized by K.S.A. 65-7203; implementing K.S.A. 2007 Supp. 65-7209; effective, T-100-1-2-03, Jan. 2, 2003; effective Nov. 14, 2003; amended March 27, 2009.)

## Article 73.—RADIOLOGIC TECHNOLOGISTS

**100-73-1. Fees.** The following fees shall be collected by the board:

(a) Application for license ..... $60.00
(b) Annual renewal of license:
(1) Paper renewal ..... $50.00
(2) On-line renewal ..... $45.00
(c) Late renewal of license:
(1) Paper late renewal ..... $55.00
(2) On-line late renewal ..... $50.00
(d) Reinstatement of cancelled license ..... $60.00
(e) Certified copy of license ..... $15.00
(f) Temporary license ..... $25.00
(g) Reinstatement of revoked license ..... $100.00

(Authorized by K.S.A. 2008 Supp. 65-7312; implementing K.S.A. 2008 Supp. 65-7308; effective, T-100-7-1-05, July 1, 2005; effective Sept. 23, 2005; amended Aug. 17, 2007; amended, T-100-6-2-09, June 2, 2009; amended Sept. 11, 2009.)

**100-73-2. Application.** (a) Each individual for licensure as a radiologic technologist shall sub-

mit an application on a form provided by the board. The form shall contain the following information in legible writing:

(1) The applicant's full name;

(2) the applicant's social security number, driver's license number, nondriver identification number, or individual tax identification number if the applicant is advised that providing a social security number is voluntary pursuant to K.S.A. 74-139 and 74-148, and amendments thereto, and that if the social security number is provided, the agency may provide this number to the Kansas department of social and rehabilitation services for child support enforcement purposes and to the Kansas department of revenue's director of taxation;

(3) the applicant's residence address and, if different from the residence address, the applicant's current mailing address;

(4) the applicant's date and place of birth;

(5) the names of all educational programs recognized under K.A.R. 100-73-2 that the applicant attended, including the program from which the applicant graduated, the degree received, and the date of graduation;

(6) information on whether the applicant is currently certified or registered by any national organization; and

(7) for each license, registration, or certification issued to the applicant to practice any health care profession, the following information:

(A) The date of issuance;

(B) the identifying number on the license, registration, or certification; and

(C) the place of issuance, specifying the state, country, or territory, or the District of Columbia; and

(8) documentation of any prior acts constituting unprofessional conduct as defined in K.S.A. 65-7313, and amendments thereto, and K.A.R. 100-73-6.

(b)(1) Each applicant shall submit the following with the application:

(A) The fee required by K.A.R. 100-73-1;

(B) an official transcript for the applicant from an educational program approved by the board, as specified in K.A.R. 100-73-3, that indicates the degree awarded to the applicant;

(C) a verification from each state or jurisdiction where the applicant has been issued any license, registration, or certification to practice any health care profession; and

(D) a photograph of the applicant measuring two inches by three inches and showing the head and shoulder areas only. The photograph shall be taken within 90 days of submission of the application for licensure.

(2) In addition to meeting the requirements specified in paragraph (1) of this subsection, each applicant shall have the testing entity specified in K.A.R. 100-73-4 provide evidence directly to the board that the applicant has passed the national certifying examination.

(c) Each applicant shall sign the application under oath and shall have the application notarized. (Authorized by K.S.A. 2009 Supp. 65-7312; implementing K.S.A. 2009 Supp. 65-7305; effective, T-100-7-1-05, July 1, 2005; effective Sept. 23, 2005; amended May 14, 2010.)

## Agency 102

# Behavioral Sciences Regulatory Board

*Articles*

102-1. Certification of Psychologists.
102-2. Licensing of Social Workers.
102-3. Professional Counselors; Fees.
102-4. Master's Level Psychologists.
102-5. Licensing of Marriage and Family Therapists.
102-6. Registered Alcohol and Other Drug Abuse Counselors.
102-7. Licensing of Addiction Counselors.

### Article 1.—CERTIFICATION OF PSYCHOLOGISTS

**102-1-8a. Renewal audit.** (a) A random audit of the continuing education documentation for 10 percent of the psychologist licenses expiring during each license renewal period shall be conducted by the board.

(b) Each licensee selected for the random audit shall be notified in writing after the board has received the psychologist's renewal application form required by K.A.R. 102-1-8.

(c) Upon board notification, each renewal applicant for a psychologist license shall submit the following to the board within 30 days after the license expiration date:

(1) The completed renewal audit forms; and

(2) the original continuing education documents that validate all continuing education units claimed for credit during the current renewal period.

(d) Continuing education units that a renewal applicant for a psychologist license earns after board receipt of the renewal application form shall not be approved for continuing education credit for the current renewal period.

(e) Failure to comply with this regulation shall be considered unprofessional conduct. (Authorized by and implementing K.S.A. 74-5318 and K.S.A. 2007 Supp. 74-7507; effective Feb. 13, 2009.)

**102-1-13. Fees.** (a) Each applicant for licensure as a psychologist shall pay the appropriate fee as specified in this subsection:

(1) Application for a license, $225;

(2) original license, $50;

(3) renewal, $200;

(4) duplicate license, $20;

(5) temporary license, $150;

(6) temporary license renewal fee, $150;

(7) specialty endorsement, $130;

(8) temporary, 15-day permit for an out-of-state professional, $200; or

(9) temporary, 15-day permit for an out-of-state professional extension, $200.

(b) Each applicant for a license renewal after its expiration date shall pay an additional fee of $200, as well as the renewal fee of $200.

(c) Fees paid to the board shall not be refundable. (Authorized by K.S.A. 2008 Supp. 74-5316, K.S.A. 2008 Supp. 74-5316a, K.S.A. 74-5319, K.S.A. 74-5349, and K.S.A. 2008 Supp. 74-7507; implementing K.S.A. 74-5310, as amended by 2009 HB 2162, sec. 2, K.S.A. 74-5310a, K.S.A. 2008 Supp. 74-5316, K.S.A. 2008 Supp. 74-5316a, K.S.A. 74-5319, K.S.A. 74-5320, and K.S.A. 74-5349; effective May 1, 1984; amended, T-85-35, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended, T-102-5-1-90, May 1, 1990; amended June 11, 1990; amended, T-102-11-29-90, Nov. 29, 1990; amended Jan. 21, 1991; amended Aug. 23, 1993; amended Aug. 4, 1995; amended Oct. 24, 1997; amended July 1, 2005; amended, T-102-7-2-07, July 2, 2007; amended Nov. 30, 2007; amended, T-102-6-26-09, June 26, 2009; amended Oct. 9, 2009.)

### Article 2.—LICENSING OF SOCIAL WORKERS

**102-2-3. Fees.** (a) Each applicant for a new social work license shall pay the appropriate application fee as follows:

(1) Licensed baccalaureate social worker (LBSW): $100.00;

(2) licensed master social worker (LMSW): $100.00;

(3) licensed specialist clinical social worker (LSCSW): $100.00;

(4) temporary license fee: $50.00;

(5) temporary, 15-day permit for an out-of-state professional: $200; and

(6) temporary, 15-day permit for an out-of-state professional extension: $200.

(b) Each applicant for a new social work license shall pay the appropriate original license fee as follows:

(1) Licensed baccalaureate social worker (LBSW): $100.00;

(2) licensed master social worker (LMSW): $150.00; and

(3) licensed specialist clinical social worker (LSCSW): $150.00.

(c) Each applicant for license renewal shall pay the applicable fee as follows:

(1) Licensed associate social worker (LASW): $100.00;

(2) licensed baccalaureate social worker (LBSW): $100.00;

(3) licensed master social worker (LMSW): $125.00; and

(4) licensed specialist clinical social worker (LSCSW): $150.00.

(d) Each applicant for license reinstatement after the date of its expiration shall pay, in addition to the renewal fee, the applicable penalty fee as follows:

(1) Licensed associate social worker (LASW): $100.00;

(2) licensed baccalaureate social worker (LBSW): $100.00;

(3) licensed master social worker (LMSW): $125.00; and

(4) licensed specialist clinical social worker (LSCSW): $150.00.

(e) The fee for a replacement license shall be $20.00, and the fee for a replacement wallet card license shall be $2.00.

(f) Each provider of continuing education programs shall pay the applicable fee as follows:

(1) One-year, provisional approved provider application fee: $100.00;

(2) three-year approved provider renewal fee: $250.00; and

(3) single-program provider fee: $50.00.

(g) Fees paid to the board shall not be refundable. (Authorized by K.S.A. 2008 Supp. 65-6309a and K.S.A. 65-6314; implementing K.S.A. 2008 Supp. 65-6309a and 65-6313, K.S.A. 65-6314; effective May 1, 1982; amended, T-86-20, July 1, 1985; amended, May 1, 1986; amended, T-87-10, July 1, 1986; amended May 1, 1987; amended, T-102-10-17-89, Oct. 17, 1989; amended, T-102-11-29-90, Nov. 29, 1990; amended Jan. 21, 1991; amended June 12, 1995; amended Aug. 4, 1995; amended Aug. 4, 2000; amended March 8, 2002; amended July 1, 2005; amended, T-102-7-2-07, July 2, 2007; amended Nov. 30, 2007; amended April 2, 2010.)

**102-2-8. Supervision.** (a) Supervision of nonlicensed social work service providers who participate in the delivery of social work services.

(1) Social work consultation shall not meet the supervision requirements for any nonlicensed social work service provider.

(2) Each licensee supervising one or more nonlicensed individuals who participate in the delivery of social work services shall specifically delineate the duties of each non- licensed individual and provide a level of supervision that is consistent with the training and ability of the nonlicensed social work service provider.

(3) Each licensee supervising one or more nonlicensed persons who participate in the delivery of social work services shall develop a written agreement. The agreement shall consist of specific goals and objectives, the means to attain the goals, and the manner in which the goals relate to the overall objective for supervision of the nonlicensed social work service provider. The licensee shall maintain the following documentation associated with the written agreement:

(A) A copy of the written agreement signed by both the licensee and the nonlicensed person;

(B) a summary of the types of clients and situations dealt with at each supervisory session;

(C) a written explanation of the relationship of the goals and objectives of supervision to each supervisory session; and

(D) the length of time spent in each supervisory session.

(4) The supervisor shall provide no fewer than four hours of supervision per month for each supervisee.

(5) The supervisor shall not have a dual relationship with the supervisee.

(b) Supervision of nonlicensed student social work service providers.

(1) Social work consultation shall not meet the supervision requirements for any nonlicensed student social work service provider.

(2) Each licensee supervising one or more nonlicensed students in the delivery of social work services shall specifically delineate each student's duties and provide a level of supervision consistent with the training and ability of each student.

(3) Each licensee supervising one or more nonlicensed students who participate in the delivery of social work services shall develop a written agreement for each student that is consistent with the requirements of the student's academic social work program.

(4) The supervisor shall not have a dual relationship with the supervisee.

(c) Supervision of holders of temporary social work licenses.

(1) Social work consultation shall not meet the supervision requirements for any holder of a temporary social work license.

(2) Each licensee supervising one or more individuals who hold a temporary social work licensure permit shall specifically delineate the duties of each temporary license holder and provide a level of supervision consistent with the training and ability of each individual.

(3) Each licensee supervising a temporary social work license holder and that individual shall develop a written agreement. This agreement shall consist of specific goals and objectives, the means to attain the goals, and the manner in which the goals relate to the overall objective for supervision of that person. The licensee shall maintain the following documentation associated with the written agreement:

(A) A copy of the written agreement signed by both the licensee and the temporary social work license holder;

(B) a summary of the types of clients and situations dealt with at each supervisory session;

(C) a written explanation of the relationship of the goals and objectives of supervision to each supervisory session; and

(D) the length of time spent in each supervisory session.

(4) A minimum of one hour of supervision shall be provided for each 40 hours of service delivery.

(5) The supervisor shall not have a dual relationship with the supervisee.

(d) Supervision of persons engaged in private practice or persons seeking licensure as a specialist clinical social worker.

(1) A licensed specialist clinical social worker shall supervise the practice or delivery of social work services by the following persons:

(A) Any licensee who is attaining the two years of supervised experience required for licensure as a specialist clinical social worker; and

(B) any licensee who is not a licensed specialist clinical social worker and who is engaged in private practice.

(2) Any person attaining the supervised experience required for licensure as a specialist clinical social worker may be supervised by a social worker who is licensed as a clinical social worker authorized to engage in the private, independent practice of social work in another state and who is otherwise qualified.

(3) Supervisor qualifications. To qualify as a supervisor, a licensed specialist clinical social worker shall fulfill these requirements:

(A) Have practiced as a specialist clinical social worker, in a position that included assessment, diagnoses, and psychotherapy, for two years beyond the date of clinical licensure. This requirement shall apply to each individual commencing a new supervisory relationship on or after April 15, 2009;

(B) have, in full or in part, professional responsibility for the supervisee's practice of social work or delivery of social work services;

(C) not have a dual relationship with the supervisee;

(D) not be under sanction from a disciplinary proceeding, unless this prohibition is waived by the board for good cause shown by the proposed supervisor;

(E) have knowledge of and experience with the supervisee's client population;

(F) have knowledge of and experience with the methods of practice that the supervisee employs;

(G) have an understanding of the organization and administrative policies and procedures of the supervisee's practice setting; and

(H) be a member of the staff for that practice setting or meet the requirements of paragraph (d)(4).

(4) If a qualified supervisor is not available from among staff in the supervisee's practice setting, the supervisee may secure an otherwise qualified supervisor outside of the practice setting if all of the following conditions are met:

(A) The supervisor has a complete understanding of the practice setting's mission, policy, and procedures.

(B) The extent of the supervisor's responsibility

for the supervisee is clearly defined with respect to client cases to be supervised, the supervisor's role in personnel evaluation within the practice setting, and other aspects of the clinical supervision training plan.

(C) The responsibility for payment for supervision is clearly defined.

(D) If the supervisee pays the supervisor directly for the supervision, the supervisor maintains responsibility to the client and to the practice setting.

(E) The parameters of client confidentiality are clearly defined and agreed to by the client.

(5) Supervisory duties. Each social work practice supervisor shall perform these duties:

(A) Meet in person or by videoconferencing according to K.A.R. 102-2-12(c)(4) with the supervisee for clinical supervision throughout the postgraduate supervised professional experience at a ratio of a minimum of one hour of clinical supervision for every 20 hours of direct, face-to-face client contact, with a maximum of two hours of supervision allowed for each 20 hours of clinical social work practice to be counted toward licensure requirements;

(B) meet with not more than four supervisees at a time in the supervisory meetings;

(C) provide oversight, guidance, and direction of the supervisee's practice of social work or delivery of social work services by assessing and evaluating the supervisee's performance;

(D) conduct supervision as a process distinct from personal therapy, didactic instruction, or social work consultation;

(E) ensure that the scope of the supervisor's own responsibility and authority in the practice setting has been clearly and expressly defined;

(F) provide documentation of supervisory qualifications to the supervisee;

(G) periodically evaluate the supervisee's role, use of a theoretical base, and use of social work principles;

(H) provide supervision in accordance with the written clinical supervision training plan;

(I) maintain documentation of supervision;

(J) provide the documentation required by the board upon a supervisee's application for licensure in sufficient detail to enable the board to evaluate the extent and quality of the supervisee's supervised experience;

(K) provide a level of supervision that is consistent with the education, training, experience, and ability of the supervisee; and

(L) ensure that each client knows that the supervisee is practicing social work or participating in the delivery of social work services under supervision.

(6) Clinical supervision training plan. Each supervisor and supervisee shall develop and co-sign a written clinical supervision training plan at the beginning of the supervisory relationship. The supervisee shall submit an official position description and the training plan to the board and shall receive board approval of the plan before any supervised professional experience hours for clinical licensure can begin to accrue. This plan shall clearly define and delineate the following items:

(A) The supervisory context, which shall include the purpose of supervision;

(B) a summary of the types of clients with whom and the situations in which the supervisee will typically work, as evidenced by the supervisee's official position description;

(C) a plan that describes the supervision goals and objectives, the means to attain and evaluate progress towards the goals, and the manner in which the goals relate to the overall objective of supervision;

(D) the format and schedule for supervision;

(E) the supervisor's responsibilities;

(F) the supervisee's responsibilities;

(G) the plans for both the supervisee's and supervisor's documentation of the date, length, method, content, and format of each supervisory meeting and the supervisee's progress toward the learning goals;

(H) the plans for documenting the 4,000 hours of postgraduate supervised clinical social work experience, which shall include specifically documenting the 1,500 hours of direct client contact providing psychotherapy and assessment;

(I) the plan for notifying clients of the following information:

(i) The fact that the supervisee is practicing social work or participating in the delivery of social work services under supervision;

(ii) the limits of client confidentiality within the supervisory process; and

(iii) the name, address, and telephone number of the supervisor or other person with administrative authority over the supervisee;

(J) a plan to address and remedy circumstances in which there is a conflict between the supervisor and the supervisee;

(K) the date on which the supervisor and supervisee entered into the clinical supervision

training plan, the time frame that the plan is intended to encompass, and the process for termination of the supervisory relationship by either party;

(L) the steps for amending or renegotiating the clinical supervision training plan, if warranted, including written notification of these changes to the board office as provided in paragraph (d)(7); and

(M) a statement identifying the person who is responsible for payment, the terms of payment, and the mutual obligations and rights of each party with respect to compensation, if there is any compensation for supervisory services.

(7) Revision of the clinical supervision training plan. All changes to the clinical supervision training plan shall be submitted by the supervisee to the board for its approval. The changes shall be submitted no more than 45 days after the date on which the changes took effect. If the supervisee fails to submit the changes to the board within that 45-day period, no supervised hours of practice shall be accrued or credited for any practice, beginning on the date the changes took effect through the date on which the changes to the plan are approved by the board. (Authorized by K.S.A. 2007 Supp. 74-7507; implementing K.S.A. 65-6303, 65-6306, 65-6308, K.S.A. 2007 Supp. 65-6309 and 74-7507; effective, T-85-36, Dec. 19, 1984; effective May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended Feb. 25, 1991; amended Oct. 24, 1997; amended Aug. 4, 2000; amended Aug. 13, 2004; amended April 22, 2005; amended Feb. 13, 2009.)

**102-2-11a. Renewal audit.** (a) A random audit of the continuing education documentation for 10 percent of the social worker licenses expiring each month shall be conducted by the board.

(b) Each licensee selected for the random audit shall be notified in writing after the board has received the social worker's renewal application form required by K.A.R. 102-2-11.

(c) Upon board notification, each renewal applicant for a social worker license shall submit the following to the board within 30 days after the license expiration date:

(1) The completed renewal audit forms; and

(2) the original continuing education documents that validate all continuing education units claimed for credit during the current renewal period.

(d) Continuing education units that a renewal applicant for a social worker license earns after board receipt of the renewal application form shall not be approved for continuing education credit for the current renewal period.

(e) Failure to comply with this regulation shall be considered unprofessional conduct. (Authorized by K.S.A. 2007 Supp. 74-7507; implementing K.S.A. 2007 Supp. 65-6313, K.S.A. 65-6317, and K.S.A. 2007 Supp. 74-7507; effective Feb. 13, 2009.)

**102-2-12. Licensed specialist clinical social work licensure requirements.** (a) Educational requirements. In order for an applicant who earns a degree before July 1, 2003 to qualify for licensure as a licensed specialist clinical social worker, the applicant shall meet, as a part of or in addition to the educational requirements provided in K.S.A. 65-6306, and amendments thereto, the following educational requirements:

(1) Satisfactory completion of at least three graduate academic hours in a discrete academic course whose primary and explicit focus is upon psychopathology and the diagnosis and treatment of mental disorders classified in the diagnostic manuals commonly used as a part of accepted social work practice;

(2) satisfactory completion of a graduate-level, clinically oriented social work practicum that fulfills these requirements:

(A) Is taken after completion of the graduate-level, clinically focused academic courses that are prerequisite to entering the clinical practicum;

(B) is an integrated, conceptually organized academic experience and is not an after-the-fact tabulation of clinical experience;

(C) occurs in a practice setting that, by its nature and function, clearly supports clinical social work practice and consistently provides opportunities for the supervised application of clinical social work practice knowledge, skills, values, and ethics; and

(D) provides training and close supervision in a wide range of clinical social work practice activities with a population of clients presenting a diverse set of problems and backgrounds.

(b) Each applicant for licensure as a specialist clinical social worker who earns a degree on or after July 1, 2003 shall meet the following requirements:

(1) Satisfactory completion of 15 graduate-level credit hours supporting diagnosis or treatment of mental disorders using the diagnostic and statis-

tical manual of mental disorders as specified in K.A.R. 102-2-14. Three of the 15 credit hours shall consist of a discrete academic course whose primary and explicit focus is upon psychopathology and the diagnosis and treatment of mental disorders as classified in the diagnostic and statistical manual of mental disorders. The 15 graduate-level credit hours shall be from a social work program accredited by the council on social work education or a social work program in substantial compliance as prescribed in K.A.R. 102-2-6 and approved by the board; and

(2) completion of one of the following experience requirements:

(A) A graduate-level, supervised clinical practicum of professional experience that includes psychotherapy and assessment. The practicum shall integrate diagnosis and treatment of mental disorders with use of the diagnostic and statistical manual of mental disorders as identified in K.A.R. 102-2-14 and shall include not less than 350 hours of direct client contact; or

(B) postgraduate supervised experience including psychotherapy and assessment. The experience shall integrate diagnosis and treatment of mental disorders with use of the diagnostic and statistical manual of mental disorders, as specified in K.A.R. 102-2-14. The experience shall consist of not less than 700 hours of supervised experience, including not less than 350 hours of direct client contact. This experience shall be in addition to the 4,000 hours of postgraduate, supervised experience required for each licensed specialist clinical social worker, as specified in subsection (c). The applicant shall provide documentation of this postgraduate experience on board-approved forms. The supervision shall comply with K.A.R. 102-2-8 and K.A.R. 102-2-12(c) and shall be in addition to the supervision requirements in K.A.R. 102-2-12(c)(4).

(c) Each applicant for licensure as a specialist clinical social worker shall fulfill the following requirements:

(1) Develop and co-sign with the supervisor a clinical supervision training plan for the postgraduate supervised clinical experience required under K.S.A. 65-6306 and amendments thereto, on forms provided by the board. The applicant shall submit this plan to the board for consideration for approval before beginning clinical supervision. The clinical supervision training plan shall comply with K.A.R. 102-2-8. If changes or amendments to the plan occur after initial board approval, these changes or amendments shall be submitted to the board for consideration for approval;

(2) complete, in not less than two years and not more than six years, a minimum of 4,000 hours of satisfactorily evaluated postgraduate, supervised clinical social work practice experience under the supervision of a qualified licensed specialist clinical social worker. A minimum of 2,000 hours of the applicant's total postgraduate, supervised clinical experience shall consist of a combination of the following types of social work services:

(A) At least 1,500 hours of direct client contact conducting psychotherapy and assessments with individuals, couples, families, or groups; and

(B) up to 500 hours of providing clinical social work practice services;

(3) complete all required practice under supervision in accordance with K.A.R. 102-2-8; and

(4) participate in a minimum of 100 supervisory meetings consisting of not less than 150 hours of clinical supervision. A minimum of 75 hours of the 150 required hours of supervision shall be individual supervision, of which at least 50 hours shall be obtained in person. The remainder of the 150 required hours may be obtained in person or, if confidentiality is technologically protected, by videoconferencing. Each applicant using videoconferencing shall provide written verification of the technological security measure implemented. The supervision shall integrate the diagnosis and treatment of mental disorders with the use of the diagnostic and statistical manual of mental disorders specified in K.A.R. 102-2-14. A maximum of two hours of supervision shall be counted for each 20 hours of clinical social work practice.

(d) At the time of the individual's application for licensure as a specialist clinical social worker, the applicant's supervisor shall submit documentation that is satisfactory to the board and that enables the board to evaluate the nature, quality, and quantity of the applicant's supervised clinical social work experience. This documentation shall include the following information:

(1) A written summary of the types of clients and situations dealt with during the supervisory sessions;

(2) a written summary that addresses the degree to which the goals and objectives of supervision have been met;

(3) a written statement and supportive documentation that describes the applicant's practice setting and provides a summary of the applicant's

practice activities and responsibilities that occurred while under supervision;

(4) a statement indicating whether or not the applicant merits the public trust; and

(5) an evaluation of the applicant's supervised clinical social work experience. (Authorized by K.S.A. 65-6306, K.S.A. 65-6308, and K.S.A. 2007 Supp. 74-7507; implementing K.S.A. 65-6306 and K.S.A. 65-6308; effective, T-85-36, Dec. 19, 1984; effective May 1, 1985; amended May 1, 1987; amended Feb. 25, 1991; amended Oct. 24, 1997; amended Aug. 4, 2000; amended July 7, 2003; amended April 22, 2005; amended Feb. 13, 2009.)

## Article 3.—PROFESSIONAL COUNSELORS; FEES

**102-3-9b. Renewal audit.** (a) A random audit of the continuing education documentation for 10 percent of the professional counselor licenses and the clinical professional counselor licenses expiring each month shall be conducted by the board.

(b) Each licensee selected for the random audit shall be notified in writing after the board has received the licensee's renewal application form required by K.A.R. l02-3-9a.

(c) Upon board notification, each renewal applicant shall submit the following to the board within 30 days after the license expiration date:

(1) The completed renewal audit forms; and

(2) the original continuing education documents that validate all continuing education units claimed for credit during the current renewal period.

(d) Continuing education units that a renewal applicant earns after board receipt of the renewal application form shall not be approved for continuing education credit for the current renewal period.

(e) Failure to comply with this regulation shall be considered unprofessional conduct. (Authorized by and implementing K.S.A. 65-5806 and K.S.A. 2007 Supp. 74-7507; effective Feb. 13, 2009.)

## Article 4.—MASTER'S LEVEL PSYCHOLOGISTS

**102-4-9b. Renewal audit.** (a) A random audit of the continuing education documentation for 10 percent of the master's level psychologist licenses and the clinical psychotherapist licenses expiring each month shall be conducted by the board.

(b) Each licensee selected for the random audit shall be notified in writing after the board has received the licensee's renewal application form required by K.A.R. l02-4-9a.

(c) Upon board notification, each renewal applicant shall submit the following to the board within 30 days after the license expiration date:

(1) The completed renewal audit forms; and

(2) the original continuing education documents that validate all continuing education units claimed for credit during the current renewal period.

(d) Continuing education units that a renewal applicant earns after board receipt of the renewal application form shall not be approved for continuing education credit for the current renewal period.

(e) Failure to comply with this regulation shall be considered unprofessional conduct. (Authorized by and implementing K.S.A. 74-5365 and K.S.A. 2007 Supp. 74-7507; effective Feb. 13, 2009.)

## Article 5.—LICENSING OF MARRIAGE AND FAMILY THERAPISTS

**102-5-3. Education requirements.** (a) Definitions. For purposes of this regulation, the following terms shall be defined as follows:

(1) "Core faculty member" means an individual who is part of the program's teaching staff and who meets the following conditions:

(A) Is an individual whose education, training, and experience are consistent with the individual's role within the program and are consistent with the published description of the goals, philosophy, and educational purpose of the program;

(B) is an individual whose primary professional employment is at the institution in which the program is housed; and

(C) is an individual who is identified with the program and is centrally involved in program development, decision making, and student training as demonstrated by consistent inclusion of the individual's name in public and departmental documents.

(2) "In residence," when used to describe a student, means that the student is present at the physical location of the institution for the purpose of completing coursework during which the stu-

dent and one or more core faculty members are in face-to-face contact.

(3) "Primary professional employment" means a minimum of 20 hours per week of instruction, research, any other service to the institution in the course of employment, and the related administrative work.

(b) Each applicant for licensure shall meet both of the following education requirements:

(1) Each applicant shall have been awarded a master's or doctoral degree that meets the standards in subsection (c), (e), or (f).

(2) The applicant shall have completed no less than 50% of the coursework for the degree "in residence" at one institution, and the required practicum shall be completed at the same institution.

(c) To qualify for licensure with a master's or doctoral degree from a marriage and family therapy program, both of the following requirements shall be met:

(1) The college or university at which the applicant completed a master's or doctoral degree in marriage and family therapy shall be regionally accredited, with accreditation standards equivalent to those in Kansas.

(2) The marriage and family therapy program through which the applicant completed a master's or doctoral degree either shall be accredited by the commission on accreditation for marriage and family therapy education or shall meet the standards set out in subsection (d).

(d) Each marriage and family therapy program that is not accredited by the commission on accreditation for marriage and family therapy education shall meet all of these conditions:

(1) The program requires satisfactory completion by the applicant of a marriage and family therapy practicum, or its equivalent, that is provided by the program and that fulfills these conditions:

(A) Is a part-time clinical experience that integrates didactic learning with clinical experience and that is completed concurrently with didactic coursework at a typical rate of five to 10 hours of direct client contact per week;

(B) consists of at least 300 total hours of client contact; and

(C) includes at least 60 total hours of supervision that is provided by the program's core faculty and off-site supervisors. The practicum shall provide a minimum of 30 supervised hours in an individual format and no more than 30 supervised hours in a group format. Supervision shall occur at least once a week.

(2) The program requires that each marriage and family therapy student successfully complete a minimum of nine graduate semester credit hours, or the academic equivalent, in each of the following substantive content areas:

(A) Human development and family study courses in which the interplay between interpersonal and intrapersonal development is stressed and issues of gender, ethnicity, and ecosystems are addressed as they relate to human development. These courses may include studies in sexuality, sexual functioning, sexual identity, sexism, stereotyping, and racism;

(B) theoretical foundations of marital and family functioning courses, including an overview of the historical development of systems theory and cybernetics, a study of the life cycle of the family, and a study of family processes and the modification of family structures over time. These courses may include studies in the birth of the first child, adolescent sexual development, death of a family member, and issues of context, including gender and ethnicity; and

(C) marital and family assessment and therapy courses that underscore the interdependence between diagnosis or assessment and treatment by ensuring that students can use appropriate assessment instruments and methods within a systemic context. These courses shall provide a thorough understanding of the major theoretical models of systemic change, including structural, strategic, intergenerational, contextual, experiential, systemic, and behavioral theories. These courses also shall teach the principles and techniques evolving from each theory. In addition, the courses shall identify the indications and contraindications for use of each theory or technique and shall address the rationale for intervention, the role of the therapist, and the importance of considering gender and ethnicity in selecting and using assessment and treatment methods.

(3) The program requires that each marriage and family therapy student successfully complete a minimum of three graduate semester credit hours, or the academic equivalent, in each of the following substantive content areas:

(A) A professional study course that contributes to the development of a professional attitude and identity by examining the role of professional socialization, professional organizations, licensure and certification, the code of ethics, the legal re-

sponsibilities and liabilities of clinical practice and research, and interprofessional cooperation, as these topics relate to the profession and practice of marriage and family therapy. A generic course in ethics shall not be considered appropriate for this area of study; and

(B) a research course in which students gain an understanding of research methodology, data analysis, computer research skills, and evaluation and critical examination of professional research reports. The emphasis of the course shall be placed on the quantitative and qualitative research that is relevant to marriage and family therapy.

(e) To qualify for licensure with a master's or doctoral degree in a related field, both of the following requirements shall be met:

(1) The college or university at which the applicant completed a master's or doctoral degree in a related field shall be regionally accredited, with accreditation standards equivalent to those in Kansas.

(2) To be considered equivalent to a marriage and family therapy program, the related-field degree program shall have provided and the applicant shall have completed the requirements of subsection (d).

(f) To qualify for licensure with a master's or doctoral degree in a related field with additional coursework in marriage and family therapy, both of the following requirements shall be met:

(1) The college or university at which the applicant completed a master's or doctoral degree in a related field shall be regionally accredited, with accreditation standards equivalent to those in Kansas.

(2) The marriage and family therapy program through which the applicant obtained additional coursework in marriage and family therapy either shall be accredited by the commission on accreditation for marriage and family therapy education or shall meet the standards approved by the board as set out in subsection (d).

(g) Each applicant for licensure as a clinical marriage and family therapist whose master's or doctoral degree is earned on or after July 1, 2003 shall meet the following education requirements:

(1) A graduate degree as required by the board for licensure as a licensed marriage and family therapist in accordance with subsection (c), (e), or (f); and

(2) in addition to or as a part of the academic requirements for the graduate degree, completion of 15 graduate semester credit hours, or the academic equivalent, supporting diagnosis and treatment of mental disorders using the "diagnostic and statistical manual of mental disorders" as specified in K.A.R. 102-5-14. Three of the 15 semester credit hours, or the academic equivalent, shall consist of a discrete academic course with the primary and explicit focus of psychopathology and the diagnosis and treatment of mental disorders as classified in the "diagnostic and statistical manual of mental disorders." The remaining 12 graduate semester credit hours, or their academic equivalent, shall consist of academic courses with the primary and explicit focus of diagnostic assessment, interdisciplinary referral and collaboration, treatment approaches, and professional ethics or other coursework that specifically contains identifiable, equivalent instruction. The 15 graduate semester credit hours shall be from an educational institution and graduate degree program meeting the requirements described in subsection (c), (e), or (f).

(h) The following activities shall not be substituted for or counted toward any of the education or supervised experience requirements set out in subsections (b) through (g):

(1) Academic courses that the applicant completed as a part of or in conjunction with undergraduate degree requirements;

(2) independent studies;

(3) thesis or independent research courses;

(4) academic coursework that has been audited rather than graded;

(5) academic coursework for which the applicant received an incomplete or a failing grade;

(6) graduate or postgraduate coursework or experiential training provided by colleges, universities, institutes, or training programs that do not qualify under subsection (c), (e), or (f); and

(7) continuing education, an in-service activity, or on-the-job training. (Authorized by K.S.A. 2010 Supp. 65-6404 and K.S.A. 2010 Supp. 74-7507; implementing K.S.A. 2010 Supp. 65-6404; effective March 29, 1993; amended Dec. 19, 1997; amended July 7, 2003; amended Oct. 27, 2006; amended April 15, 2011.)

**102-5-9a. Renewal audit.** (a) A random audit of the continuing education documentation for 10 percent of the marriage and family therapist licenses and the clinical marriage and family therapist licenses expiring each month shall be conducted by the board.

(b) Each licensee selected for the random audit

shall be notified in writing after the board has received the licensee's renewal application form required by K.A.R. 102-5-9.

(c) Upon board notification, each renewal applicant shall submit the following to the board within 30 days after the license expiration date:

(1) The completed renewal audit forms; and

(2) the original continuing education documents that validate all continuing education units claimed for credit during the current renewal period.

(d) Continuing education units that a renewal applicant earns after board receipt of the renewal application form shall not be approved for continuing education credit for the current renewal period.

(e) Failure to comply with this regulation shall be considered unprofessional conduct. (Authorized by and implementing K.S.A. 65-6407 and K.S.A. 2007 Supp. 74-7507; effective Feb. 13, 2009.)

## Article 6.—REGISTERED ALCOHOL AND OTHER DRUG ABUSE COUNSELORS

**102-6-9a. Renewal audit.** (a) A random audit of the continuing education documentation for 10 percent of the alcohol and other drug abuse counselor registrations expiring each month shall be conducted by the board.

(b) Each registrant selected for the random audit shall be notified in writing after the board has received the alcohol and other drug abuse counselor's renewal application form required by K.A.R. 102-6-9.

(c) Upon board notification, each renewal applicant for an alcohol and other drug abuse counselor registration shall submit the following to the board within 30 days after the registration expiration date:

(1) The completed renewal audit forms; and

(2) the original continuing education documents that validate all continuing education units claimed for credit during the current renewal period.

(d) Continuing education units that a renewal applicant for an alcohol and other drug abuse counselor registration earns after board receipt of the renewal application form shall not be approved for continuing education credit for the current renewal period.

(e) Failure to comply with this regulation shall be considered unprofessional conduct. (Authorized by and implementing K.S.A. 65-6603 and K.S.A. 2007 Supp. 74-7507; effective Feb. 13, 2009.)

## Article 7.—LICENSING OF ADDICTION COUNSELORS

**102-7-1. Definitions.** (a) "Academic equivalent of a semester credit hour," when used in K.A.R. 102-7-3, means the prorated proportionate credit for formal academic coursework if that coursework is completed on the basis of trimester or quarter hours rather than semester hours.

(b) "Addiction counseling supervision" means a formal professional relationship between the supervisor and supervisee that promotes the development of responsibility, skills, knowledge, values, and ethical standards in the practice of addiction counseling.

(c) "Board" means the Kansas behavioral sciences regulatory board.

(d) "Client" means a person who is a direct recipient of addiction counseling services.

(e) "Client contact," for purposes of K.A.R. 102-7-6, means a service to a client or clients that utilizes individual, family, or group interventions through face-to-face interaction or the use of electronic mediums of face-to-face interaction in which confidentiality is protected.

(f) "Clinical supervision training plan" means a formal, written agreement that establishes the supervisory framework for postgraduate clinical experience and describes the expectations and responsibilities of the supervisor and the supervisee.

(g) "Continuing education" means formally organized programs or activities that are designed for and have content intended to enhance the addiction counselor's or clinical addiction counselor's knowledge, skill, values, ethics, and ability to practice as an addiction counselor or as a clinical addiction counselor.

(h) "Fraudulent representation" shall include the following:

(1) Deceit;

(2) misrepresentation; and

(3) concealing a material fact.

(i) "Harmful dual relationship" means a professional relationship between a licensee and a client, student, supervisee, or any person who has had a significant relationship with either a current client or a person who has been a client within the past 24 months if that relationship is known to the li-

censee, in which the objectivity or competency of the licensee is impaired or compromised because of any of the following types of present or previous relationships:

(1) Familial;

(2) social;

(3) emotional;

(4) financial;

(5) supervisory; or

(6) administrative.

(j) "LAC" means licensed addiction counselor.

(k) "LCAC" means licensed clinical addiction counselor.

(l) "Malfeasance" means the performance of an act by a licensee that is prohibited or that constitutes wrongdoing or misconduct.

(m) "Merits the public trust" means that an applicant or licensee possesses the high standard of good moral character and fitness that is required to practice addiction counseling as demonstrated by the following personal qualities:

(1) Good judgment;

(2) integrity;

(3) honesty;

(4) fairness;

(5) credibility;

(6) reliability;

(7) respect for others;

(8) respect for the laws of the state and nation;

(9) self-discipline;

(10) self-evaluation;

(11) initiative; and

(12) commitment to the addiction counseling profession and its values and ethics.

(n) "Misfeasance" means the improper performance of a lawful act by a licensee.

(o) "Nonfeasance" means the omission of an act that a licensee should do.

(p) "Practice setting" means the public or private addiction counseling agency or delivery system within which addiction counseling is practiced or addiction counseling services are delivered.

(q) "Practicum or its equivalent" means a formal component of the academic curriculum in the addiction counseling or in the related field educational program that engages the student in supervised addiction counseling practice and provides opportunities to apply classroom learning to actual practice situations in a field setting.

(r) "Quarter credit hour" means two-thirds of a semester hour. Quarter credit hours shall be rounded as follows:

(1) One quarter credit hour equals .7 semester hours.

(2) Two quarter credit hours equal 1.3 semester hours.

(3) Three quarter credit hours equal 2.0 semester hours.

(4) Four quarter credit hours equal 2.7 semester hours.

(5) Five quarter credit hours equal 3.3 semester hours.

(s) "Related field" means a degree program in a helping profession and may include any of the following:

(1) Criminal justice;

(2) counseling;

(3) healing arts;

(4) human development and family studies;

(5) human services;

(6) marriage and family therapy;

(7) nursing;

(8) psychology;

(9) social work; or

(10) theology.

(t) "Semester credit hour," when used in K.A.R. 102-7-3, means at least 13 clock-hours of formal, didactic classroom instruction that occurred over the course of an academic semester and for which the applicant received formal academic credit.

(u) "Undue influence" means misusing one's professional position of confidence, trust, or authority over a client or supervisee, or taking advantage of a client's vulnerability, weakness, infirmity, or distress for any of the following purposes:

(1) To improperly influence or change a client's or supervisee's actions or decisions;

(2) to exploit a client or supervisee for the counselor's or a third party's financial gain, personal gratification, or advantage; or

(3) to impose one's personal values, spiritual beliefs, or lifestyle on a client, student, or supervisee. (Authorized by and implementing K.S.A. 2010 Supp. 74-7507, as amended by L. 2010, ch. 45, §15; effective, T-102-7-1-11, July 1, 2011; effective, T-102-10-27-11, Oct. 27, 2011; effective Jan. 20, 2012.)

**102-7-2. Fees.** (a) Each applicant or licensee shall pay the appropriate fee or fees as follows:

(1) Application for an addiction counselor license:

(A) Before January 1, 2012: $50; and

(B) on and after January 1, 2012: $100;

(2) application for a clinical addiction counselor license:

(A) Before January 1, 2012: $50; and

(B) on and after January 1, 2012: $100;

(3) original addiction counselor license: $100;

(4) original clinical addiction counselor license:

(A) Before January 1, 2012: $100; and

(B) on and after January 1, 2012: $150;

(5) renewal of an addiction counselor license: $100;

(6) renewal of a clinical addiction counselor license: $150;

(7) replacement of an addiction counselor or a clinical addiction counselor wall certificate: $20;

(8) reinstatement of an addiction counselor license fee: $100;

(9) reinstatement of a clinical addiction counselor license fee: $150;

(10) temporary addiction counselor license fee: $100;

(11) temporary, 15-day permit for an out-of-state licensed clinical addiction counselor: $200; or

(12) temporary, 15-day permit for an out-of-state state licensed clinical addiction counselor extension: $200.

(b) Each applicant for license renewal after the date of its expiration shall pay, in addition to the renewal fee, the applicable late renewal penalty fee as follows:

(1) Licensed addiction counselor (LAC): $100; or

(2) licensed clinical addiction counselor (LCAC): $150.

(c) Fees paid to the board shall not be refundable. (Authorized by K.S.A. 2010 Supp. 74-7507, as amended by L. 2010, ch. 45, §15; implementing L. 2010, ch. 45, §4, as amended by 2011 HB 2182, §12, and L. 2010, ch. 45, §12; effective, T-102-7-1-11, July 1, 2011; effective, T-102-10-27-11, Oct. 27, 2011; effective Jan. 20, 2012.)

**102-7-3. Educational requirements.** (a)(1) "Core faculty member" means an individual who is part of the teaching staff of a program covered by this regulation and who meets the following conditions:

(A) Has education, training, and experience consistent with the individual's role within the program and consistent with the published description of the goals, philosophy, and educational purpose of the program;

(B) has primary professional employment at the institution in which the program is housed; and

(C) is identified with the program and is centrally involved in program development, decision making, and student training as demonstrated by consistent inclusion of the individual's name in public and departmental documents.

(2) "In residence," when used to describe a student, means that the student is present at the physical location of the institution for the purpose of completing coursework, during which the student and one or more core or adjunct faculty members are in face-to-face contact.

(3) "Primary professional employment" means at least 20 hours each week of instruction, research, or any other service to the institution in the course of employment, and related administrative work.

(4) "Skill-based coursework" means those courses that allow students to work on basic helping skills including open-ended questions, clarification, interpretation, response to feelings, and summarization.

(b) To qualify for licensure as an addiction counselor with a baccalaureate degree in addiction counseling or a baccalaureate degree in a related field that included all coursework requirements, the applicant shall hold one of the following:

(1) A baccalaureate degree in addiction counseling or a related field. When the degree was granted, the program met the standards approved by the board;

(2) a baccalaureate degree in addiction counseling or a related field, if the applicant began the program before May 1, 2011 and the baccalaureate degree is conferred on or before June 1, 2012, from a program that was approved by the Kansas department of social and rehabilitation services, division of addiction and prevention services; or

(3) a baccalaureate degree in addiction counseling or a related field, if the applicant began the program before July 1, 2012, from a program that included at least 30 semester hours, or the academic equivalent, in coursework on substance use disorders and that meets the coursework requirements in subsection (c).

(c) Each applicant for licensure as an addiction counselor shall have satisfactorily completed formal academic coursework that contributes to the development of a broad conceptual framework for addiction counseling theory and practice. This formal academic coursework shall be distributed

across the substantive content areas specified in this subsection. For applicants who graduate after July 1, 2013, two of the following courses shall be completed while the student is in residence: methods of individual counseling, methods of group counseling, practicum one, or practicum two. A maximum of three semester hours, or the academic equivalent, may be completed in independent study. Except for the required courses in a practicum or its equivalent, there shall be at least three discrete and unduplicated semester hours, or the academic equivalent, in each of the following content areas:

(1) Addiction treatment, which shall include studies in the philosophies, practices, policies and outcomes of the most generally accepted, culturally sensitive, and scientifically supported models of treatment, recovery, relapse prevention, and continuing care for addiction and other substance-related problems;

(2) methods of individual counseling, which shall include studies utilizing culturally sensitive, evidence-based approaches to individual counseling;

(3) methods of group counseling, which shall include studies utilizing culturally sensitive, evidence-based approaches to group counseling;

(4) pharmacology, which shall include the study of behavioral, psychological, physical, and social effects of psychoactive substances;

(5) co-occurring disorders, which shall include studies of an understanding of terms, service delivery systems, assessment, and strategies for working with clients with co-occurring disorders;

(6) addiction services coordination, which shall include studies of the established diagnostic criteria for substance use disorders for culturally sensitive screening, assessment, treatment planning, referral, service coordination, documentation, and consultation;

(7) legal and ethical issues, which shall include studies of the ethical, legal and culturally sensitive behavioral standards of conduct for the addiction counselor;

(8) family and community studies, which shall include studies of the importance of family, social networks, community systems, and the development of cultural competence in the treatment and recovery process;

(9) at least six semester credit hours, or the academic equivalent, of practicum or its equivalent, which shall include the following:

(A) An experience that integrates didactic learning that is related to substance use disorders with practical experience;

(B) at least 400 clock-hours; and

(C) at least one hour of supervision for every 10 hours of practice. Supervision shall be provided by the program's faculty and agency supervisors, at least one of whom shall be licensed at the clinical level; and

(10) for applicants who graduate on and after July 1, 2012, at least three discrete and unduplicated semester hours, or the academic equivalent, in the study of research that includes studies of an understanding of research methodology, critical evaluation of professional research reports, knowledge and application of current research, and an understanding of how culture and history impact research.

(d) To qualify for licensure as an addiction counselor with a baccalaureate degree in a related field with additional coursework in addiction counseling, the following requirements shall be met:

(1) The college or university at which the applicant completed a baccalaureate degree in a related field shall be regionally accredited with accreditation standards equivalent to those met by Kansas colleges and universities.

(2) The applicant shall meet the coursework requirements in subsection (c).

(3) The program through which the applicant obtained additional coursework in addiction counseling shall meet the standards approved by the board as specified in subsections (h) and (i).

(e) To qualify for licensure as a clinical addiction counselor with a master's degree in addiction counseling or a master's degree in a related field that included all coursework requirements, the applicant shall hold one of the following:

(1) A master's degree in addiction counseling or a related field. When the degree was granted, met the standards approved by the board;

(2) a master's degree in addiction counseling or a related field, if the applicant began the program before May 1, 2011 and the master's degree is conferred on or before June 1, 2012 from a program that was approved by the Kansas department of social and rehabilitation services, division of addiction and prevention services; or

(3) a master's degree in addiction counseling or a related field. Part of the coursework completed for the master's degree shall be at least 27 graduate semester credit hours, or the academic equivalent, supporting the diagnosis and treat-

ment of substance use disorders and shall meet the coursework requirements in subsection (f).

(f) Each applicant for licensure as a clinical addiction counselor shall have satisfactorily completed formal academic coursework that contributes to the development of a broad conceptual framework for addiction counseling theory and practice. This formal academic coursework shall be distributed across the substantive content areas specified in this subsection. For applicants who graduated after July 1, 2013, half of all skill-based coursework shall be completed while the student is in residence, as defined in this regulation. A maximum of three graduate semester hours, or the academic equivalent, may be completed in independent study. There shall be at least three discrete and unduplicated graduate semester hours, or the academic equivalent, in each of the following content areas:

(1) Addiction recovery services, which shall include studies of theories and models of treatment including the philosophies, practices, policies, and outcomes of the most generally accepted culturally sensitive and scientifically supported models of treatment, recovery, relapse prevention, and continuing care for addiction and other substance-related problems;

(2) methods of individual and group counseling;

(3) clinical supervision, which shall include studies of the tasks and functions of the clinical supervisor and the ability to assess development of competencies, conduct supervisory interviews, and design professional development plans;

(4) pharmacology, which shall include studies of the behavioral, psychological, physical, and social effects of psychoactive substances, drug interactions, and medication-assisted therapies;

(5) integrative dual disorders, which shall include studies of collaborative psychopharmacology, psychoeducation-supported employment, and culturally sensitive integrated substance use and mental health disorder treatment;

(6) diagnosis of substance use disorders, which shall include studies of the established diagnostic criteria for substance use disorders for culturally sensitive screening, assessment, treatment planning, referrals, service coordination, documentation, and consultation;

(7) professional legal and ethical issues, which shall include studies of the code of ethics, the legal responsibilities and liabilities of clinical supervision, practice and research, and the development of professional attitudes by examining the role of professional socialization, the development of cultural competence, professional organizations, and licensure;

(8) research, which shall include studies of an understanding of research methodology, data analysis, computer research skills, and critical evaluation of professional research reports, knowledge, and application of current research, and an understanding of how culture impacts research, including a historical context. A maximum of three semester hours, or the academic equivalent, may be completed in thesis or independent research courses; and

(9) practicum or its equivalent, which shall meet the following requirements:

(A) Be a clinical experience that integrates didactic learning supporting the diagnosis and treatment of substance use disorders;

(B) include at least 300 hours of client contact; and

(C) provide at least one hour of supervision for every 10 hours of client contact. Supervision shall be provided by the program's faculty and agency supervisors, at least one of whom shall be licensed at the clinical level.

(g) To qualify for licensure as a clinical addiction counselor with a master's degree in a related field with additional coursework in addiction counseling, the following requirements shall be met:

(1) The college or university at which the applicant completed a master's degree in a related field shall be regionally accredited with accreditation standards equivalent to those met by Kansas colleges and universities.

(2) The applicant shall meet the coursework requirements in subsection (f).

(3) The program through which the applicant obtained additional coursework in addiction counseling shall meet the standards approved by the board as specified in subsections (h) and (i).

(h) In order to be approved by the board, each addiction counseling program or related-field program, except the related-field degree listed in paragraphs (d)(1) and (g)(1), shall meet the following conditions:

(1) Have established program admission requirements that are based, in part or in full, on objective measures or standardized achievement tests and measures;

(2) offer education and training in addiction counseling, one goal of which is to prepare students for the practice of addiction counseling;

(3) require an established curriculum that encompasses at least one academic year of study for a baccalaureate degree or two academic years of study for a master's degree;

(4) have clear administrative authority and primary responsibility within the program for the core and specialty areas of training in addiction counseling;

(5) have an established, organized, and comprehensive sequence of study that is planned by administrators who are responsible for providing an integrated educational experience in addiction counseling;

(6) for a master's degree program, be coordinated or directed by an identifiable person who holds a graduate degree that was earned from a regionally accredited college or university upon that person's actual completion of a formal academic training program;

(7) have an identifiable, full-time core faculty member who holds an earned graduate degree in addiction counseling or a related field;

(8) have an established, identifiable body of students who are formally enrolled in the program with the goal of obtaining coursework for the concentration in the study of addiction counseling;

(9) require the student's major advisor to be a member of the program faculty;

(10) require each student to complete the institution's residency requirements and to satisfactorily complete an addiction counseling practicum or its equivalent that is provided by the program from which the student completes the concentration in the study of addiction counseling. The required practicum shall meet the following requirements:

(A) Accept as practicum students only applicants enrolled in the addiction counseling or related field program;

(B) provide the majority of supervision by an individual who is licensed at the clinical level;

(C) exist as a distinct and organized program that is clearly recognizable within an institution or agency, as well as in pertinent public, official documents issued by the institution or agency, and that is clearly recognizable as a training program for addiction counselors;

(D) identify students as being in training and not as staff members; and

(E) be an integrated and formally organized training experience, not an after-the-fact tabulation of experience; and

(11) conduct an ongoing, objective review and evaluation of each student's learning and progress and report this evaluation in the official student transcripts.

(i) In order to be approved by the board, each addiction counseling program or related-field program, except the related-field degree listed in paragraphs (d)(1) and (g)(1), shall meet the following requirements:

(1) Be regionally accredited, with accreditation standards equivalent to those met by Kansas colleges and universities;

(2) document in official publications, including course catalogs and announcements, the program description and standards and the admission requirements for the addiction counseling or related-field education and training program;

(3) identify and clearly describe in pertinent institutional catalogs the coursework, experiential, and other academic program requirements that must be satisfied before conferral of the degree;

(4) clearly identify and specify in pertinent institutional catalogs the intent to educate and train addiction counselors;

(5) have clearly established the addiction counselor or related-field education program as a coherent entity within the college or university that, when the applicant's degree was conferred, met the program standards in subsection (h);

(6) have conferred the degree upon the applicant's successful completion of an established and required formal program of studies; and

(7) have a library and equipment and resources available that are adequate for the size of the student body and the scope of the program offered.

(j) The following types of study shall not be substituted for or counted toward the coursework requirements of this regulation:

(1) Academic coursework that has been audited rather than graded;

(2) academic coursework for which the applicant received an incomplete or failing grade;

(3) coursework that the board determines is not closely related to the field or practice of addiction counseling;

(4) coursework or training provided by any college, university, institute, or training program that does not meet the requirements of subsections (h) and (i); and

(5) any continuing education, in-service activity, or on-the-job training. (Authorized by K.S.A. 2010 Supp. 74-7507, as amended by L. 2010, ch. 45, §15; implementing L. 2011, ch. 114, §12; effec-

tive, T-102-7-1-11, July 1, 2011; effective, T-102-10-27-11, Oct. 27, 2011; effective Jan. 20, 2012.)

**102-7-4. Application for licensure.** (a) Each applicant for licensure as an addiction counselor or a clinical addiction counselor shall request the appropriate licensure application forms from the executive director of the board.

(b) Each applicant for licensure as an addiction counselor shall submit the completed application materials to the board and perform the following:

(1) Submit the full payment of the licensure application fee as specified in K.A.R. 102-7-2;

(2) submit, on board-approved forms, two professional references. Each individual submitting a reference shall meet all of the following conditions:

(A) Not be related to the applicant;

(B) be authorized by law to practice addiction counseling or to practice in a related field; and

(C) be able to address the applicant's professional conduct, competence, and merit of the public trust;

(3) if not previously provided to the board, submit, on a board-approved form, a third professional reference from an individual who shall meet the following conditions:

(A) Not be related to the applicant;

(B) if the individual is the applicant's practicum supervisor, be authorized by law to practice addiction counseling; and

(C) have served as the applicant's on-site practicum supervisor or, if that supervisor is unavailable, the program director or any person who has knowledge of the applicant's practicum experience on the basis of the applicant's practicum records; and

(4) meet either of the following requirements:

(A) Currently hold a license issued by the board at the master's level or above; or

(B)(i) Demonstrate completion of the educational requirements specified in K.A.R. 102-7-3; and

(ii) arrange for the applicant's transcripts covering all applicable college or university coursework to be sent directly from each academic institution to the board office. Each applicant who graduated from a college or university outside the United States also shall arrange for the applicant's transcript to be translated and evaluated for degree equivalency by a source and in a manner that are acceptable to the board.

(c) Each applicant for licensure as a clinical addiction counselor shall submit the completed application materials to the board and perform the following:

(1) Submit the full payment of the licensure application fee as specified in K.A.R. 102-7-2;

(2) demonstrate that the applicant is licensed by the board as an addiction counselor or meets all requirements for licensure as a licensed addiction counselor;

(3) if not previously provided to the board, submit, on board-approved forms, two professional references. Each individual submitting a reference shall meet all of the following conditions:

(A) Not be related to the applicant;

(B) be authorized by law to practice addiction counseling or to practice in a related field; and

(C) be able to address the applicant's professional conduct, competence, and merit of the public trust;

(4) if not previously provided to the board, submit, on a board-approved form, a third professional reference from an individual who shall meet the following conditions:

(A) Not be related to the applicant;

(B) if the individual is the applicant's practicum supervisor, be authorized by law to practice addiction counseling; and

(C) have served as the applicant's on-site practicum supervisor or, if that supervisor is unavailable, the program director or any person who has knowledge of the applicant's practicum experience on the basis of the applicant's practicum records;

(5) meet either of the following requirements:

(A) Demonstrate compliance with requirements pursuant to L. 2011, ch. 114, sec. 12(b)(1)(A)(iv), and amendments thereto; or

(B)(i) Demonstrate satisfactory completion of the graduate education requirements specified in K.A.R. 102-7-3; and

(ii) if not previously provided to the board, arrange for the applicant's transcripts covering all applicable college or university coursework to be sent directly from each academic institution to the board office. Each applicant who graduated from a college or university outside the United States also shall arrange for the applicant's transcript to be translated and evaluated for degree equivalency by a source and in a manner that are acceptable to the board; and

(6) submit each supervisor's attestation that the applicant has satisfactorily completed the postgraduate supervised professional experience

requirements in accordance with a clinical supervision training plan approved by the board as specified in K.A.R. 102-7-6.

(d) The following provisions shall apply to each applicant for licensure as an addiction counselor and each applicant for licensure as a clinical addiction counselor:

(1) Upon the board's determination that the applicant has met the applicable educational requirements, each applicant shall pass an appropriate, nationally administered, standardized written examination approved by the board in accordance with K.A.R. 102-7-5.

(2) An applicant shall not be given a judgment on the applicant's eligibility for licensure until the board receives all application materials and the applicant completes all application procedures.

(3) Upon notification from the board that all eligibility requirements have been satisfied, the applicant shall submit the fee for the original two-year licensure period as specified in K.A.R. 102-7-2.

(4)(A) If any of the following conditions applies to the applicant, the applicant's application shall expire one year from the date on which it was submitted to the board or on the date the applicant's temporary license expires, whichever date is later, except as provided by paragraph (d)(4)(B):

(i) The applicant has not met the qualifications for licensure.

(ii) The applicant has not submitted a complete application.

(iii) The applicant has not submitted the original license fee.

(B) Any applicant whose application will expire under paragraph (d)(4)(A) may request that the application be kept open for an additional period of time, not to exceed six months, on the basis of extenuating circumstances. The applicant shall submit a written request to the board with a detailed explanation of the extenuating circumstances that are the basis of the applicant's request. The written request shall be submitted no later than 30 days before the application expires. If the request is approved by the board, the application shall remain open for the period of time stipulated by the board in its approval, which shall not exceed six months.

(C) Upon expiration of the application, the applicant may submit a new application, the required fee, and all supporting documents if the applicant wishes to reapply.

(e)(1) Any applicant who is determined by the board to meet the requirements of L. 2011, ch. 114, sec. 12 (a)(1), (2), and (4), and amendments thereto, may be granted a temporary license if the applicant submits a written request for a temporary license on a form approved by the board and the temporary license fee as specified in K.A.R. 102-7-2. Except as provided in paragraph (e)(2), the temporary license shall remain in effect for 12 months.

(2) Any applicant whose 12-month temporary license is due to expire may request that the temporary license remain in effect for a period of time not to exceed six months on the basis of extenuating circumstances. The applicant shall submit a written request to the board with a detailed explanation of the extenuating circumstances that are the basis of the applicant's request. The written request shall be submitted no later than 30 days before the application expires. If the request is approved by the board, the temporary license shall remain in effect for the period of time stipulated by the board in its approval, which shall not exceed six months.

(f) For purposes of this regulation, the term "extenuating circumstances" shall mean any condition caused by events beyond a person's control that is sufficiently extreme in nature to result in either of the following:

(1) The person's inability to comply with the requirements of this regulation within the time frames established by this regulation or L. 2010, ch. 45, sec. 5, and amendments thereto; or

(2) the inadvisability of requiring the applicant to comply with the requirements of this regulation within the time frames established by this regulation and L. 2010, ch. 45, sec. 5, and amendments thereto. (Authorized by K.S.A. 2010 Supp. 74-7507, as amended by L. 2010, ch. 45, §15; implementing L. 2010, ch. 45, §4, as amended by 2011 HB 2182, §12, and K.S.A. 2010 Supp. 74-7507, as amended by L. 2010, ch. 45, §15; effective, T-102-7-1-11, July 1, 2011; effective, T-102-10-27-11, Oct. 27, 2011; effective Jan. 20, 2012.)

**102-7-4a. Licensure without examination.** (a) Each applicant for licensure as an addiction counselor or clinical addiction counselor shall request the appropriate licensure application forms from the executive director of the board.

(b) Each applicant for licensure as an addiction counselor without examination shall submit the completed application materials to the board and meet the following requirements:

(1) Submit a certificate or written statement issued by the credentialing organization verifying that the applicant was registered or credentialed as an alcohol or other drug counselor pursuant to L. 2011, ch. 114, sec. 12, and amendments thereto, at any time from July 1, 2008 through June 30, 2011;

(2) submit an attestation, on a board-approved form, by the applicant that the applicant's last Kansas alcohol or other drug registration or credential was not suspended or revoked;

(3) submit documentation verifying that the applicant has completed two hours each of continuing education in ethics, confidentiality, and infectious disease during the three years immediately preceding application;

(4) submit, on board-approved forms, references from two professionals. Each individual submitting a reference shall meet all of the following conditions:

(A) Not be related to the applicant;

(B) be authorized to engage in the practice of addiction counseling or to practice in a related field; and

(C) be able to address the applicant's competence to perform the duties of an addiction counselor; and

(5) pay the application fee specified in K.A.R. 102-7-2.

(c) Each applicant for licensure as a clinical addiction counselor without examination shall submit to the board all application materials prescribed in paragraphs (b)(1) through (4), in addition to the following items:

(1) Documentation verifying that the applicant has completed six hours of continuing education in the diagnosis and treatment of substance use disorders during the three years immediately preceding the application date;

(2) (A) Documentation verifying that the applicant is authorized to practice independently as a licensed specialist clinical social worker, licensed clinical professional counselor, licensed clinical marriage and family therapist, licensed clinical psychotherapist, licensed psychologist, mental health advanced registered nurse practitioner, or advanced practice registered nurse or is a physician licensed to practice medicine and surgery; or

(B) (i) An official transcript verifying that the applicant holds a master's degree in a related field; and

(ii) an attestation, on a board-approved form, that the applicant has engaged in the practice, supervision, or administration of addiction counseling for at least four years with an average of at least eight hours each week for at least nine months of each of the four years; and

(3) payment of the application fee specified in K.A.R. 102-7-2.

(d) The following provisions shall apply to each applicant for licensure as an addiction counselor and each applicant for licensure as a clinical addiction counselor:

(1) An applicant shall not be given a judgment on the applicant's eligibility for licensure until the board receives all application materials and the applicant completes all application procedures.

(2) Upon notification from the board that all eligibility requirements for licensure without examination have been satisfied, the applicant shall submit the fee for the original two-year licensure period as specified in K.A.R. 102-7-2.

(3)(A) If any of the following conditions applies to the applicant, the applicant's application shall expire one year from the date on which it was submitted to the board:

(i) The applicant has not met the qualifications for licensure.

(ii) The applicant has not submitted a complete application.

(iii) The applicant has not submitted the original license fee.

(B) Upon expiration of the application, the applicant may submit a new application, the required fee, and all supporting documents if the applicant wishes to reapply. (Authorized by K.S.A. 2010 Supp. 74-7507, as amended by L. 2010, ch. 45, §15; implementing L. 2010, ch. 45, §4, as amended by L. 2011, ch. 114, §12, and K.S.A. 2010 Supp. 74-7507, as amended by L. 2010, ch. 45, §15; effective, T-102-7-1-11, July 1, 2011; effective, T-102-10-27-11, Oct. 27, 2011; effective Jan. 20, 2012.)

**102-7-4b. Application for licensure based on reciprocity.** (a) Each individual who wishes to be licensed as an addiction counselor or a clinical addiction counselor based on reciprocity, pursuant to L. 2011, ch. 114, sec. 13 and amendments thereto, shall submit an application for licensure in accordance with this regulation.

(b) Each applicant for licensure as an addiction counselor shall request the application forms for licensure by reciprocity from the board. Each applicant shall ensure that the application materials are submitted to the board as follows:

(1) The applicant shall submit the completed application form and payment in full of the application for a license fee, as specified in K.A.R. 102-7-2.

(2) The applicant shall forward to the licensing agency for the jurisdiction in which the applicant is currently licensed, certified, or registered as an addiction counselor a form provided by the board on which the licensing agency is to provide the following information directly to the board:

(A) Verification that the applicant currently holds a valid license, registration, or certification to practice addiction counseling issued by the licensing agency;

(B) the date on which the applicant was initially licensed, registered, or certified as an addiction counselor by the licensing agency and a complete history of each subsequent renewal, reinstatement, and lapse in licensure, registration, or certification. If an applicant is seeking licensure based on reciprocity pursuant to L. 2011, ch. 114, sec. 13 (a)(2) and amendments thereto, the applicant shall ensure that documentation covering the five years of continuous licensure, registration, or certification as an addiction counselor that immediately precede the date of the application is submitted to the board by the licensing agency for each jurisdiction in which the applicant was licensed, registered, or certified during that five-year period; and

(C) a complete history of any disciplinary action of a serious nature brought by the licensing agency against the applicant. For purposes of this regulation, "disciplinary action of a serious nature" shall mean the revocation or suspension of a license, registration, or certification issued by the licensing board or the voluntary surrender of a license, registration, or certification in lieu of the completion of an investigation or final disciplinary action.

(3) The applicant either shall provide verification that the standards for licensure, certification, or registration as an addiction counselor in that jurisdiction are substantially equivalent to the standards in Kansas or shall meet the following requirements:

(A)(i) Demonstrate completion of a baccalaureate or master's degree in addiction counseling as specified in K.A.R. 102-7-3; or

(ii) demonstrate completion of a baccalaureate or master's degree in a related field that included all required addiction counseling coursework requirements as specified in K.A.R. 102-7-3; and

(B) arrange for the applicant's transcripts covering all applicable college or university coursework to be sent directly from each academic institution to the board office. Each applicant who graduated from a college or university outside the United States also shall arrange for the applicant's transcript to be translated and evaluated for degree equivalency by a source and in a manner that are acceptable to the board.

(4) The applicant shall submit an attestation that the applicant engaged in the professional practice of addiction counseling an average of at least 15 hours each week for nine months during each of the five years immediately preceding the date of application for licensure based on reciprocity.

(c) In addition to meeting the requirements of subsection (b), each applicant for licensure as a clinical addiction counselor shall demonstrate competence to diagnose and treat substance use disorders by submitting at least two of the following forms of documentation:

(1)(A) A transcript sent directly from a regionally accredited university or college documenting satisfactory completion of 15 graduate credit hours supporting diagnosis or treatment of substance use disorders, including the following coursework:

(i) Three graduate semester hours of discrete coursework in ethics;

(ii) three graduate semester hours of discrete coursework in the diagnosis of substance use disorders that includes studies of the established diagnostic criteria for substance use disorders; and

(iii) coursework that addresses interdisciplinary referrals, interdisciplinary collaborations, and treatment approaches; or

(B) verification from either the licensing agency or the testing service that the applicant passed a national clinical examination approved by the board, including the applicant's score on the exam and the passing score established for the exam;

(2) one or both of the following types of documentation, which shall cover periods of time totaling at least three years:

(A) An attestation by a supervisor or other designated representative of the applicant's employer that the applicant has at least three years of clinical practice, including at least eight hours of client contact each week during nine months or more of each year, in a treatment facility, community mental health center or its affiliate, state mental hospital, or another employment setting in

which the applicant engaged in clinical practice that included diagnosis or treatment of substance use disorders; or

(B) an attestation by the applicant that the applicant engaged in at least three years of independent clinical practice that included diagnosis or treatment of substance use disorders, as well as supporting documentation in the form of a published job description, a description of the applicant's practice in a public information brochure, a description of services in an informed consent document, or other similar published statements demonstrating that the applicant has engaged in independent clinical practice for at least three years; or

(3) an attestation that the applicant has demonstrated competence in diagnosis or treatment of substance use disorders, which shall be signed by either a professional licensed to practice medicine and surgery or a professional licensed psychologist, a licensed clinical social worker, or another professional licensed to diagnose and treat mental disorders or substance use disorders, or both, in independent practice. (Authorized by K.S.A. 2010 Supp. 74-7507, as amended by L. 2010, ch. 45, §15; implementing L. 2010, ch. 45, §7, as amended by 2011 HB 2182, §13; effective, T-102-7-1-11, July 1, 2011; effective, T-102-10-27-11, Oct. 27, 2011; effective Jan. 20, 2012.)

**102-7-5. Examination for addiction counselor or clinical addiction counselor.** (a)(1) Each applicant for licensure as an addiction counselor who does not meet the requirements of K.A.R. 102-7-4a or 102-7-4b shall be required to pass a nationally administered, standardized written examination approved by the board.

(2) An applicant shall not be authorized to register for an examination until the applicant is within at least four months of anticipated completion of the applicable academic degree requirements and has satisfied the board that the applicant merits the public trust. Each applicant who has not completed the applicable academic degree requirements on the date that the application is submitted shall arrange for the required transcripts to be sent to the board when the academic degree is awarded to the applicant.

(3) The applicant's required written examination may be waived by the board if the applicant obtained a passing score as determined by the examination company on a nationally administered, standardized written examination deemed by the board to be substantially equivalent to the examination used in this state.

(b)(1) Each applicant for licensure as a clinical addiction counselor who does not meet the requirements of K.A.R. 102-7-4a or 102-7-4b shall be required to pass a nationally administered, standardized written clinical examination approved by the board.

(2) An applicant shall not be authorized to register for the clinical examination or to qualify for a waiver of the examination until the applicant has fulfilled all educational requirements and has satisfied the board that the applicant merits the public trust.

(3) The applicant's required written clinical examination may be waived by the board if the applicant obtained a passing score as determined by the examination company on a standardized written examination deemed by the board to be substantially equivalent to the examination used in this state. (Authorized by K.S.A. 2010 Supp. 74-7507, as amended by L. 2010, ch. 45, §15; implementing L. 2010, ch. 45, §4, as amended by 2011 HB 2182, §12; effective, T-102-7-1-11, July 1, 2011; effective, T-102-10-27-11, Oct. 27, 2011; effective Jan. 20, 2012.)

**102-7-6. Professional postgraduate supervised experience requirement for a clinical addiction counselor.** For each applicant for licensure as a clinical addiction counselor, the postgraduate supervised professional experience of addiction counseling shall meet all of the following requirements:

(a) The postgraduate supervised professional experience of addiction counseling shall consist of 4,000 hours of professional experience, including 1,500 hours of direct client contact conducting substance abuse assessments and treatment.

(b) Except as provided in subsection (c), clinical supervision shall be provided throughout the entirety of the postgraduate supervised professional experience at a ratio of one hour of clinical supervision for each 20 hours of direct client contact, specified as follows:

(1) At least 50 hours of one-on-one, individual clinical supervision occurring with the supervisor and supervisee in the same physical space;

(2) at least 100 hours of clinical supervision with one supervisor and no more than six supervisees, which may be obtained in person or, if confidentiality is technologically protected, person-to-per-

son contact by interactive video or other telephonic means; and

(3) at least two separate clinical supervision sessions per month, at least one of which shall be one-on-one individual supervision.

(c) Each applicant with a doctor's degree in addiction counseling or a related field as defined in K.A.R. 102-7-1(s) shall be required to complete, after the doctoral degree is granted, at least one-half of the postgraduate supervised professional experience requirements as follows:

(1) At least 25 hours of one-on-one, individual clinical supervision occurring with the supervisor and supervisee in the same physical space;

(2) at least 50 hours of clinical supervision with one supervisor and no more than six supervisees, which may be obtained in person or, if confidentiality is technologically protected, person-to-person contact by interactive video or other telephonic means; and

(3) at least two separate clinical supervision sessions per month, at least one of which shall be one-on-one individual supervision.

(d) The clinical supervisor of each person attaining the 4,000 hours of postgraduate supervised professional experience required for licensure as a clinical addiction counselor shall meet one of the following requirements while the individual is providing supervision:

(1) The clinical supervisor shall be a clinical addiction counselor who is licensed in Kansas or is certified or licensed in another jurisdiction and, on and after January 1, 2014, who has engaged in the independent practice of clinical addiction counseling, including the diagnosis and treatment of substance use disorders, for at least two years beyond the supervisor's certification or licensure date as a clinical addiction counselor.

(2) If a licensed clinical addiction counselor is not available, the clinical supervisor may be a person who is certified or licensed at the graduate level to practice in one of the behavioral sciences and whose authorized scope of practice permits the diagnosis and treatment of mental disorders independently. The qualifying individual shall have had at least two years of clinical professional experience beyond the date of the supervisor's certification or licensure.

(e) In addition to the requirements of subsection (d), each clinical supervisor shall meet the following requirements:

(1) Have professional authority over and responsibility for the supervisee's clinical functioning in the practice of addiction counseling;

(2) not have a harmful dual relationship with the supervisee;

(3) not be under any sanction from a disciplinary proceeding, unless the board waives this prohibition for good cause shown by the proposed supervisor;

(4) have knowledge of and experience with the supervisee's client population;

(5) have knowledge of and experience with the methods of practice that the supervisee employs;

(6) have an understanding of the organization and the administrative policies and procedures of the supervisee's practice setting; and

(7) be a member of the practice setting staff or meet the requirements of subsection (f).

(f) If a qualified clinical supervisor is not available from among staff in the supervisee's practice setting, the supervisee may secure an otherwise qualified clinical supervisor outside the practice setting if all of the following conditions are met:

(1) The supervisor has an understanding of the practice setting's mission, policies, and procedures.

(2) The extent of the supervisor's responsibility for the supervisee is clearly defined in terms of client cases to be supervised, role in personnel evaluation within the practice setting, and other aspects of the clinical supervision training plan.

(3) The responsibility for payment for supervision is clearly defined.

(4) If the supervisee pays the supervisor directly for the supervision, the supervisor maintains responsibility for the client and to the practice setting.

(g) Each clinical supervisor shall perform the following duties:

(1) Provide oversight, guidance, and direction for the supervisee's clinical practice of addiction counseling by assessing and evaluating the supervisee's performance;

(2) conduct supervision as a process distinct from personal therapy, didactic instruction, or addiction counseling consultation;

(3) provide documentation of supervisory qualifications to the supervisee;

(4) periodically evaluate the supervisee's clinical functioning;

(5) provide supervision in accordance with the clinical supervision training plan;

(6) maintain documentation of supervision in

accordance with the clinical supervision training plan;

(7) provide the documentation required by the board when the supervisee completes the postgraduate supervised professional experience. The supervisor shall submit this documentation on board-approved forms and in a manner that will enable the board to evaluate the extent and quality of the supervisee's professional experience and assign credit for that experience;

(8) provide a level of supervision that is commensurate with the education, training, experience, and ability of both the supervisor and the supervisee; and

(9) ensure that each client knows that the supervisee is practicing addiction counseling under supervision.

(h)(1) In order for an applicant for a clinical addiction counselor license to obtain credit for hours accrued before August 1, 2011 toward the required 4,000 hours of clinical supervision, the applicant shall provide an attestation that the clinical supervision occurred in accordance with a plan that meets the following conditions:

(A) The supervision was scheduled and formalized.

(B) The supervision included review and examination of cases.

(C) Assessment of the supervisee's competencies was addressed by the supervisor.

(2) The attestation shall be signed by one of the following:

(A) The supervisor, if available; or

(B) if the supervisor is not available, another person who was in the supervisee's practice setting with knowledge of the supervisee's clinical supervision.

(i) For supervision hours accrued on and after August 1, 2011, each supervisor and supervisee shall develop and cosign a written clinical supervision training plan on forms provided by the board at the beginning of the supervisory relationship. The supervisee shall submit an official position description and the training plan to the board and shall receive board approval of the plan before any supervised professional experience hours for clinical licensure can begin to accrue. This plan shall clearly define and delineate the following items:

(1) The supervisory context, which shall include the purpose of supervision;

(2) a summary of the anticipated types of clients and the services to be provided, as evidenced by the supervisee's official position description;

(3) a plan that describes the supervision goals and objectives and the means to attain and evaluate progress towards the goals;

(4) the supervisor's responsibilities;

(5) the supervisee's responsibilities;

(6) the format and schedule of supervision;

(7) a plan for documenting the following information:

(A) The date of each supervisory meeting;

(B) the length of each supervisory meeting;

(C) a designation of each supervisory meeting as an individual or group meeting;

(D) a designation of each supervisory meeting as conducted in the same physical space or by another means as specified in paragraph (b)(2);

(E) the 4,000 hours of postgraduate supervised clinical addiction counseling experience, which shall include specifically documenting the 1,500 hours of direct client contact conducting substance abuse assessments and treatment; and

(F) an evaluation of the supervisee's progress under clinical supervision;

(8) a plan to address and remedy circumstances in which there is a conflict between the supervisor and the supervisee;

(9) a plan to notify clients of the following information:

(A) The fact that the supervisee is practicing addiction counseling under supervision;

(B) the limits of client confidentiality within the supervisory process; and

(C) the name, address, and telephone number of the clinical supervisor;

(10) the date on which the parties entered into the clinical supervision training plan and the time frame that the plan is intended to encompass;

(11) an agreement to amend or renegotiate the terms of the clinical supervision training plan, if warranted, including written notification of these changes to the board office, as provided in subsection (j);

(12) the supervisee's informed consent for the supervisor to discuss supervision or performance issues with the supervisee's clients, the supervisee's other addiction counseling or employment supervisors, the board, or any other individual or entity to which either the supervisee or the supervisor is professionally accountable; and

(13) a statement signed by each supervisor and supervisee acknowledging that each person has read and agrees to the postgraduate supervised

professional experience requirements specified in this regulation.

(j) All changes to the clinical supervision training plan shall be submitted by the supervisee to the board for its approval. The changes shall be submitted no more than 45 days after the date on which the changes took effect. If the supervisee fails to submit the changes to the board within that 45-day period, no supervised hours of practice shall be accrued or credited for any practice, beginning on the date the changes took effect through the date on which the changes to the plan are approved by the board. (Authorized by K.S.A. 2010 Supp. 74-7507, as amended by L. 2010, ch. 45, §15; implementing L. 2010, ch. 45, §4, as amended by 2011 HB 2182, §12; effective, T-102-7-1-11, July 1, 2011; effective, T-102-10-27-11, Oct. 27, 2011; effective Jan. 20, 2012.)

**102-7-7. Renewal; late renewal.** (a) To be considered for license renewal, each licensed addiction counselor and each licensed clinical addiction counselor shall submit the following items to the board:

(1) A completed renewal application;

(2) the continuing education reporting form; and

(3) the renewal fee specified in K.A.R. 102-7-2.

(b) If the items specified in subsection (a) are not submitted before the date the license expires, the licensee may late renew the license by performing the following:

(1) Submitting a completed late renewal application form;

(2) paying the required renewal fee and the late renewal penalty fee specified in K.A.R. 102-7-2; and

(3) submitting the continuing education reporting form and documentation pursuant to K.A.R. 102-7-10.

(c) Each individual who holds an addiction counseling license or a clinical addiction counseling license but who fails to renew the license before its expiration and subsequently applies to renew the license shall indicate the following on the late renewal application form:

(1) Specification of whether or not the individual has continued to practice addiction counseling in Kansas or has continued to represent that individual as being a licensed addiction counselor or a licensed clinical addiction counselor in Kansas after the individual's license expired; and

(2) if either condition in paragraph (c)(1) has been met, an explanation of the circumstances. (Authorized by K.S.A. 2010 Supp. 74-7507, as amended by L. 2010, ch. 45, §15; implementing L. 2010, ch. 45, §8, as amended by 2011 HB 2182, §14, and K.S.A. 2010 Supp. 74-7507, as amended by L. 2010, ch. 45, §15; effective, T-102-7-1-11, July 1, 2011; effective, T-102-10-27-11, Oct. 27, 2011; effective Jan. 20, 2012.)

**102-7-7a. Reinstatement after suspension or revocation.** (a) If the license of any individual has been suspended and the individual subsequently wants to apply for license reinstatement, the individual shall submit the following items:

(1) The completed reinstatement application form;

(2) the required reinstatement fee specified in K.A.R. 102-7-2;

(3) the continuing education reporting form and documentation pursuant to K.A.R. 102-7-10;

(4) proof satisfactory to the board that the individual has complied with sanctions and any other conditions imposed under the suspension; and

(5) any materials, information, evaluation or examination reports, or other documentation that may be requested by the board and that will enable the board to satisfactorily evaluate and determine whether or not the license should be reinstated.

(b) If the license of any individual has been revoked and the individual subsequently wants to apply for license reinstatement, the individual shall submit the following items:

(1) The completed reinstatement application form;

(2) the required reinstatement fee specified in K.A.R. 102-7-2;

(3) the continuing education reporting form and documentation pursuant to K.A.R. 102-7-10; and

(4) any materials, information, evaluation or examination reports, or other documentation that the board may request and that will enable the board to satisfactorily evaluate and determine whether or not to reinstate the license. Factors to be considered by the board in determining whether or not to reinstate the revoked license shall include the following:

(A) The extent to which the individual presently merits the public trust;

(B) the extent to which the individual has demonstrated consciousness of the misconduct that resulted in the license revocation;

(C) the extent of the individual's remediation and rehabilitation in regard to the misconduct that resulted in the license revocation;

(D) the nature and seriousness of the original misconduct;

(E) the individual's conduct after the license revocation;

(F) the time elapsed since the license revocation; and

(G) the individual's present knowledge and competence in addiction counseling skills. (Authorized by K.S.A. 2010 Supp. 74-7507, as amended by L. 2010, ch. 45, §15; implementing L. 2010, ch. 45, §8, as amended by 2011 HB 2182, §14; effective, T-102-7-1-11, July 1, 2011; effective, T-102-10-27-11, Oct. 27, 2011; effective Jan. 20, 2012.)

**102-7-8. Renewal audit.** (a) A random audit of the continuing education documentation for 10 percent of the addiction counselor licenses and the clinical addiction counselor licenses expiring each month shall be conducted by the board.

(b) Each licensee selected for the random audit shall be notified after the board has received the licensee's renewal application form required by K.A.R. 102-7-7.

(c) Upon board notification, each renewal applicant shall submit the following to the board within 30 days after the license expiration date:

(1) The completed renewal audit forms; and

(2) the original continuing education documents that validate all continuing education hours claimed for credit during the current renewal period.

(d) Continuing education hours that a renewal applicant earns after board receipt of the renewal application form shall not be approved for continuing education credit for the period being audited. (Authorized by K.S.A. 2010 Supp. 74-7507, as amended by L. 2010, ch. 45, §15; implementing L. 2010, ch. 45, §8, as amended by 2011 HB 2182, §14, and K.S.A. 2010 Supp. 74-7507, as amended by L. 2010, ch. 45, §15; effective, T-102-7-1-11, July 1, 2011; effective, T-102-10-27-11, Oct. 27, 2011; effective Jan. 20, 2012.)

**102-7-9. Continuing education.** (a) Each licensee shall complete 30 hours of documented and approved continuing education oriented to the enhancement of an addiction counselor's practice, values, ethics, skills, or knowledge during each two-year renewal period. Continuing education hours accumulated in excess of the requirement shall not be carried over to the next renewal period.

(b) During each two-year renewal period and as a part of the required continuing education hours, each licensee shall complete three hours of professional ethics and each clinical addiction counselor licensee shall complete six hours related to the diagnosis and treatment of substance use disorders. These hours shall be obtained from any of the activities specified in paragraphs (d)(1), (d)(2), (d)(3), (d)(4), (d)(9), and (d)(10).

(c) One hour of continuing education credit shall consist of at least 50 minutes of classroom instruction or at least one clock-hour of other types of acceptable continuing education experiences listed in subsection (d). One-quarter hour of continuing education credit may be granted for each 15 minutes of acceptable continuing education. Credit shall not be granted for fewer than 15 minutes.

(d) Acceptable continuing education, whether taken within the state or outside the state, shall include the following:

(1) An academic addiction counseling course or an academic course oriented to the enhancement of addiction counselor's practice, values, ethics, skills, or knowledge that is taken for academic credit. Each licensee shall be granted 15 continuing education hours for each academic credit hour that the licensee successfully completes. The maximum number of allowable continuing education hours shall be 30;

(2) an academic addiction counseling course, or an academic course oriented to the enhancement of an addiction counselor's practice, values, ethics, skills, or knowledge, that is audited. Each licensee shall receive continuing education credit on the basis of the actual contact time that the licensee spends attending the course, up to a maximum of 15 hours per academic credit hour. The maximum numbers of allowable continuing education hours shall be 30;

(3) a seminar, institute, conference, workshop, or course. The maximum number of allowable continuing education hours shall be 30;

(4) if a posttest is provided, an activity consisting of completing a computerized interactive learning module, viewing a telecast or videotape, listening to an audiotape, or reading. The maxi-

mum number of allowable continuing education hours shall be 30;

(5) if a posttest is not provided, an activity consisting of completing a computerized interactive learning module, viewing a telecast or videotape, listening to an audiotape, or reading. The maximum number of allowable continuing education hours shall be five;

(6) a cross-disciplinary offering in medicine, law, a foreign or sign language, computer science, professional or technical writing, business administration, management sciences, or any other discipline if the offering is clearly related to the enhancement of an addiction counselor's practice, values, ethics, skills, or knowledge. The maximum number of allowable continuing education hours shall be 10;

(7) a self-directed learning project preapproved by the board. The maximum number of allowable continuing education hours shall be 10;

(8) providing supervision to practicum or intern students, applicants for licensure as clinical addiction counselors, or other clinical mental health practitioners. The maximum number of allowable continuing education hours shall be 10;

(9) the first-time preparation and presentation of an addiction seminar, institute, conference, workshop, or course, or the substantial revision of an addiction counseling seminar, institute, conference, workshop, or course. The maximum number of allowable continuing education hours shall be 10 for documented preparation and presentation time;

(10) the preparation of a professional addiction counseling article published for the first time in a professional journal, a book chapter published by a recognized publisher, or a written presentation given for the first time at a statewide or national professional meeting. If more than one licensee or other professional authored the material, the continuing education credit shall be prorated among the authors. The maximum number of allowable continuing education hours shall be 10; and

(11) participation in a professional organization or appointment to a professional credentialing board, if the goals of the organization or board are clearly related to the enhancement of addiction counseling practice, values, ethics, skills, and knowledge. Participation may include holding office or serving on committees of the organization or board. The maximum number of allowable continuing education hours shall be 10.

(e) Continuing education credit approval shall not be granted for identical programs if the programs are completed within the same renewal period.

(f) 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 licensee cannot demonstrate to the board's satisfaction that the program's goals and objectives are to enhance the licensee's practice, values, ethics, skills, or knowledge in addiction counseling.

(g) Each licensee shall maintain individual, original continuing education records. These records shall document the licensee's continuing education activity attendance, participation, or completion as specified in K.A.R. 102-7-10. Any licensee may be required to submit these records to the board at least 30 days before the expiration date of each current licensure period. (Authorized by K.S.A. 2010 Supp. 74-7507, as amended by L. 2010, ch. 45, §15; implementing L. 2010, ch. 45, §8, as amended by 2011 HB 2182, §14; effective, T-102-7-1-11, July 1, 2011; effective, T-102-10-27-11, Oct. 27, 2011; effective Jan. 20, 2012.)

**102-7-10. Documentation of continuing education.** Each of the following forms of documentation shall be accepted as proof that a licensee has completed that continuing education activity:

(a) An official transcript or other proof indicating a passing grade for an academic course;

(b) a statement signed by the instructor indicating the number of actual contact hours attended for an audited academic course. A copy shall not be accepted;

(c) a signed statement from the provider of a seminar, institute, conference, workshop, or course indicating that the licensee attended the continuing education program. A copy shall not be accepted;

(d) for each videotape, audiotape, computerized interactive learning module, or telecast that the licensee utilized for continuing education purposes, a written statement from the licensee specifying the media format, content title, presenter or sponsor, content description, length, and activity date;

(e) a copy of a self-directed project. The licensee shall submit this copy to the board to eval-

uate and certify the number of credit hours that the board will grant;

(f) written, signed verification from the university practicum or intern instructor or other official training director for whom the licensee supervised undergraduate or graduate students or from the postgraduate supervisee for whom the licensee provided supervision. A copy shall not be accepted;

(g) a copy of an academic course syllabus and verification that the licensee presented the course;

(h) a copy of a letter from the presentation sponsor or a copy of the brochure announcing the licensee as the presenter, the agenda of the presentation, and verification that the licensee presented the seminar, institute, conference, workshop, or course;

(i) a copy of an article or book chapter written by the licensee and verification of publication or written presentation at a professional meeting. The licensee shall submit these materials to the board to evaluate and certify the number of hours of credit to be granted; and

(j) a signed letter from a professional organization or credentialing board outlining the licensee's participation in that professional organization or credentialing board. A copy shall not be accepted. (Authorized by K.S.A. 2010 Supp. 74-7507, as amended by L. 2010, ch. 45, §15; implementing L. 2010, ch. 45, §8, as amended by 2011 HB 2182, §14; effective, T-102-7-1-11, July 1, 2011; effective, T-102-10-27-11, Oct. 27, 2011; effective Jan. 20, 2012.)

**102-7-11. Unprofessional conduct.** Each of the following acts shall be considered unprofessional conduct for a licensed addiction counselor, a licensed clinical addiction counselor, or an applicant for an addiction counselor license or a clinical addiction counselor license:

(a) Except when the information has been obtained in the context of confidentiality, failing to notify the board, within a reasonable period of time, that the licensee or applicant or any other person regulated by the board or applying for licensure or registration has met any of these conditions:

(1) Has had a professional license, certificate, permit, registration, certification, or professional membership granted by any jurisdiction, professional association, or professional organization that has been limited, conditioned, qualified, restricted, suspended, revoked, refused, voluntarily surrendered, or allowed to expire in lieu of or during investigatory or disciplinary proceedings;

(2) has been subject to any other disciplinary action by any credentialing board, professional association, or professional organization;

(3) has been demoted, terminated, suspended, reassigned, or asked to resign from employment, or has resigned from employment, for some form of misfeasance, malfeasance, or nonfeasance;

(4) has been substantiated of abuse against a child, an adult, or a resident of a care facility; or

(5) has practiced the licensee's profession in violation of the laws or regulations that regulate the profession;

(b) knowingly allowing another person to use one's license;

(c) impersonating another person holding a license or registration issued by this or any other board;

(d) having been convicted of a crime resulting from or relating to one's professional practice of addiction counseling;

(e) furthering the licensure application of another person who is known or reasonably believed to be unqualified with respect to character, education, or other relevant eligibility requirements;

(f) knowingly aiding or abetting any individual who is not credentialed by the board to represent that individual as a person who was or is credentialed by the board;

(g) failing to recognize, seek intervention, and otherwise appropriately respond when one's own personal problems, psychosocial distress, or mental health difficulties interfere with or negatively impact professional judgment, professional performance and functioning, or the ability to act in the client's best interests;

(h) failing or refusing to cooperate in a timely manner with any request from the board for a response, information, or assistance with respect to the board's investigation of any report of an alleged violation filed against oneself or any other applicant or professional who is required to be licensed or registered by the board. Each person taking longer than 30 days to provide the requested response, information, or assistance shall have the burden of demonstrating that the person has acted in a timely manner;

(i) offering to perform or performing services clearly inconsistent or incommensurate with one's training, education, or experience or with accepted professional standards;

(j) engaging in any behavior that is abusive or demeaning to a client, student, or supervisee;

(k) imposing one's personal values, spiritual beliefs, or lifestyle on a client, student, or supervisee;

(l) discriminating against any client, student, directee, or supervisee on the basis of color, race, gender, age, religion, national origin, or disability;

(m) failing to inform each client of that client's rights as those rights relate to the addiction counseling relationship;

(n) failing to provide each client with a description of the services, fees, and payment expectations, or failing to reasonably comply with that description;

(o) failing to provide each client with a description of the possible effects of the proposed treatment if the treatment is experimental or if there are clear and known risks to the client;

(p) failing to inform each client, student, or supervisee of any financial interests that might accrue to the licensee or applicant if the licensee or applicant refers a client, student, or supervisee to any other service or if the licensee or applicant uses any tests, books, or apparatus;

(q) failing to inform each client that the client can receive services from a public agency if one is employed by that public agency and also offers services privately;

(r) failing to obtain written, informed consent from each client, or the client's legal representative or representatives, before performing any of the following actions:

(1) Electronically recording sessions with that client;

(2) permitting a third-party observation of their activities; or

(3) releasing information concerning a client to a third person, unless required or permitted by law;

(s) failing to exercise due diligence in protecting the information regarding the client from disclosure by other persons in one's work or practice setting;

(t) engaging in professional activities, including billing practices and advertising, involving dishonesty, fraud, deceit, or misrepresentation;

(u) using alcohol or any illegal drug or misusing any substance that could cause impairment while performing the duties or services of an addiction counselor;

(v) engaging in a harmful dual relationship or exercising undue influence;

(w) making sexual advances toward or engaging in physical intimacies or sexual activities with either of the following:

(1) Any person who is a client, supervisee, or student; or

(2) any person who has a significant relationship with the client and that relationship is known to the licensee;

(x) making sexual advances toward or engaging in physical intimacies or sexual activities with any person who meets either of the following conditions:

(1) Has been a client within the past 24 months; or

(2) has had a significant relationship with a current client or a person who has been a client within the past 24 months and that relationship is known to the licensee;

(y) 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 referring the client or in connection with performing professional services;

(z) permitting any person to share in the fees for professional services, other than a partner, an employee, an associate in a professional firm, or a consultant authorized to practice addiction counseling or clinical addiction counseling;

(aa) soliciting or assuming professional responsibility for clients of another agency or colleague without attempting to coordinate the continued provision of client services by that agency or colleague;

(bb) making claims of professional superiority that one cannot substantiate;

(cc) guaranteeing that satisfaction or a cure will result from performing or providing any professional service;

(dd) claiming or using any secret or special method of treatment or techniques that one refuses to disclose to the board;

(ee) continuing or ordering tests, procedures, or treatments or using treatment facilities or services not warranted by the client's condition, best interests, or preferences;

(ff) taking credit for work not personally performed, whether by giving inaccurate or misleading information or by failing to disclose accurate or material information;

(gg) if engaged in research, failing to meet these requirements:

(1) Considering carefully the possible consequences for human beings participating in the research;

(2) protecting each participant from unwarranted physical and mental harm;

(3) ascertaining that each participant's consent is voluntary and informed; and

(4) preserving the privacy and protecting the anonymity of each subject of the research within the terms of informed consent;

(hh) making or filing a report that one knows to be false, distorted, erroneous, incomplete, or misleading;

(ii) failing to notify the client promptly if one anticipates terminating or interrupting service to the client;

(jj) failing to seek continuation of service, or abandoning or neglecting a client under or in need of professional care, without making reasonable arrangements for that care;

(kk) abandoning employment under circumstances that seriously impair the delivery of professional care to clients and without providing reasonable notice to the employer;

(ll) failing to terminate addiction counseling services if it is apparent that the relationship no longer serves the client's needs or best interests;

(mm) when supervising, failing to provide accurate and current information, timely evaluations, and constructive consultation;

(nn) when applicable, failing to inform a client that addiction counseling services are provided or delivered under supervision;

(oo) failing to inform a client that addiction counseling services are delivered under supervision as a student or an individual seeking clinical licensure;

(pp) failing to report unprofessional conduct of a licensed addiction counselor, licensed clinical addiction counselor, or any individual licensed by the board;

(qq) intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing another person from filing a report or record that is required by state or federal law, or inducing another person to take any of these actions;

(rr) offering to perform or performing any service, procedure, or therapy that, by the accepted standards of addiction counseling practice in the community, would constitute experimentation on human subjects without first obtaining the full, informed, and voluntary written consent of the client or the client's legal representative or representatives;

(ss) practicing addiction counseling after one's license expires;

(tt) using without a license, or continuing to use after a license has expired, any title or abbreviation defined by regulation; and

(uu) violating any provision of the addictions counselor licensure act or any implementing regulation. (Authorized by K.S.A. 2010 Supp. 74-7507, as amended by L. 2010, ch. 45, §15; implementing L. 2011, ch. 114, §15; effective, T-102-7-1-11, July 1, 2011; effective, T-102-10-27-11, Oct. 27, 2011; effective Jan. 20, 2012.)

**102-7-11a. Recordkeeping.** (a) Each licensed addiction counselor and each licensed clinical addiction counselor shall maintain a record for each client that accurately reflects the licensee's contact with the client and the results of the addiction counseling or clinical addiction counseling services provided. Each licensee shall have ultimate responsibility for the content of the licensee's records and the records of those persons under the licensee's supervision. These records may be maintained in a variety of formats, if reasonable steps are taken to maintain the confidentiality, accessibility, and durability of the records. Each record shall be completed in a timely manner and, at a minimum, shall include the following information for each client in sufficient detail to permit planning for continuity of care:

(1) Adequate identifying data;

(2) the date or dates of services that the licensee or the licensee's supervisee provided;

(3) the type or types of services that the licensee or the licensee's supervisee provided;

(4) the initial assessment, conclusions, and recommendations;

(5) the treatment plan; and

(6) the clinical or progress notes from each session.

(b) If a licensee is the owner or custodian of client records, the licensee shall retain a complete record for the following time periods, unless otherwise provided by law:

(1) At least six years after the date of termination of one or more contacts with an adult; and

(2) for a client who is a minor on the date of termination of the contact or contacts, at least until the later of the following two dates:

(A) Two years past the date on which the client reaches the age of majority; or

(B) six years after the date of termination of the contact or contacts with the minor. (Authorized

by K.S.A. 2010 Supp. 74-7507, as amended by L. 2010, ch. 45, §15; implementing L. 2010, ch. 45, §2, as amended by 2011 HB 2182, §10; effective, T-102-7-1-11, July 1, 2011; effective, T-102-10-27-11, Oct. 27, 2011; effective Jan. 20, 2012.)

**102-7-12. Designation of referral source for use in the diagnosis and treatment of substance use disorders.** The "diagnostic and statistical manual of mental disorders," fourth edition, text revision, copyrighted in 2000 and published by the American psychiatric association, is hereby adopted by reference. This manual shall be used for the diagnosis and treatment of substance use disorders. (Authorized by K.S.A. 2010 Supp. 74-7507, as amended by L. 2010, ch. 45, §15; implementing L. 2010, ch. 45, §2, as amended by 2011 HB 2182, §10; effective, T-102-7-1-11, July 1, 2011; effective, T-102-10-27-11, Oct. 27, 2011; effective Jan. 20, 2012.)

## Agency 105

# State Board of Indigents' Defense Services

*Articles*

105-4. ENTITLEMENT TO LEGAL REPRESENTATION.
105-5. ATTORNEY COMPENSATION.
105-11. REIMBURSEMENT FROM DEFENDANT.

### Article 4.—ENTITLEMENT TO LEGAL REPRESENTATION

**105-4-1. Determination of eligibility.** (a) At the commencement of proceedings against any defendant, the defendant may apply for legal representation at state expense by submitting, to the court, an affidavit of indigency on a form provided by the board. The court shall determine if the defendant is indigent, based upon consideration of the following factors, as defined in K.A.R. 105-4-2:

(1) The defendant's liquid assets;

(2) the defendant's household income;

(3) either the defendant's actual, reasonable, and necessary expenses incurred to support the defendant's household or the most current federal poverty guidelines, as published by the U.S. department of health and human services, for the defendant's family unit;

(4) the anticipated cost of private legal representation; and

(5) any transfer of property by the defendant without adequate monetary consideration after the date of the alleged commission of the offense.

(b) An eligible indigent defendant shall mean a person whose combined household income and liquid assets equal less than the most current federal poverty guidelines, as published by the U.S. department of health and human services, for the defendant's family unit.

(c) The court may also consider any special circumstances affecting the defendant's eligibility for legal representation at state expense.

(d) If the court determines that the defendant is financially able to employ counsel after counsel has been appointed, the court shall require the defendant to reimburse the board in accordance with the provisions of K.S.A. 22-4510, and amendments thereto, for all or part of the expenditures made on the defendant's behalf. (Authorized by K.S.A. 22-4504 and K.S.A. 22-4522; implementing K.S.A. 22-4504 and K.S.A. 22-4510; effective May 1, 1984; amended, T-105-10-3-05, Oct. 3, 2005; amended Feb. 17, 2006; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010.)

**105-4-2. Definition of terms.** Terms used to determine eligibility for indigents' defense services shall have the following meanings: (a) Household income. The defendant's household income shall be defined as the defendant's income and the income of all other persons related by birth, marriage, or adoption who reside with the defendant. Income shall include the total cash receipts before taxes from all resources, including money, wages, and the net receipts from nonfarm or farm self-employment. Income shall include regular payments from a governmental income maintenance program, alimony, child support, public or private pensions, annuities, and income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts.

(b) Liquid assets. The defendant's liquid assets shall be defined as cash in hand, stocks and bonds, accounts at financial institutions, real property or homestead having a net value greater than $50,000, a car, and any other property that can be readily converted to cash, with the following exceptions:

(1) The defendant's clothing, household furnishings, and any personal property that is exempt from attachment or levy of execution by K.S.A. 60-2304, and amendments thereto; and

(2) any other property, except a homestead having a net value greater than $50,000, that is exempt from attachment or levy of execution by K.S.A. 60-2301 et seq., and amendments thereto.

The net value of the homestead shall be the fair market value less the mortgage, other encumbrances, and the reasonable cost of sale. The net

value of any property transferred after the date of the alleged commission of the offense shall be included in the determination of the defendant's liquid assets.

(c) Transfer of property.

(1) If the defendant has transferred property after the alleged commission of the offense, the court shall determine the reason for the transfer of property and whether adequate monetary consideration was received. If adequate monetary consideration was not received, the court shall presume that the transfer was made for the purpose of establishing eligibility unless the defendant furnishes clear and convincing evidence that the transfer was made exclusively for another purpose.

(2) If a transfer was made either for the purpose of establishing eligibility or without adequate monetary consideration and the property is reconveyed to the defendant or an adjustment is made by which the defendant receives full value, the defendant shall, if otherwise qualified, be eligible to receive legal representation at state expense. (Authorized by K.S.A. 22-4504 and 22-4522; implementing K.S.A. 22-4504; effective May 1, 1984; amended Nov. 1, 1996; amended, T-105-7-22-11, July 22, 2011; amended Nov. 14, 2011.)

**105-4-3. Affidavit of indigency.** A standard format for an affidavit of indigency shall include the following information: (a) The defendant's liquid assets and household income;

(b) the defendant's household expenses;

(c) any extraordinary financial obligations of the defendant;

(d) the size of the defendant's household; and

(e) any transfer of property by the defendant after the date of the alleged commission of the offense.

If the information provided by the defendant on the affidavit is unclear, incomplete, contradictory, or questionable, further inquiry may be conducted by the board, the court, the county or district attorney, or other officer assigned by the court. The affidavit of indigency forms shall be published and distributed annually to the judicial administrator and to the administrative judge of each district. (Authorized by K.S.A. 22-4522; implementing K.S.A. 22-4504; effective May 1, 1984; amended May 1, 1985; amended, T-105-7-22-11, July 22, 2011; amended Nov. 14, 2011.)

## Article 5.—ATTORNEY COMPENSATION

**105-5-2. Rates of compensation.** (a) Each assigned counsel shall be compensated at the rate of $62 per hour.

(b) Contract counsel shall be compensated at the rate or rates specified in the contract between the board and the assigned counsel. (Authorized by and implementing K.S.A. 22-4507 and 22-4522; effective May 1, 1984; amended May 1, 1988; amended, T-105-6-13-88, July 1, 1988; amended Oct. 31, 1988; amended July 1, 1993; amended, T-105-6-15-93, July 1, 1993; amended Aug. 16, 1993; amended March 28, 1994; amended Aug. 20, 1999; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010.)

**105-5-3. Appellate courts; compensation.** (a) For services performed in appealing a case to the court of appeals or the Kansas supreme court, compensation shall be paid at the rate prescribed in K.A.R. 105-5-2.

(b) Compensation for attorneys' services in cases appealed to the Kansas supreme court or the court of appeals shall not exceed $1,240. However, additional compensation may be approved by the board. (Authorized by and implementing K.S.A. 22-4507 and 22-4522; effective May 1, 1984; amended May 1, 1985; amended Aug. 20, 1999; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010.)

**105-5-6. Reasonable compensation; non-tried cases.** (a) Each appointed and assigned attorney shall be compensated for time expended in representing indigent defendants and other indigent persons at the hourly rate prescribed in K.A.R. 105-5-2. Except as provided in K.A.R. 105-5-8, reasonable compensation shall not exceed $1,240 in the following cases:

(1) Those felony cases in the trial court that are classified as non-drug offenses of severity levels 1 through 5 that are not submitted to a judge or jury, including services at a preliminary hearing and sentencing, if applicable; and

(2) those felony cases in the trial court that are classified as drug offenses, that have not been submitted to a judge or jury, and in which there have been six hours or more spent in court in defense of the indigent defendant, including services

at a preliminary hearing and sentencing, if applicable.

(b) Except as provided in K.A.R. 105-5-8 and K.A.R. 105-5-6(a), reasonable compensation shall not exceed $930 in the following cases:

(1) Those felony cases in the trial court that are not submitted to a judge or jury, including services at a preliminary hearing and sentencing, if applicable, and are classified as severity levels 6 through 10 non-drug offenses; and

(2) those felony cases in the trial court that are not submitted to a judge or jury, that are classified as drug offenses, and in which there have been fewer than six hours spent in court in defense of the indigent defendant, including services at a preliminary hearing and sentencing, if applicable.

(c) Except as provided in K.A.R. 105-5-8, K.A.R. 105-5-6(a), and K.A.R. 105-5-6(b), reasonable compensation shall not exceed $620 in the following types of cases:

(1) Habeas corpus cases as authorized by K.S.A. 22-4503 and K.S.A. 22-4506 and amendments thereto;

(2) cases filed pursuant to K.S.A. 60-1507 and K.S.A. 22-4506 and amendments thereto;

(3) habeas corpus cases as authorized by K.S.A. 22-2710 and amendments thereto;

(4) habeas corpus cases as authorized by K.S.A. 22-3428 and K.S.A. 22-3428a and amendments thereto; and

(5) habeas corpus cases as authorized by K.S.A. 59-2965 and amendments thereto.

(d) Except as provided in K.A.R. 105-5-8, reasonable compensation shall not exceed $248 in the following types of cases:

(1) Representation of grand jury witnesses determined to be indigent and called to testify pursuant to K.S.A. 22-3009 and amendments thereto;

(2) representation of indigent persons committed to custody as material witnesses pursuant to K.S.A. 22-2805 and amendments thereto;

(3) probation revocation hearings; and

(4) motions to modify sentence pursuant to K.S.A. 21-4603 and amendments thereto. (Authorized by and implementing K.S.A. 22-4507 and 22-4522; effective May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended, T-105-6-13-88, July 1, 1988; amended Nov. 1, 1988; amended Oct. 30, 1989; amended July 1, 1993; amended, T-105-6-15-93, July 1, 1993; amended Aug. 16, 1993; amended Aug. 20, 1999; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010.)

**105-5-7. Reasonable compensation; tried cases.** Each appointed and assigned attorney shall be compensated for time expended in representing indigent defendants at the hourly rate prescribed in K.A.R. 105-5-2. Except as provided in K.A.R. 105-5-8, reasonable compensation for felony cases tried on pleas of not guilty and submitted to a judge or jury for adjudication, including compensation for services at the preliminary hearing, sentencing, and motions to modify the sentence, shall not exceed the following:

(a) $1,860 for felonies classified as non-drug offenses of severity levels 5 through 10;

(b) $2,480 for felonies classified as non-drug offenses of severity level 4 and felonies classified as drug offenses of severity levels 2 through 4; and

(c) $6,200 for felonies classified as non-drug offenses of severity levels 1 through 3, off-grid felonies, and felonies classified as drug offenses of severity level 1. (Authorized by and implementing K.S.A. 22-4507 and 22-4522; effective May 1, 1984; amended, T-105-6-13-88, July 1, 1988; amended Nov. 1, 1988; amended Oct. 30, 1989; amended July 1, 1993; amended, T-105-6-15-93, July 1, 1993; amended Aug. 16, 1993; amended Aug. 20, 1999; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010.)

**105-5-8. Compensation; exceptional cases.** (a) Any compensation for attorneys' services in excess of the amounts set out in K.A.R. 105-5-6 and K.A.R. 105-5-7 may be approved only in exceptional cases. A finding by the court that a case is exceptional shall be subject to final approval by the board. An exceptional case shall mean any of the following:

(1) Any case involving a felony charge in the trial court that is off grid;

(2) any felony case tried on a not guilty plea in which there have been 25 or more hours spent in court in defense of the indigent defendant;

(3) any felony case not submitted to a judge or jury in which there have been 10 hours or more of in-court time spent in defense of the indigent defendant; or

(4) any case that has been declared an exceptional case by the court due to its complexity or other significant characteristics.

(b) Each claim for compensation in an exceptional case shall be accompanied by a specific finding in a court order setting forth the basis for the declaration that the case is exceptional.

(c) Reasonable compensation for attorneys' services in exceptional cases shall not exceed $6,200 per case. However, additional compensation may be approved by the board if warranted by the extreme complexity of the case. (Authorized by and implementing K.S.A. 22-4507 and 22-4522; effective May 1, 1984; amended, T-105-6-13-88, July 1, 1988; amended Nov. 1, 1988; amended Oct. 30, 1989; amended July 1, 1993; amended, T-105-6-15-93, July 1, 1993; amended Aug. 16, 1993; amended Aug. 20, 1999; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010.)

## Article 11.—REIMBURSEMENT FROM DEFENDANT

**105-11-1. Defendant reimbursement of attorney fees.** The document titled "attorney cost reimbursement tables: assigned counsel and public defender," as revised by the state board of indigents' defense services on June 10, 2011, is hereby adopted by reference. (Authorized by K.S.A. 22-4504; implementing K.S.A. 22-4522 (e); effective, T-105-10-3-05, Oct. 3, 2005; effective Feb. 17, 2006; amended, T-105-7-5-06, July 5, 2006; amended Nov. 13, 2006; amended, T-105-7-26-07, July 26, 2007; amended Nov. 26, 2007; amended, T-105-8-12-08, Aug. 12, 2008; amended Dec. 29, 2008; amended, T-105-6-26-09, June 26, 2009; amended Oct. 16, 2009; amended, T-105-8-16-10, Aug. 16, 2010; amended Nov. 5, 2010; amended, T-105-7-22-11, July 22, 2011; amended Nov. 14, 2011.)

# Agency 108

# State Employees Health Care Commission

*Articles*

108-1. ELIGIBILITY REQUIREMENTS.

## Article 1.—ELIGIBILITY REQUIREMENTS

**108-1-1. Eligibility.** (a) General definitions.

(1) "Active participant" means any person enrolled in the health care benefits program who falls within one of the classes specified in subsection (b).

(2) "Child" means any of the following:

(A) A natural son or daughter of a primary participant;

(B) a lawfully adopted son or daughter of a primary participant. The term "lawfully adopted" shall include those instances in which a primary participant has filed the petition for adoption with the court, has a placement agreement for adoption, or has been granted legal custody;

(C) a stepchild of a primary participant. However, if the natural or adoptive parent of the stepchild is divorced from the primary participant, the stepchild shall no longer qualify;

(D) a child of whom the primary participant has legal custody; or

(E) a grandchild, if at least one of the following conditions is met:

(i) The primary participant has legal custody of the grandchild or has lawfully adopted the grandchild;

(ii) the grandchild lives in the home of the primary participant and is the child of a covered eligible dependent child, and the primary participant provides more than 50 percent of the support for the grandchild; or

(iii) the grandchild is the child of a covered eligible dependent child and is considered to reside with the primary participant even when the grandchild or eligible dependent child is temporarily absent due to special circumstances including education of the covered eligible dependent child, and the primary participant provides more than 50 percent of the support for the grandchild.

(3) "COBRA" means the consolidated omnibus budget reconciliation act, public law 99-272, as amended.

(4) "Commission" means the Kansas state employees health care commission.

(5) "Direct bill participant" means any person enrolled in the health care benefits program pursuant to subsections (d), (e), and (h).

(6) "Eligible dependent child" means any dependent child who meets one of the following criteria:

(A) The child is under 26 years of age.

(B) The child is aged 26 or older, has a permanent and total disability, and has continuously maintained group coverage as an eligible dependent child of the primary participant before attaining the age of 26. The child shall be chiefly dependent on the primary participant for support.

(7) "Health care benefits program" means the state of Kansas health care benefits program established by the commission.

(8) "Permanent and total disability" means that an individual is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or has lasted or can be expected to last for a continuous period of at least 12 months. An individual shall not be considered to have a permanent and total disability unless that person furnishes proof of the permanent and total disability in the form and manner, and at the times, that the health care benefits program may require.

(9) "Primary participant" means any person enrolled in the health care benefits program as an active participant under subsection (b), a direct bill participant under subsection (d), or a COBRA participant.

(b) Active participants. Subject to the provisions of subsection (c), the classes of persons eligible to participate as active participants in the health care benefits program shall be the following classes of persons:

(1) Any elected official of the state;

(2) any other officer or employee of a state agency who meets both of the following conditions:

(A) Is working in one or more positions that together require at least 1,000 hours of work per year; and

(B) is in a position that is not temporary. An employee who works under employment customs at any regents institution requiring less than a full calendar year of service shall not be considered temporary;

(3) any person engaged in a postgraduate residency training program in medicine at the university of Kansas medical center or in a postgraduate residency or internship training program in veterinary medicine at Kansas state university, but not including student employees of a state institution of higher learning;

(4) any person elected to a board position that requires less than 1,000 hours of work per year;

(5) any person serving with the foster grandparent program;

(6) any person participating under a phased retirement agreement outlined in K.S.A. 76-746, and amendments thereto; and

(7) any other class of individuals approved by the Kansas state employees health care commission, within the limitations set out in K.S.A. 75-6501 et seq., and amendments thereto.

(c) Waiting period.

(1) Each person who is within a class listed in paragraph (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), or (b)(7) shall become eligible for enrollment in the health care benefits program following completion of a 30-day waiting period beginning with the first day of work for the state of Kansas. Each person shall have 31 days after becoming eligible to elect coverage.

(2) The waiting period established in paragraph (c)(1) shall not apply if all of the following conditions are met:

(A) The person is returning to work for the state of Kansas or is transferring from a position that was eligible for coverage under K.A.R. 108-1-3 or K.A.R. 108-1-4.

(B) Immediately before leaving the prior position, the person was enrolled in the health care benefits program.

(C) The break in service between the prior position and the new position does not exceed the following time periods:

(i) 30 or fewer calendar days; or

(ii) 365 or fewer calendar days, if the person was laid off, as defined in K.S.A. 75-2948 and amendments thereto.

(3) The waiting period established in paragraph (c)(1) shall not apply to any person who, on that person's first day of work for the state, is enrolled in the health care benefits program on any of the following bases:

(A) As a direct bill participant;

(B) under the continuation of benefits coverage provided under COBRA; or

(C) as a dependent of a participant in the health care benefits program.

(4) The waiting period established in paragraph (c)(1) may be waived if, within 30 days of the date of hire, the agency head or designee certifies in writing to the commission, or its designee, that the waiver is being sought for either of the following reasons:

(A) The potential new employee is not entitled to continuation of health benefits under either COBRA or state continuation of coverage laws, K.S.A. 40-2209 and K.S.A. 40-3209 and amendments thereto, and is not covered by or eligible to be covered by another health insurance plan.

(B) The potential new employee is required to have health insurance as a condition of obtaining a work visa for employment in the United States.

(d) Classes of direct bill participants. Subject to the provisions of subsection (e), the classes of persons eligible to participate as members of the health care benefits program on a direct bill basis shall be the following:

(1) Any former elected state official;

(2) any retired state officer or employee who is eligible to receive retirement benefits under K.S.A. 74-4925, and amendments thereto, or retirement benefits administered by the Kansas public employees retirement system;

(3) any totally disabled former state officer or employee who is receiving disability benefits administered by the Kansas public employees retirement system;

(4) any surviving spouse or dependent of a qualifying participant in the health care benefits program;

(5) any person who is in a class listed in paragraph (b)(1), (b)(2), (b)(3), (b)(4), or (b)(5) and who is lawfully on leave without pay;

(6) any blind person licensed to operate a vending facility as defined in K.S.A. 75-3338, and amendments thereto;

(7) any former "state officer," as that term is defined in K.S.A. 74-4911f and amendments

thereto, who elected not to be a member of the Kansas public employees retirement system as provided in K.S.A. 74-4911f and amendments thereto; and

(8) any former state officer or employee who separated from state service when eligible to receive a retirement benefit but, in lieu of that, withdrew that individual's employee contributions from the retirement system.

(e) Conditions for direct bill participants. Each person who is within a class listed in paragraph (d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (d)(7), or (d)(8) shall be eligible to participate on a direct bill basis only if the conditions of both paragraphs (e)(1) and (e)(2) are met:

(1) The person was covered by the health care benefits program on one of the following bases:

(A) The person was covered as an active participant, as a COBRA participant, or as a spouse under paragraph (g)(1) immediately before the date that person ceased to be eligible for that type of coverage or the date the individual became newly eligible for a class listed in subsection (d).

(B) The person is the surviving spouse or eligible dependent child of a person who was enrolled as an active participant or a direct bill participant when the plan participant died, and the surviving spouse or eligible dependent child was covered by the health care benefits program as a dependent pursuant to subsection (g) when the plan participant died.

(2) The person completes an enrollment form requesting transfer to the direct bill program and submits the form to the health care benefits program. The form shall be submitted no more than 30 days after the person ceased to be eligible for coverage.

(f) COBRA participants. Any individual with rights to extend coverage under COBRA may continue to participate in the health care benefits program, subject to the provisions of that federal law.

(g) Eligible dependent participants.

(1) Any person enrolled in the health care benefits program as a primary participant may enroll the following dependents, subject to the same conditions and limitations that apply to the primary participant:

(A) The primary participant's lawful wife or husband; and

(B) any of the primary participant's eligible dependent children.

(2) An eligible dependent child who is enrolled by one primary participant shall not be eligible to be enrolled by another primary participant.

(3) An individual who is eligible to enroll as a primary participant in the health care benefits program shall not be eligible to be enrolled under this subsection as a dependent in the health care benefits program.

(4) The term "dependent" shall exclude any individual who is not a citizen or national of the United States, unless the individual is a resident of the United States or a country contiguous to the United States, is a member of a primary participant's household, and resides with the primary participant for more than six months of the calendar year. The dependent shall be considered to reside with the primary participant even when the dependent is temporarily absent due to special circumstances, including illness, education, business, vacation, and military service.

(h) Direct bill participants; continuous coverage provisions.

(1) Except as otherwise provided in this subsection, each direct bill participant enrolled in the state health care benefits program on or after January 21, 2001, shall maintain continuous coverage in the program or shall lose eligibility to be in the state health care benefits program as a direct bill participant.

(2) Any person who discontinued direct bill coverage in the state health care benefits program before January 21, 2001, and who is not a direct bill participant on that date may return one time to the state health care benefits program if the person meets the criteria specified in subsections (d) and (e) and if that person has not previously discontinued and returned to direct bill coverage before January 21, 2001. (Authorized by K.S.A. 2010 Supp. 75-6501 and K.S.A. 75-6510; implementing K.S.A. 2010 Supp. 75-6501; effective, T-85-22, July 16, 1984; effective May 1, 1985; amended, T-88-64, Dec. 30, 1987; amended, T-89-12, May 1, 1988; amended, T-108-9-12-88, Sept. 12, 1988; amended Oct. 31, 1988; amended May 9, 1997; amended Jan. 21, 2001; amended Aug. 27, 2004; amended June 17, 2005; amended Jan. 6, 2006; amended July 16, 2010; amended, T-108-8-16-10, Aug. 16, 2010; amended March 11, 2011.)

**108-1-3. School district employee health care benefits plan.** (a) Definitions.

(1) "Active participant" means any school dis-

trict employee who is enrolled in the school district plan under subsection (b).

(2) "Child" means any of the following:

(A) A natural son or daughter of a primary participant;

(B) a lawfully adopted son or daughter of a primary participant. The term "lawfully adopted" shall include those instances in which a primary participant has filed the petition for adoption with the court, has a placement agreement for adoption, or has been granted legal custody;

(C) a stepchild of a primary participant. However, if the natural or adoptive parent of the stepchild is divorced from the primary participant, the stepchild shall no longer qualify;

(D) a child of whom the primary participant has legal custody; or

(E) a grandchild, if at least one of the following conditions is met:

(i) The primary participant has legal custody of the grandchild or has lawfully adopted the grandchild;

(ii) the grandchild lives in the home of the primary participant and is the child of a covered eligible dependent child, and the primary participant provides more than 50 percent of the support for the grandchild; or

(iii) the grandchild is the child of a covered eligible dependent child and is considered to reside with the primary participant even when the grandchild or eligible dependent child is temporarily absent due to special circumstances including education of the covered eligible dependent child, and the primary participant provides more than 50 percent of the support for the grandchild.

(3) "COBRA" means the consolidated omnibus budget reconciliation act, public law 99-272, as amended.

(4) "Commission" means the Kansas state employees health care commission.

(5) "Direct bill participant" means any person enrolled in the school district plan pursuant to subsections (d), (e), and (h).

(6) "Eligible dependent child" means any dependent child who meets one of the following criteria:

(A) The child is under 26 years of age.

(B) The child is aged 26 or older, has a permanent and total disability, and has continuously maintained group coverage as an eligible dependent child of the primary participant before attaining the age of 26. The child shall be chiefly dependent on the primary participant for support.

(7) "Health care benefits program" means the state of Kansas health care benefits program established by the commission.

(8) "Permanent and total disability" means that an individual is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or has lasted or can be expected to last for a continuous period of at least 12 months. An individual shall not be considered to have a permanent and total disability unless that person furnishes proof of the permanent and total disability in the form and manner, and at the times, that the health care benefits program may require.

(9) "Primary participant" means any person enrolled in the school district plan as an active participant under subsection (b), a direct bill participant under subsection (d), or a COBRA participant.

(10) "Qualified school district" means a public school district, community college, area vocational technical school, or technical college that meets the terms, conditions, limitations, exclusions, and other provisions established by the commission for participation in the school district employee health care benefits component of the health care benefits program and has entered into a written agreement with the commission to participate in the program.

(11) "School district employee" means any individual who is employed by a qualified school district and who meets the definition of employee under K.S.A. 74-4932(4), and amendments thereto, except that the following employees shall be employed in a position that requires at least 1,000 hours of work per year:

(A) Employees of community colleges; and

(B) employees of area vocational technical schools and technical colleges that are not governed by a unified school district.

For purposes of this definition, a technical college shall be a participating employer under K.S.A. 74-4931, and amendments thereto, in accordance with K.S.A. 72-4471, and amendments thereto.

(12) "School district plan" means the school district employee health care benefits component of the health care benefits program.

(b) Active participants. Subject to the provisions of subsection (c), each school district employee shall be eligible to participate as an active participant in the school district plan. Eligibility

and participation shall be subject to terms, conditions, limitations, exclusions, and other provisions established by the commission, including the amount and method of payment for employee and employer contributions.

(c) Waiting periods.

(1) Each school district employee whose first day of work for a qualified school district is on or after the first day on which the employee's qualified school district participates in the school district plan shall become eligible for coverage following completion of a 30-day waiting period beginning with the first day of work for the qualified school district. Each school district employee shall have 31 days after becoming eligible to elect coverage.

(2) The waiting period established in paragraph (c)(1) shall not apply if all of the following conditions are met:

(A) The person is returning to work for the qualified school district, transferring from another qualified school district, or transferring from a position that is eligible for coverage under K.A.R. 108-1-1 or K.A.R. 108-1-4.

(B) Immediately before leaving the prior position, the person was enrolled in the health care benefits program.

(C) The break in service between the prior position and the new position does not exceed the following time periods:

(i) 30 or fewer calendar days; or

(ii) 365 or fewer calendar days, if the person was laid off in accordance with the practices of the qualified school district.

(3) The waiting period established in paragraph (c)(1) shall not apply to any person who, on that person's first day of work for the qualified school district, is enrolled in the health care benefits program on any of the following bases:

(A) As a direct bill participant;

(B) under the continuation of benefits coverage provided under COBRA; or

(C) as a dependent of a participant in the health care benefits program.

(4) The waiting period established in paragraph (c)(1) may be waived if, within 30 days of the date of hire, the chief administrative officer of the qualified school district, or the chief administrative officer's designee, certifies in writing to the commission, or its designee, that the waiver is being sought for either of the following reasons:

(A) The new school district employee is not entitled to continuation of health benefits under COBRA or state continuation of coverage laws, K.S.A. 40-2209 and K.S.A. 40-3209 and amendments thereto, and is not covered by or eligible to be covered by another health insurance plan.

(B) The new employee is required to have health insurance as a condition of obtaining a work visa for employment in the United States.

(5) Each school district employee who is employed by the qualified school district immediately before the first day on which the employee's qualified school district participates in the school district plan shall be subject to transitional provisions established by the commission regarding waiting periods and the effective date on which the employee becomes eligible to participate in the school district plan.

(d) Classes of direct bill participants. Subject to the provisions of subsection (e), the classes of persons eligible to participate as members of the school district plan on a direct bill basis shall be the following:

(1) Any retired school district employee who is eligible to receive retirement benefits;

(2) any totally disabled former school district employee who is receiving benefits under K.S.A. 74-4927, and amendments thereto;

(3) any surviving spouse or dependent of a qualifying participant in the school district plan;

(4) any person who is a school district employee and who is on approved leave without pay in accordance with the practices of the qualified school district; and

(5) any individual who was covered by the health care plan offered by the qualified school district on the day immediately before the first day on which the qualified school district participates in the school district plan, except that no individual who is an employee of the qualified school district and who does not meet the definition of school district employee in subsection (a) shall be qualified as a direct bill participant under this paragraph.

(e) Conditions for direct bill participants. Each person who is within a class listed in subsection (d) shall be eligible to participate on a direct bill basis only if the person meets both of the following conditions:

(1) The person was covered by the school district plan or the health care insurance plan offered by the qualified school district on one of the following bases:

(A) Immediately before the date the person ceased to be eligible for coverage, or for any per-

son identified in paragraph (d)(5), immediately before the first day on which the qualified school district participates in the school district plan, the person either was covered as an active participant under subsection (b) or was covered by the health care insurance plan offered by the employee's qualified school district.

(B) The person is a surviving spouse or dependent of a plan participant who was enrolled as an active participant or a direct bill participant when the plan participant died, and the person was covered by the health care benefits program as a dependent under subsection (g) when the plan participant died.

(C) The person is a surviving spouse or dependent of a plan participant who was enrolled under the health care insurance plan offered by the participant's qualified school district when the participant died, and the person has maintained continuous coverage under the qualified school district's health care insurance plan before joining the health care benefits program.

(2) The person completes an enrollment form requesting transfer to the direct bill program and submits the form to the health care benefits program. The form shall be submitted no more than 30 days after the person ceased to be eligible for coverage, or in the case of any individual identified in paragraph (d)(5), no more than 30 days after the first day on which the qualified school district participates in the school district plan.

(f) COBRA participants. Any individual with rights to extend coverage under COBRA may participate in the school district plan, subject to the provisions of that federal law.

(g) Eligible dependent participants.

(1) Any person enrolled in the school district plan as a primary participant may enroll the following dependents, subject to the same conditions and limitations that apply to the primary participant:

(A) The primary participant's lawful wife or husband; and

(B) any of the primary participant's eligible dependent children.

(2) An eligible dependent child who is enrolled by one primary participant shall not be eligible to be enrolled by another primary participant.

(3) An individual who is eligible to enroll as a primary participant in the health care benefits program shall not be eligible to be enrolled under this subsection as a dependent in the health care benefits program.

(4) The term "dependent" shall exclude any individual who is not a citizen or national of the United States, unless the individual is a resident of the United States or a country contiguous to the United States, is a member of a primary participant's household, and resides with the primary participant for more than six months of the calendar year. The dependent shall be considered to reside with the primary participant even when the dependent is temporarily absent due to special circumstances, including illness, education, business, vacation, and military service.

(h) Direct bill participants; continuous coverage provisions.

(1) Except as otherwise provided in this subsection, each direct bill participant enrolled in the health care benefits program on or after January 21, 2001 shall maintain continuous coverage in the program or shall lose eligibility to be in the health care benefits program as a direct bill participant.

(2) Any person who discontinued direct bill coverage in the health care benefits program before January 21, 2001 and who was not a direct bill participant on that date may return one time to the health care benefits program if the person meets the criteria specified in subsections (d) and (e) and if that person has not previously discontinued and returned to direct bill coverage before January 21, 2001. (Authorized by K.S.A. 2010 Supp. 75-6501 and K.S.A. 75-6510; implementing K.S.A. 2010 Supp. 75-6501 and K.S.A. 75-6508; effective, T-108-9-13-99, Sept. 13, 1999; effective Feb. 4, 2000; amended July 16, 2010; amended, T-108-8-16-10, Aug. 16, 2010; amended March 11, 2011.)

**108-1-4. Local unit of government employee health care benefits plan.** (a) Definitions.

(1) "Active participant" means any local unit employee who is enrolled in the local unit plan under subsection (b).

(2) "Child" means any of the following:

(A) A natural son or daughter of a primary participant;

(B) a lawfully adopted son or daughter of a primary participant. The term "lawfully adopted" shall include those instances in which a primary participant has filed the petition for adoption with the court, has a placement agreement for adoption, or has been granted legal custody;

(C) a stepchild of a primary participant. However, if the natural or adoptive parent of the step-

child is divorced from the primary participant, the stepchild shall no longer qualify;

(D) a child of whom the primary participant has legal custody; or

(E) a grandchild, if at least one of the following conditions is met:

(i) The primary participant has legal custody of the grandchild or has lawfully adopted the grandchild;

(ii) the grandchild lives in the home of the primary participant and is the child of a covered eligible dependent child, and the primary participant provides more than 50 percent of the support for the grandchild; or

(iii) the grandchild is the child of a covered eligible dependent child and is considered to reside with the primary participant even when the grandchild or eligible dependent child is temporarily absent due to special circumstances including education of the covered eligible dependent child, and the primary participant provides more than 50 percent of the support for the grandchild.

(3) "COBRA" means the consolidated omnibus budget reconciliation act, public law 99-272, as amended.

(4) "Commission" means the Kansas state employees health care commission.

(5) "Direct bill participant" means any person enrolled in the local unit plan pursuant to subsections (d), (e), and (h).

(6) "Eligible dependent child" means any dependent child who meets one of the following criteria:

(A) The child is under 26 years of age.

(B) The child is aged 26 or older, has a permanent and total disability, and has continuously maintained group coverage as an eligible dependent child of the primary participant before attaining the age of 26. The child shall be chiefly dependent on the primary participant for support.

(7) "Health care benefits program" means the state of Kansas health care benefits program established by the commission.

(8) "Local unit" means any of the following:

(A) Any county, township, or city;

(B) any community mental health center;

(C) any groundwater management district, rural water-supply district, or public wholesale water-supply district;

(D) any county extension council or extension district;

(E) any hospital established, maintained, and operated by a city of the first or second class, a county, or a hospital district in accordance with applicable law;

(F)(i) Any city, county, or township public library created under the authority of K.S.A. 12-1215 et seq., and amendments thereto;

(ii) any regional library created under the authority of K.S.A. 12-1231, and amendments thereto;

(iii) any library district created under the authority of K.S.A. 12-1236, and amendments thereto;

(iv) the Topeka and Shawnee county library district established under the authority of K.S.A. 12-1260 et seq., and amendments thereto;

(v) the Leavenworth and Leavenworth county library district established under the authority of K.S.A. 12-1270, and amendments thereto;

(vi) any public library established by a unified school district under the authority of K.S.A. 72-1623, and amendments thereto; or

(vii) any regional system of cooperating libraries established under the authority of K.S.A. 75-2547 et seq., and amendments thereto;

(G) any housing authority created pursuant to K.S.A. 17-2337 et seq., and amendments thereto;

(H) any local environmental protection program obtaining funds from the state water fund in accordance with K.S.A. 75-5657, and amendments thereto;

(I) any city-county, county, or multicounty health board or department established pursuant to K.S.A. 65-204 and 65-205, and amendments thereto;

(J) any nonprofit independent living agency, as defined in K.S.A. 65-5101 and amendments thereto;

(K) the Kansas guardianship program established pursuant to K.S.A. 74-9601 et seq., and amendments thereto; or

(L) any group of persons on the payroll of a county, township, city, special district or other local governmental entity, public school district, licensed child care facility operated by a not-for-profit corporation providing residential group foster care for children and receiving reimbursement for all or part of this care from the department of social and rehabilitation services, nonprofit community mental health center pursuant to K.S.A. 19-4001 et seq. and amendments thereto, nonprofit community facility for the mentally retarded pursuant to K.S.A. 19-4001 et seq. and amendments thereto, or nonprofit independ-

ent living agency as defined in K.S.A. 65-5101 and amendments thereto.

(9) "Local unit employee" means any individual who meets one or more of the following criteria:

(A) The individual is an appointed or elective officer or employee of a qualified local unit whose employment is not seasonal or temporary and whose employment requires at least 1,000 hours of work per year.

(B) The individual is an appointed or elective officer or employee who is employed concurrently by two or more qualified local units in positions that involve similar or related tasks and whose combined employment by the qualified local units is not seasonal or temporary and requires at least 1,000 hours of work per year.

(C) The individual is a member of a board of county commissioners of a county that is a qualified local unit, and the compensation paid for service on the board equals or exceeds $5,000 per year.

(D) The individual is a council member or commissioner of a city that is a qualified local unit, and the compensation paid for service as a council member or commissioner equals or exceeds $5,000 per year.

(10) "Local unit plan" means the local unit employee health care benefits component of the health care benefits program.

(11) "Permanent and total disability" means that an individual is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or has lasted or can be expected to last for a continuous period of at least 12 months. An individual shall not be considered to have a permanent and total disability unless that person furnishes proof of the permanent and total disability in the form and manner, and at the times, that the health care benefits program may require.

(12) "Primary participant" means any person enrolled in the local unit plan as an active participant under subsection (b), a direct bill participant under subsection (d), or a COBRA participant.

(13) "Qualified local unit" means a local unit that meets the terms, conditions, limitations, exclusions, and other provisions established by the commission for participation in the local unit employee health care benefits component of the health care benefits program and that has entered into a written agreement with the commission to participate in the program.

(b) Active participants. Subject to the provisions of subsection (c), each local unit employee shall be eligible to participate as an active participant in the local unit plan. Eligibility and participation shall be subject to terms, conditions, limitations, exclusions, and other provisions established by the commission, including the amount and method of payment for employee and employer contributions.

(c) Waiting periods.

(1) Each local unit employee whose first day of work for a qualified local unit is on or after the first day on which the employee's qualified local unit participates in the local unit plan shall become eligible for coverage following completion of a 30-day waiting period beginning with the first day of work for the qualified local unit. Each local unit employee shall have 31 days after becoming eligible to elect coverage.

(2) The waiting period established in paragraph (c)(1) shall not apply if all of the following conditions are met:

(A) The person is returning to work for the qualified local unit, is transferring from another qualified local unit under this regulation, or is transferring from a position that is eligible for coverage under K.A.R. 108-1-1 or K.A.R. 108-1-3.

(B) Immediately before leaving the prior position, the person was enrolled in the health care benefits program provided by the state of Kansas under K.A.R. 108-1-1, the school district plan under K.A.R. 108-1-3, or the qualified local unit plan under K.A.R. 108-1-4.

(C) The break in service between the prior position and the new position does not exceed the following time periods:

(i) 30 or fewer calendar days; or

(ii) 365 or fewer calendar days, if the person was laid off in accordance with the practices of the prior qualified local unit.

(3) The waiting period established in paragraph (c)(1) shall not apply to any person who, on that person's first day of work for the qualified local unit, is enrolled in the local unit plan, the school district plan under K.A.R. 108-1-3, or the health care benefits plan under K.A.R. 108-1-1 on any of the following bases:

(A) As a direct bill participant;

(B) under the continuation of benefits coverage provided under COBRA; or

(C) as a dependent of a participant in the health care benefits program.

(4) The waiting period established in paragraph (c)(1) may be waived if, within 30 days of the date of hire, the chief administrative officer of the qualified local unit, or the chief administrative officer's designee, certifies in writing to the commission, or its designee, that the waiver is being sought for either of the following reasons:

(A) The new local unit employee is not entitled to continuation of health benefits under either COBRA or state continuation of coverage laws, K.S.A. 40-2209 and K.S.A. 40-3209 and amendments thereto, and is not covered by or eligible to be covered by another health insurance plan.

(B) The new employee is required to have health insurance as a condition of obtaining a work visa for employment in the United States.

(5) Each local unit employee who is employed by the qualified local unit immediately before the first day on which the qualified local unit participates in the local unit plan shall be subject to transitional provisions established by the commission regarding waiting periods and the effective date on which the employee becomes eligible to participate in the local unit plan.

(d) Classes of direct bill participants. Subject to the provisions of subsection (e), the classes of persons eligible to participate as members of the local unit plan on a direct bill basis shall be the following:

(1) Any retired local unit employee who meets one of the following conditions:

(A) The employee is eligible to receive retirement benefits under the Kansas public employees retirement system or the Kansas police and firemen's retirement system; or

(B) if the qualified local unit is not a participating employer under either the Kansas public employees retirement system or the Kansas police and firemen's retirement system, the employee is eligible to receive retirement benefits under the retirement plan provided by the qualified local unit;

(2) any totally disabled former local unit employee who meets one of the following conditions:

(A) The employee is receiving benefits under the Kansas public employees retirement system or the Kansas police and firemen's retirement system; or

(B) if the qualified local unit is not a participating employer under either the Kansas public employees retirement system or the Kansas police and firemen's retirement system, the employee is receiving disability benefits under the retirement or disability plan provided by the qualified local unit;

(3) any surviving spouse or dependent of a qualifying participant in the local unit plan;

(4) any person who is a local unit employee and who is on approved leave without pay in accordance with the practices of the qualified local unit; and

(5) any individual who was covered by the health care plan offered by the qualified local unit on the day immediately before the first day on which the qualified local unit participates in the local unit plan, except that no individual who is an employee of the qualified local unit and who does not meet the definition of local unit employee in subsection (a) shall be qualified as a direct bill participant under this paragraph.

(e) Conditions for direct bill participants. Each person who is within a class listed in subsection (d) shall be eligible to participate on a direct bill basis only if the person meets both of the following conditions:

(1) The person was covered by the local unit plan or the health care insurance plan offered by the qualified local unit on one of the following bases:

(A) Immediately before the date the person ceased to be eligible for coverage or, for any person identified in paragraph (d)(5), immediately before the first day on which the qualified local unit participates in the local unit plan, the person either was covered as an active participant under subsection (b) or was covered by the health care insurance plan offered by the employee's qualified local unit.

(B) The person is a surviving spouse or dependent of a plan participant who was enrolled as an active participant or a direct bill participant when the plan participant died, and the person was covered by the health care benefits program as a dependent under subsection (g) when the plan participant died.

(C) The person is a surviving spouse or dependent of a plan participant who was enrolled in the health care insurance plan offered by the participant's qualified local unit when the participant died, and the person has maintained continuous coverage under the local unit's health care insurance plan before joining the health care benefits program.

(2) The person completes an enrollment form

requesting transfer to the direct bill program and submits the form to the health care benefits program. The form shall be submitted no more than 30 days after the person ceased to be eligible for coverage or, in the case of any individual identified in paragraph (d)(5), no more than 30 days after the first day on which the qualified local unit participates in the local unit plan.

(f) COBRA participants. Any individual with rights to extend coverage under COBRA may participate in the local unit plan, subject to the provisions of that federal law.

(g) Eligible dependent participants.

(1) Any person enrolled in the local unit plan under subsection (b), (d), or (f) as a primary participant may enroll the following dependents, subject to the same conditions and limitations that apply to the primary participant:

(A) The primary participant's lawful wife or husband; and

(B) any of the primary participant's eligible dependent children.

(2) An eligible dependent child who is enrolled by one primary participant shall not be eligible to be enrolled by another primary participant in the health care benefits program.

(3) An individual who is eligible to enroll as a primary participant in the health care benefits program shall not be eligible to be enrolled under this subsection as a dependent in the health care benefits program.

(4) The term "dependent" shall exclude any individual who is not a citizen or national of the United States, unless the individual is a resident of the United States or a country contiguous to the United States, is a member of a primary participant's household, and resides with the primary participant for more than six months of the calendar year. The dependent shall be considered to reside with the primary participant even when the dependent is temporarily absent due to special circumstances, including illness, education, business, vacation, and military service.

(h) Direct bill participants; continuous coverage provisions.

(1) Except as otherwise provided in this subsection, each direct bill participant enrolled in the health care benefits program shall maintain continuous coverage in the program or shall lose eligibility to be in the health care benefits program as a direct bill participant.

(2) Any person who discontinued direct bill coverage in the health care benefits program before January 21, 2001 and was not a direct bill participant on that date may return one time to the health care benefits program if the person meets the criteria specified in subsections (d) and (e) and if that person has not previously discontinued and returned to direct bill coverage before January 21, 2001. (Authorized by K.S.A. 2010 Supp. 75-6501 and K.S.A. 75-6510; implementing K.S.A. 2010 Supp. 75-6501 and K.S.A. 75-6508; effective Aug. 30, 2002; amended March 28, 2003; amended Jan. 9, 2004; amended June 18, 2004; amended March 10, 2006; amended July 17, 2009; amended July 16, 2010; amended, T-108-8-16-10, Aug. 16, 2010; amended March 11, 2011.)

# Agency 109

# Board of Emergency Medical Services

**Editor's Note:**
The Emergency Medical Services Council was abolished on April 14, 1988. Powers, duties, and functions were transferred to its successor, the Emergency Medical Services Board. See K.S.A. 1988 Supp. 65-6101.

*Articles*


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109-15. CERTIFICATION.


## Article 1.—DEFINITIONS

**109-1-1. Definitions.** The following terms, as used in the board's regulations, shall have the meanings specified in this regulation.

(a) "AEMT" means advanced emergency medical technician.

(b) "Advanced life support" means the statutorily authorized activities and interventions that may be performed by an emergency medical technician-intermediate, emergency medical technician-defibrillator, emergency medical technician-intermediate/defibrillator, advanced emergency medical technician, mobile intensive care technician, or paramedic.

(c) "Air ambulance" means a fixed-wing or rotor-wing aircraft that is specially designed, constructed or modified, maintained, and equipped to provide air medical transportation or emergency care of patients.

(d) "Air medical director" means a physician as defined by K.S.A. 65-6112, and amendments thereto, who meets the following requirements:

(1) Is trained and experienced in care consistent with the air ambulance service's mission statement; and

(2) is knowledgeable in altitude physiology and the complications that can arise due to air medical transport.

(e) "Air medical personnel" means the attendants listed on the attendant roster, health care personnel identified on the service health care personnel roster of the air ambulance service, specialty patient care providers specific to the mission, and the pilot or pilots necessary for the operation of the aircraft.

(f) "Airway maintenance," as used in K.S.A. 65-6121 and amendments thereto and as applied to the authorized activities of an emergency medical technician-intermediate, means the use of any invasive oral equipment and procedures necessary to ensure the adequacy and quality of ventilation and oxygenation.

(g) "ALS" means advanced life support, as defined in subsection (b).

(h) "Basic life support" means the statutorily authorized activities and interventions that may be performed by a first responder, emergency medical responder, or emergency medical technician.

(i) "BLS" means basic life support, as defined in subsection (h).

(j) "CECBEMS" means the national continuing education coordinating board for emergency medical services.

(k) "Certified mechanic," as used in K.A.R. 109-2-2, means an individual employed or contracted by the ambulance service, city or county, qualified to perform maintenance on licensed am-

bulances and inspect these vehicles and validate, by signature, that the vehicles meet both mechanical and safety considerations for use.

(l) "Class," as used in these regulations, means the period during which a group of students meets.

(m) "Clinical preceptor" means an individual who is responsible for the supervision and evaluation of students in clinical training in a health care facility.

(n) "Continuing education" means a formally organized learning experience that has education as its explicit principal intent and is oriented towards the enhancement of emergency medical services practice, values, skills, and knowledge.

(o) "Contrived experience," as used in K.A.R. 109-11-3, means a simulated ambulance call and shall include dispatch communications, responding to the scene, assessment and management of the scene and patient or patients, biomedical communications with medical control, ongoing assessment, care, and transportation of the patient or patients, transference of the patient or patients to the staff of the receiving facility, completion of records, and preparation of the ambulance for return to service.

(p) "Coordination" means the submission of an application for approval of initial or continuing education courses and the oversight responsibility of those same courses and instructors once the courses are approved.

(q) "Course of instruction" means a body of prescribed EMS studies approved by the board.

(r) "Critical care transport" means the transport by an ambulance of a critically ill or injured patient who receives care commensurate with the care rendered by health care personnel as defined in subsection (cc) or either an MICT or a paramedic with specialized training as approved by service protocols and the medical director.

(s) "Emergency" means a serious medical or traumatic situation or occurrence that demands immediate action.

(t) "Emergency call" means an immediate response by an ambulance service to a medical or trauma incident that happens unexpectedly.

(u) "Emergency care" means the services provided after the onset of a medical condition of sufficient severity that the absence of immediate medical attention could reasonably be expected to cause any of the following:

(1) Place the patient's health in serious jeopardy;

(2) seriously impair bodily functions; or

(3) result in serious dysfunction of any bodily organ or part.

(v) "EMS" means emergency medical services.

(w) "EMR" means emergency medical responder.

(x) "EMT" means emergency medical technician.

(y) "EMT-D" means emergency medical technician-defibrillator.

(z) "EMT-I" means emergency medical technician-intermediate.

(aa) "EMT-I/D" means emergency medical technician-intermediate/defibrillator.

(bb) "Field internship preceptor" means an individual who is responsible for the supervision and evaluation of students in field training with an ambulance service.

(cc) "Health care personnel," as used in these regulations, means a physician, physician assistant, licensed professional nurse, advanced practice registered nurse, or respiratory therapist.

(dd) "Incompetence," as applied to attendants and as used in K.S.A. 65-6133 and amendments thereto, means a demonstrated lack of ability, knowledge, or fitness to perform patient care according to applicable medical protocols or as defined by the authorized activities of the attendant's level of certification.

(ee) "Incompetence," as applied to instructor-coordinators and training officers and as used in K.S.A. 65-6133 and K.S.A. 65-6129c and amendments thereto, means a pattern of practice or other behavior that demonstrates a manifest incapacity, inability, or failure to coordinate or to instruct attendant training programs.

(ff) "Incompetence," as applied to an operator and as used in K.S.A. 65-6132 and amendments thereto, means either of the following:

(1) The operator's inability or failure to provide the level of service required for the type of permit held; or

(2) the failure of the operator or an agent or employee of the operator to comply with a statute or regulation pertaining to the operation of a licensed ambulance service.

(gg) "Instructor-coordinator (I-C)" means any of the following individuals who are certified to instruct and coordinate attendant training programs:

(1) Emergency medical technician;

(2) emergency medical technician-intermediate;

(3) emergency medical technician-defibrillator;

(4) mobile intensive care technician;
(5) physician;
(6) physician's assistant;
(7) advanced practice registered nurse;
(8) licensed professional nurse;
(9) advanced emergency medical technician; or
(10) paramedic.

(hh) "Interoperable" means that one system has the ability to communicate or work with another.

(ii) "Lab assistant" means an individual who is assisting a primary instructor in the instruction and evaluation of students in classroom laboratory training sessions.

(jj) "Long-term provider approval" means that the sponsoring organization has been approved by the executive director to provide any continuing education program as prescribed in K.A.R. 109-5-3.

(kk) "MICT" means mobile intensive care technician.

(ll) "Out of service," as used in K.A.R. 109-2-5, means that a licensed ambulance is not immediately available for use for patient care or transport.

(mm) "Primary instructor" means an instructor-coordinator or training officer who is listed by the sponsoring organization as the individual responsible for the competent delivery of cognitive, psychomotor, and affective objectives of an approved initial course of instruction or continuing education program and who is the person primarily responsible for evaluating student performance and developing student competency.

(nn) "Prior-approved continuing education" means material submitted by a sponsoring organization, to the board, that is reviewed and subsequently approved by the executive director, in accordance with criteria established by regulations, and that is assigned a course identification number.

(oo) "Public call" means the request for an ambulance to respond to the scene of a medical emergency or accident by an individual or agency other than any of the following:

(1) A type I ambulance service, type II ambulance service, or type IIA ambulance service;

(2) the Kansas highway patrol or any law enforcement officer who is at the scene of an accident or medical emergency;

(3) a physician, as defined by K.S.A. 65-6112 and amendments thereto, who is at the scene of an accident or medical emergency; or

(4) an attendant who has been dispatched to provide emergency first response and who is at the scene of an accident or medical emergency.

(pp) "Retroactively approved continuing education" means credit issued to an attendant after attending a program workshop, conference, seminar, or other offering that is reviewed and subsequently approved by the executive director, in accordance with criteria established by the board.

(qq) "Service director" means an individual who has been appointed, employed, or designated by the operator of an ambulance service to handle daily operations and to ensure that the ambulance service is in conformance with local, state, and federal laws and ensure that quality patient care is provided by the service attendants.

(rr) "Service records" means the documents required to be maintained by state regulations and statutes pertaining to the operation and education within a licensed ambulance service.

(ss) "Single-program provider approval" means that the sponsoring organization has been granted approval to offer a specific continuing education program.

(tt) "Site coordinator" means a person supervising, facilitating, or monitoring students, facilities, faculty, or equipment at a training site.

(uu) "Sponsoring organization" means any professional association, accredited postsecondary educational institution, permitted ambulance service, fire department, other officially organized public safety agency, hospital, corporation, or emergency medical services regional council approved by the executive director to offer initial courses of instruction and continuing education programs as either a long-term provider or a single-program provider.

(vv) "Sufficient application" means that the information requested on the application form is provided in full, any applicable fee has been paid, all information required by statute or regulation has been submitted to the board, and no additional information is required to complete the processing of the application.

(ww) "Training officer I" means a person who has been certified by the board to coordinate attendant continuing education training programs for accredited postsecondary educational institutions, permitted ambulance services, fire departments, other officially organized public safety agencies, hospitals, corporations, professional associations, or emergency medical services regional councils.

(xx) "Training officer II" means a person who

is certified by the board to function as a continuing education training program coordinator and as a primary instructor of first responder initial courses of instruction.

(yy) "Training program accreditation" means the approval granted by the executive director to any of the following, to conduct EMS initial courses of instruction on a long-term basis: accredited postsecondary educational institutions, permitted ambulance services, fire departments, other officially organized public safety agencies, hospitals, or corporations.

(zz) "Type I ambulance service" means a ground-based ambulance service that provides emergency response and advanced life support, as described in the authorized activities and scope of practice of emergency medical technician-intermediate, emergency medical technician-defibrillator, emergency medical technician-intermediate/defibrillator, advanced emergency medical technician, mobile intensive care technician, or paramedic as specified in K.S.A. 65-6119, K.S.A. 65-6120, and K.S.A. 65-6123, and amendments thereto. The ambulance service may provide critical care transport when staffed in accordance with subsection (r).

(aaa) "Type II ambulance service" means a ground-based ambulance service that provides emergency response and basic life support, as described in the authorized activities or scope of practice of emergency medical technician, first responder, and emergency medical responder in K.S.A. 65-6121 and K.S.A. 65-6144, and amendments thereto.

(bbb) "Type IIA ambulance service" means a basic life support ambulance service that may provide advanced life support when staffed with one attendant and any of the following individuals functioning under ALS protocols or guidance as authorized by the applicable licensing authority:

(1) Emergency medical technician-intermediate;

(2) emergency medical technician-defibrillator;

(3) emergency medical technician-intermediate/defibrillator;

(4) advanced emergency medical technician;

(5) mobile intensive care technician;

(6) paramedic;

(7) licensed professional nurse;

(8) physician's assistant;

(9) advanced practice registered nurse;

(10) respiratory therapist; or

(11) physician.

(ccc) "Type V ambulance service" means an air or ground-based ALS ambulance service that provides critical care transport, as defined in this regulation, and is not subject to public call. This type of ambulance service uses a "type V air ambulance" or "type V ground ambulance," or both.

(ddd) "Unprofessional conduct," as applied to attendants and as used in K.S.A. 65-6133 and amendments thereto, means conduct that violates those standards of professional behavior that through professional experience have become established by the consensus of the expert opinion of the members of the emergency medical services profession as reasonably necessary for the protection of the public. This term shall include any of the following:

(1) Failing to take appropriate action to safeguard the patient;

(2) performing acts beyond the activities authorized for the level at which the individual is certified;

(3) falsifying a patient's or an ambulance service's records;

(4) verbally, sexually, or physically abusing a patient;

(5) violating statutes or regulations concerning the confidentiality of medical records or patient information obtained in the course of professional work;

(6) diverting drugs or any property belonging to a patient or an agency;

(7) making a false or misleading statement on an application for certification renewal or any agency record;

(8) engaging in any fraudulent or dishonest act that is related to the qualifications, functions, or duties of an attendant; or

(9) failing to cooperate with the board and its agents in the investigation of complaints or possible violations of the emergency medical services statutes or board regulations, including failing to furnish any documents or information legally requested by the board. Attendants who fail to respond to requests for documents or requests for information within 30 days from the date of request shall have the burden of demonstrating that they have acted in a timely manner.

(eee) "Unprofessional conduct," as applied to instructor-coordinators and training officers and as used in K.S.A. 65-6133 and K.S.A. 65-6129c and amendments thereto, means any of the following:

(1) Engaging in behavior that demeans a student. This behavior shall include ridiculing a stu-

dent in front of other students or engaging in any inhumane or discriminatory treatment of any student or group of students;

(2) verbally or physically abusing a student;

(3) failing to take appropriate action to safeguard a student;

(4) falsifying any document relating to a student or the emergency medical service agency;

(5) violating any statutes or regulations concerning the confidentiality of student records;

(6) obtaining or seeking to obtain any benefit, including a sexual favor, from a student through duress, coercion, fraud, or misrepresentation, or creating an environment that subjects a student to unwelcome sexual advances, which shall include physical touching or verbal expressions;

(7) an inability to instruct because of alcoholism, excessive use of drugs, controlled substances, or any physical or mental condition;

(8) reproducing or duplicating a state examination for certification without board authority;

(9) engaging in any fraudulent or dishonest act that is related to the qualifications, functions, or duties of an instructor-coordinator or training officer;

(10) willfully failing to adhere to the course syllabus; or

(11) failing to cooperate with the board and its agents in the investigation of complaints or possible violations of the board's statutes or regulations, including failing to furnish any documents or information legally requested by the board. Instructor-coordinators and training officers who fail to respond to requests for documents or requests for information within 30 days of the request shall have the burden of demonstrating that they have acted in a timely manner. (Authorized by K.S.A. 65-6110, as amended by L. 2011, ch. 114, sec. 81, K.S.A. 2010 Supp. 65-6111; implementing K.S.A. 65-6110, as amended by L. 2011, ch. 114, sec. 81, K.S.A. 2010 Supp. 65-6111, K.S.A. 2010 Supp. 65-6121, as amended by L. 2011, ch. 114, sec. 84, K.S.A. 2010 Supp. 65-6129, as amended by L. 2011, ch. 114, sec. 88, K.S.A. 65-6129b, K.S.A. 2010 Supp. 65-6129c, as amended by L. 2011, ch. 114, sec. 65, K.S.A. 65-6132, as amended by L. 2011, ch. 114, sec. 89, and K.S.A 65-6133, as amended by L. 2011, ch. 114, sec. 90; effective May 1, 1985; amended May 1, 1986; amended, T-88-12, May 18, 1987; amended, T-88-24, July 15, 1987; amended May 1, 1988; amended July 17, 1989; amended March 16, 1992; amended Jan. 31, 1994; amended Jan. 30, 1995; amended Jan. 31, 1997; amended Nov. 12, 1999; amended Jan. 27, 2012.)

**109-1-1a. Definitions.** The following terms, as used in this agency's regulations, shall have the following meanings.

(a) "Sponsoring organization" means provider of training, as defined in K.S.A. 65-6112 and amendments thereto.

(b) "Teach" means instruct or coordinate training, or both. (Authorized by K.S.A. 65-6110 and K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1; implementing K.S.A. 65-6110 and K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1; effective, T-109-2-7-11, Feb. 7, 2011; effective June 3, 2011.)

**109-1-2. Medical director.** Each air ambulance service shall have an air medical director who is responsible for advising the air ambulance service on policies and procedures that ensure that the appropriate aircraft, medical personnel, and equipment are provided during air ambulance transport. When necessary, the air medical director may designate another licensed physician to perform the air medical director's duties. (Authorized by K.S.A. 65-6110, as amended by L. 2011, ch. 114, sec. 81; implementing K.S.A. 65-6126, as amended by L. 2011, ch. 114, sec. 87; effective Jan. 31, 1997; amended Jan. 27, 2012.)

## Article 2.—AMBULANCE SERVICES; PERMITS AND REGULATIONS

**109-2-1. Ambulance service operator.** (a) Each operator of an ambulance service shall perform the following:

(1) Notify the board of any change in the service director within seven days of the change; and

(2) designate a person as the ambulance service director to serve as an agent of the operator.

(b) The ambulance service director shall meet the following requirements:

(1) Be responsible for the operation of the ambulance service;

(2) be available to the board regarding permit, regulatory, and emergency matters;

(3) be responsible for maintaining a current list of the ambulance service's attendants;

(4) be responsible for maintaining a current copy of each attendant's Kansas certification or renewal card;

(5) notify the board of each addition or removal

of an attendant from the attendant roster within 90 days of the addition or removal;

(6) notify the board of any known resignation, termination, incapacity, or death of a medical adviser once known and the plans for securing a new medical director; and

(7) submit written notification of each change in the medical director within 30 days of the change. (Authorized by K.S.A. 65-6110, as amended by L. 2011, ch. 114, sec. 81, K.S.A. 2010 Supp. 65-6111, and K.S.A. 65-6132, as amended by L. 2011, ch. 114, sec. 89; implementing K.S.A. 65-6110, as amended by L. 2011, ch. 114, sec. 81, K.S.A. 2010 Supp. 65-6112 (v), as amended by L. 2011, ch. 114, sec. 82, and K.S.A. 65-6130; effective May 1, 1985; amended July 17, 1989; amended Jan. 31, 1997; amended Jan. 27, 2012.)

**109-2-2. Application for ambulance service permit and ambulance license; permit renewal and license renewal.** (a)(1) An applicant may apply for only one ambulance service permit for each ambulance service that the applicant seeks to operate. Each applicant shall indicate the class of service for the permit requested as type I ambulance service, type II ambulance service, type IIA ambulance service, or type V ambulance service.

(2) An applicant may apply for only one ambulance license for each ambulance that the applicant seeks to operate. Each applicant shall indicate the class of ambulance for each license requested.

(b) All ambulance service permit and ambulance license application and renewal forms shall be submitted in a format required by the executive director.

(c) Each initial and each renewal applicant for a ground ambulance service permit and ambulance license shall obtain a mechanical and safety inspection from a person doing business as or employed by a vehicle maintenance service or a city, county, or township or from a certified mechanic as defined in K.A.R. 109-1-1, for each ambulance within 180 days before the date of ambulance service application renewal. In order for an ambulance license to be renewed, the mechanical safety inspection forms shall not contain any deficiencies identified that would compromise the safe transport of patients.

(d) Each initial and each renewal application for an air ambulance shall include a valid standard airworthiness certificate for each aircraft, evidence of an air safety training program, and an informational publication.

(e) (1) Each new ground ambulance shall be required to have a mechanical or safety inspection submitted on forms required by the board or shall require documentation from the manufacturer indicating that the vehicle has undergone a predelivery inspection without deficiencies.

(2) Each used or retrofitted ground ambulance shall be required to have a mechanical and safety inspection.

(f) Each ambulance service permit and ambulance license shall expire on April 30 of each year and may be renewed annually in accordance with this regulation.

If the board receives a complete application for renewal of an ambulance service permit or an ambulance license on or before April 30, the existing permit or license shall not expire until the board has taken final action upon the renewal application or, if the board's action is unfavorable, until the last day for seeking judicial review.

(g) If the board receives an insufficient initial application or renewal application for an ambulance service permit or ambulance license, the applicant or operator shall be notified by the board of any errors or omissions. If the applicant or operator fails to correct the deficiencies and submit a sufficient application within 30 days from the date of written notification, the application may be considered by the board as withdrawn.

(h) An application for ambulance service permit or permit renewal shall be deemed sufficient if all of the following conditions are met:

(1) The applicant or operator either completes all forms provided with the application for ambulance service permit or permit renewal or provides all requested information online. No additional information is required by the board to complete the processing of the application.

(2) Each operator submits the list of supplies and equipment carried on each ambulance validated by the signature of the ambulance service's medical director to the board each year with the operator's application for an ambulance service permit.

(3) The applicant or operator submits payment of the fee in the correct amount for the ambulance service permit or permit renewal and ambulance license fees.

(4) Each operator provides the inspection results to the board on forms provided by the executive director with the application for renewal.

(i) Each publicly subsidized operator shall provide the following statistical information to the board with the application for renewal of a permit:

(1) The number of emergency and nonemergency ambulance responses and the number of patients transported for the previous calendar year;

(2) the operating budget and, if any, the tax subsidy;

(3) the charge for emergency and nonemergency patient transports, including mileage fees; and

(4) the number of full-time, part-time, and volunteer staff.

(j) Each private operator shall provide the following statistical information to the board with the application for renewal of a permit:

(1) The number of emergency and nonemergency ambulance responses and the number of patients transported for the previous calendar year;

(2) the charge for emergency and nonemergency patient transports, including mileage fees; and

(3) the number of full-time, part-time, and volunteer staff.

(k) As a condition of issuance of an initial ambulance service permit, each ambulance service operator shall provide with the application the ambulance service's operational policies and approved medical protocols pursuant to K.A.R. 109-2-5.

(l) The operator of each type I, type II, type IIA, and type V ground ambulance service shall develop a list of supplies and equipment that is carried on each ambulance. This list shall include the supplies and equipment required by the board for the license type and any additional supplies or equipment necessary to carry out the patient care activities as indicated in the services medical protocols in accordance with K.S.A. 65-6112 and amendments thereto. (Authorized by K.S.A. 65-6110, as amended by L. 2011, ch. 114, sec. 81, and K.S.A. 2010 Supp. 65-6111; implementing K.S.A. 65-6110, as amended by L. 2011, ch. 114, sec. 81, 65-6127, and 65-6128; effective May 1, 1985; amended July 17, 1989; amended Jan. 31, 1997; amended Dec. 29, 2000; amended Jan. 27, 2012.)

**109-2-4.** (Authorized by and implementing K.S.A. 1995 Supp. 65-6110, 65-6111, K.S.A. 65-6127 and 65-6128; effective May 1, 1985; amended July 17, 1989; amended Jan. 31, 1997; revoked Jan. 27, 2012.)

**109-2-5. Ambulance service operational standards.** (a) Each ground ambulance shall have a two-way, interoperable communications system to allow contact with the ambulance service's primary communication center and with the medical facility, as defined by K.S.A. 65-411 and amendments thereto, to which the ambulance service most commonly transports patients.

(b) Smoking shall be prohibited in the patient and driver compartments of each ambulance at all times.

(c) Each operator shall ensure that the interior and exterior of the ambulance are maintained in a clean manner and that all medications, medical supplies, and equipment within the ambulance are maintained in good working order and according to applicable expiration dates.

(d) Each operator shall ensure that freshly laundered linen or disposable linen is on cots and pillows and ensure that the linen is changed after each patient is transported.

(e) When an ambulance has been utilized to transport a patient known or suspected to have an infectious disease, the operator shall ensure that the interior of the ambulance, any equipment used, and all contact surfaces are disinfected according to the ambulance service's infectious disease control policies and procedures. The operator shall place the ambulance out of service until a thorough disinfection according to the ambulance service's infection control policies and procedures has been completed.

(f) Each operator shall ensure that all items and equipment in the patient compartment are placed in cabinets or properly secured.

(g) Each operator shall park all ground ambulances in a completely enclosed building with a solid concrete floor. Each operator shall maintain the interior heat of the enclosed building at no less than 50 degrees Fahrenheit. Each operator shall ensure that the interior of the building is kept clean and has adequate lighting. Each operator shall store all supplies and equipment in a clean and safe manner.

(h) Each licensed ambulance shall meet all regulatory requirements for the ambulance license type, except when the ambulance is out of service.

(i) If an operator is unable to provide service for more than 24 hours, the operator or agent shall notify the executive director and submit an alter-

native plan, in writing and within 72 hours, for providing ambulance service for the operator's primary territory of coverage. The alternative plan shall be subject to approval by the executive director and shall remain in effect no more than 30 days from the date of approval. Approval by the executive director shall be based on whether the alternate plan will provide sufficient coverage to transport and provide emergency care for persons within the operator's primary territory. A written request for one or more extensions of the alternative plan for no more than 30 days each may be approved by the executive director if the operator has made a good faith effort but, due to circumstances beyond the operator's control, has been unable to completely remedy the problem.

(j) Each operator subject to public call shall have a telephone with an advertised emergency number that is answered by an attendant or other person designated by the operator 24 hours a day. Answering machines shall not be permitted.

(k) Each operator shall produce the ambulance service permit and service records upon request of the board.

(l) Each operator shall maintain service records for three years.

(m) Each operator shall ensure that documentation is completed for each request for service and for each patient receiving patient assessment, care, or transportation. Each operator shall furnish a completed copy or copies of each patient care report form upon request of the board.

(n) Each operator shall maintain a daily record of each request for ambulance response. This record shall include the date, time of call, scene location, vehicle number, trip number, caller, nature of call, and disposition of each patient.

(o) Each operator shall maintain a copy of the patient care documentation for at least three years.

(p) Each operator shall ensure that a copy of the patient care documentation for initial transport of emergency patients is made available to the receiving medical facility, within 24 hours of the patient's arrival.

(q) Each publicly subsidized operator shall provide the following statistical information to the board before March 1 each calendar year:

(1) The number of emergency and nonemergency ambulance responses and the number of patients transported for the previous calendar year;

(2) the operating budget and tax subsidy;

(3) the charge for emergency and nonemergency patient transports, including mileage fees; and

(4) the number of full-time, part-time, and volunteer staff.

(r) Each operator shall provide a quality improvement or assurance program that establishes medical review procedures for monitoring patient care activities. This program shall include policies and procedures for reviewing patient care documentation. Each operator shall review patient care activities at least once each quarter of each calendar year to determine whether the ambulance service's attendants are providing patient care commensurate with the attendant's scope of practice and local protocols.

(1) Review of patient care activities shall include quarterly participation by the ambulance service's medical director in a manner that ensures that the medical director is meeting the requirements of K.S.A. 65-6126, and amendments thereto.

(2) Each operator shall, upon request, provide documentation to the executive director demonstrating that the operator is performing patient care reviews and that the medical director is reviewing, monitoring, and verifying the activities of the attendants pursuant to K.S.A. 65-6126, and amendments thereto, as indicated by the medical director's electronic or handwritten signature.

(3) Each operator shall ensure that documentation of all medical reviews of patient care activities is maintained for at least three years.

(4) Within 60 days after completion of the internal review processes of an incident, each operator shall report to the board on forms approved by the board any incident indicating that an attendant or other health care provider functioning for the operator met either of the following conditions:

(A) Acted below the applicable standard of care and, because of this action, had a reasonable probability of causing injury to a patient; or

(B) acted in a manner that could be grounds for disciplinary action by the board or other applicable licensing agency.

(s) Each ambulance service operator shall develop and implement operational policies or guidelines, or both, that have a table of contents and address policies and procedures for each of the following topics:

(1) Radio and telephone communications;

(2) interfacility transfers;

(3) emergency driving and vehicle operations;

(4) do not resuscitate (DNR) orders, durable powers of attorney for health care decisions, and living wills;

(5) multiple-victim and mass-casualty incidents;

(6) hazardous material incidents;

(7) infectious disease control;

(8) crime scene management;

(9) documentation of patient reports;

(10) consent and refusal of treatment;

(11) management of firearms and other weapons;

(12) mutual aid, which means a plan for requesting assistance from another resource;

(13) patient confidentiality;

(14) extrication of persons from entrapment; and

(15) any other procedures deemed necessary by the operator for the efficient operation of the ambulance service.

(t) Each ambulance service operator shall provide the operational policies to the executive director, upon request.

(u) Each ambulance service operator shall adopt and implement medical protocols developed and approved in accordance with K.S.A. 65-6112, and amendments thereto.

(v) Each operator's medical protocols shall include a table of contents and treatment procedures at a minimum for the following medical and trauma-related conditions for pediatric and adult patients:

(1) Diabetic emergencies;

(2) shock;

(3) environmental emergencies;

(4) chest pain;

(5) abdominal pain;

(6) respiratory distress;

(7) obstetrical emergencies and care of the newborn;

(8) poisoning and overdoses;

(9) seizures;

(10) cardiac arrest;

(11) burns;

(12) stroke or cerebral-vascular accident;

(13) chest injuries;

(14) abdominal injuries;

(15) head injuries;

(16) spinal injuries;

(17) multiple-systems trauma;

(18) orthopedic injuries;

(19) drowning; and

(20) anaphylaxis.

(w) Each operator shall make available a current copy of the ambulance service's operational policies or guidelines and medical protocols to any person listed as an attendant and any other health care provider on the ambulance service's attendant roster. (Authorized by K.S.A. 65-6110, as amended by L. 2011, ch. 114, sec. 81, and K.S.A. 2010 Supp. 65-6111; implementing K.S.A 65-6110, as amended by L. 2011, ch. 114, sec. 81, K.S.A. 2010 Supp. 65-6112, as amended by L. 2011, ch. 114, sec. 82, K.S.A. 65-6126, as amended by L. 2011, ch. 114, sec. 87, K.S.A. 65-6130, and K.S.A. 2010 Supp. 65-6135, as amended by L. 2011, ch. 114, sec. 66; effective May 1, 1985; amended, T-88-24, July 15, 1987; amended May 1, 1988; amended Aug. 27, 1990; amended Aug. 16, 1993; amended Jan. 31, 1997; amended Jan. 27, 2012.)

**109-2-6. Classes of ambulance services.** (a) Permits shall be issued for four classes of ambulance service. These classes shall be known as type I ambulance service, type IIA ambulance service, type II ambulance service, and type V ambulance service.

(b) Each type I ambulance service shall meet the following requirements:

(1) Provide advanced life support as defined in K.A.R. 109-1-1;

(2) have at least one ALS licensed ambulance that meets all requirements of K.A.R. 109-2-8. Each type I ambulance service may also operate BLS licensed ambulances and may provide critical care transport if staffed by an MICT or paramedic with specialized training;

(3) maintain a staff of currently certified attendants and health care personnel as defined in K.A.R. 109-1-1 that is adequate to meet all applicable requirements of K.A.R. 109-2-7; and

(4) have a method of receiving calls and dispatching ambulances that ensures that an ambulance leaves the station within an annual average of five minutes from the time an emergency call is received by the ambulance service.

(c) Each type II ambulance service shall meet the following requirements:

(1) Provide basic life support as defined in K.A.R. 109-1-1;

(2) have at least one licensed ambulance that meets all requirements of K.A.R. 109-2-8;

(3) maintain a staff of currently certified attendants and health care personnel that is adequate to meet all requirements of K.A.R. 109-2-7; and

(4) have a method of receiving calls and dispatching ambulances that ensures that an ambulance leaves the station within an annual average of five minutes from the time an emergency call is received by the ambulance service.

(d)(1) Any type IIA ambulance service operator may provide advanced life support as defined in K.A.R. 109-1-1 and described in K.S.A. 65-6123, 65-6120, and 65-6119, and amendments thereto, when appropriate personnel are on board according to K.A.R. 109-2-7 and are adequately equipped and when the treatment is approved by medical protocols or the attendants are in direct voice contact with a physician, physician assistant, advanced practice registered nurse, or a licensed professional nurse who is authorized by a physician.

(2) Each operator of a type IIA ambulance service shall meet the following requirements:

(A) Provide basic life support or advanced life support, as defined in K.A.R. 109-1-1;

(B) have at least one licensed ambulance that meets all requirements of K.A.R. 109-2-8;

(C) maintain a staff of currently certified attendants and health care personnel adequate to meet all requirements of K.A.R. 109-2-7; and

(D) have a method of receiving calls and dispatching ambulances that ensures that an ambulance leaves the station within an annual average of five minutes from the time an emergency call is received by the ambulance service.

(e) Each type V ambulance service shall meet the following requirements:

(1) Provide critical care transport as defined in K.A.R. 109-1-1;

(2) not be subject to public call as defined in K.A.R. 109-1-1;

(3) have a ground or air ambulance that meets all requirements of K.A.R. 109-2-8, K.A.R. 109-2-11, K.A.R. 109-2-12, or K.A.R. 109-2-13, as applicable;

(4) license only type V ambulances;

(5) license rotor-wing aircraft, fixed-wing aircraft, or ground-based vehicles as ambulances;

(6) have a staff that is adequate to provide the level of care described in paragraph (e)(1) and as described in K.A.R. 109-2-7; and

(7) have a method of receiving and relaying calls that ensures that any request for emergency response is immediately and properly relayed to the nearest type I ambulance service, type II ambulance service, or type IIA ambulance service. (Authorized by K.S.A. 65-6110, as amended by L. 2011, ch. 114, sec. 81; implementing K.S.A. 65-6110, as amended by L. 2011, ch. 114, sec. 81, K.S.A. 65-6128, and K.S.A. 2010 Supp. 65-6135, as amended by L. 2011, ch. 114, sec. 66; effective May 1, 1985; amended May 1, 1987; amended, T-88-24, July 15, 1987; amended May 1, 1988; amended July 17, 1989; amended Jan. 31, 1997; amended Jan. 27, 2012.)

**109-2-8. Standards for type I, type II, type IIA, and type V ground ambulances and equipment.** (a) Each ambulance shall meet the vehicle and equipment standards that are applicable to that class of ambulance.

(b) Each ambulance shall have the ambulance license prominently displayed in the patient compartment.

(c) The patient compartment size shall meet or exceed the following specifications:

(1) Headroom: 60 inches; and

(2) length: 116 inches.

(d) Each ambulance shall have a heating and cooling system that is controlled separately for the patient and the driver compartments. The air conditioners for each compartment shall have separate evaporators.

(e) Each ambulance shall have separate ventilation systems for the driver and patient compartments. These systems shall be separately controlled within each compartment. Fresh air intakes shall be located in the most practical, contaminant-free air space on the ambulance. The patient compartment shall be ventilated through the heating and cooling systems.

(f) The patient compartment in each ambulance shall have adequate lighting so that patient care can be given and the patient's status monitored without the need for portable or hand-held lighting. A reduced lighting level shall also be provided. A patient compartment light and step-well light shall be automatically activated by opening the entrance doors. Interior light fixtures shall be recessed and shall not protrude more than 1½ inches.

(g) Each ambulance shall have an electrical system to meet maximum demand of the electrical specifications of the vehicle. All conversion equipment shall have individual fusing that is separate from the chassis fuse system.

(h) Each ambulance shall have lights and sirens as required by K.S.A. 8-1720 and K.S.A. 8-1738, and amendments thereto.

(i) Each ambulance shall have an exterior pa-

tient loading light over the rear door, which shall be activated both manually by an inside switch and automatically when the door is opened.

(j) The operator shall mark each ambulance licensed by the board as follows:

(1) The name of the ambulance service shall be in block letters, not less than four inches in height, and in a color that contrasts with the background color. The service name shall be located on both sides of the ambulance and shall be placed in such a manner that it is readily identifiable to other motor vehicle operators.

(2) Any operator may use a decal or logo that identifies the ambulance service in place of lettering. The decal or logo shall be at least 10 inches in height and shall be in a color that contrasts with the background color. The decal or logo shall be located on both sides of the ambulance and shall be placed in such a manner that the decal or logo is readily identifiable to other motor vehicle operators.

(3) Each ambulance initially licensed by the board before January 1, 1995 that is identified either by letters or a logo on both sides of the ambulance shall be exempt from the minimum size requirements in paragraphs (1) and (2) of this subsection.

(k) Each type I, type II, type llA, and type V ambulance shall have a communications system that is readily accessible to both the attendant and the driver and is in compliance with K.A.R 109-2-5(a).

(l) An operator shall equip each ambulance as follows:

(1) At least two annually inspected ABC fire extinguishers or comparable fire extinguishers with at least five pounds of dry chemical, which shall be secured. One fire extinguisher shall be easily accessible by the driver, and the other shall be easily accessible by the attendant;

(2) either two portable, functional flashlights or one flashlight and one spotlight;

(3) one four-wheeled or six-wheeled, all-purpose, multilevel cot with an elevating head and at least two safety straps with locking mechanisms;

(4) one urinal;

(5) one bedpan;

(6) one emesis basin or convenience bag;

(7) one complete change of linen;

(8) two blankets;

(9) one waterproof cot cover;

(10) one pillow; and

(11) a "no-smoking" sign posted in the patient compartment and the driver compartment.

(m) The operator shall equip each ground ambulance with the following internal medical systems:

(1) An oxygen system with at least two outlets located within the patient compartment and at least 2,000 liters of storage capacity, with a minimum oxygen level of 200 psi. The cylinder shall be in a compartment that is vented to the outside. The pressure gauge and regulator control valve shall be readily accessible to the attendant from inside the patient compartment; and

(2) a functioning, on-board, electrically powered suction aspirator system with a vacuum of at least 300 millimeters of mercury at the catheter tip. The unit shall be easily accessible with large-bore, nonkinking suction tubing and a large-bore, semirigid, nonmetalic oropharyngeal suction tip.

(n) The operator shall equip each ground ambulance with the following medical equipment:

(1) A portable oxygen unit of at least 300-liter storage capacity, complete with pressure gauge and flowmeter and with a minimum oxygen level of 200 psi. The unit shall be readily accessible from inside the patient compartment;

(2) a functioning, portable, self-contained battery or manual suction aspirator with a vacuum of at least 300 millimeters of mercury at the catheter tip and a transparent or translucent collection bottle or bag. The unit shall be fitted with large-bore, nonkinking suction tubing and a large-bore, semirigid, nonmetallic oropharyngeal suction tip, unless the unit is self-contained;

(3) a hand-operated, adult bag-mask ventilation unit, which shall be capable of use with the oxygen supply;

(4) a hand-operated, pediatric bag-mask ventilation unit, which shall be capable of use with oxygen supply;

(5) oxygen masks in adult and pediatric sizes;

(6) nasal cannulas in adult and pediatric sizes;

(7) oropharyngeal airways in adult, pediatric, and infant sizes;

(8) a blood pressure manometer with extra large, adult, and pediatric cuffs and a stethoscope;

(9) an obstetric kit with contents as described in the ambulance service's medical protocol;

(10) sterile burn sheets;

(11) sterile large trauma dressings;

(12) assorted sterile gauze pads;

(13) occlusive gauze pads;

(14) rolled, self-adhering bandages;

(15) adhesive tape at least one inch wide;

(16) bandage shears;

(17) one liter of sterile water, currently dated or one liter of sterile saline, currently dated; and

(18) currently dated medications, as authorized by the scope of practice and protocols.

(o) The operator shall equip each ground ambulance with the following patient-handling and splinting equipment:

(1) A long spinal-immobilization device, complete with accessories to immobilize a patient;

(2) a short spinal immobilization device, complete with accessories to immobilize a patient;

(3) a set of extremity splints including one arm and one leg splint, in adult and pediatric sizes;

(4) a set of rigid cervical collars in assorted adult and pediatric sizes;

(5) foam wedges or other devices that serve to stabilize the head, neck, and back as one unit; and

(6) patient disaster tags.

(p) The operator shall equip each type I, type IIA, type II, and type V ground ambulance with the following blood-borne and body fluid pathogen protection equipment in a quantity sufficient for crew members:

(1) Surgical or medical protective gloves;

(2) protective goggles, glasses or chin-length clear face shields;

(3) filtering masks that cover the mouth and nose;

(4) nonpermeable, full-length, long-sleeve protective gowns;

(5) a leakproof, rigid container clearly marked as "contaminated products" for the disposal of sharp objects; and

(6) a leakproof, closeable container for soiled linen and supplies.

(q) The operator shall equip each type I ambulance, type IIA ambulance, and type V ambulance with the following:

(1) A monitor-defibrillator;

(2) a drug supply as listed in the ambulance service's medical protocols;

(3) intravenous administration sets according to medical protocol;

(4) intravenous solutions in plastic bags or plastic bottles as listed in the ambulance service's medical protocols;

(5) assorted syringes and needles necessary to meet the requirements of the medical protocols; and

(6) if authorized by protocols, endotracheal tubes and laryngoscope blades in adult, child, and infant sizes.

(r) If an operator's medical protocols or equipment list is amended, a copy of these changes shall be submitted to the board by the ambulance service operator within 15 days of implementation of the change. Equipment and supplies obtained on a trial basis or for temporary use by the operator shall not be required to be reported to the board by an operator. (Authorized by K.S.A. 65-6110, as amended by L. 2011, ch. 114, sec. 81; implementing K.S.A. 65-6110, as amended by L. 2011, ch. 114, sec. 81, K.S.A. 2010 Supp. 65-6112, as amended by L. 2011, ch. 114, sec. 82, and K.S.A. 65-6128; effective May 1, 1985; amended, T-88-24, July 15, 1987; amended May 1, 1988; amended July 17, 1989; amended Aug. 16, 1993; amended Jan. 31, 1997; amended Jan. 27, 2012.)

**109-2-9. Variances.** (a) A temporary variance from any or all portions of an identified regulation may be granted by the board to an applicant for no more than 30 days. For good cause shown, one extension of a variance may be granted by the board for no more than an additional 30 days.

(b) Each applicant for a variance shall submit a written request, no later than 30 calendar days before a regularly scheduled board meeting, that contains the following information:

(1) The name, address, and certificate level or license type of the applicant;

(2) a statement of the reason for the variance request;

(3) the specific portion or portions of an identified regulation from which a variance is requested;

(4) the period of time for which a variance is requested;

(5) the number of units or persons involved;

(6) an explanation of how adherence to each portion or portions of the regulation from which the variance is requested would result in a serious hardship to the applicant; and

(7) an explanation and, if applicable, supportive documents indicating how a variance would not result in an unreasonable risk to the public interest, safety, or welfare.

(c) In addition to meeting the requirements in subsection (b), each instructor-coordinator or training officer who requests a variance shall describe how granting a variance will not jeopardize the quality of instruction.

(d) Periodic evaluations of the variance after it is granted may be conducted by the board.

(e) Conditions may be imposed by the board on any variance granted as necessary to protect the public interest, safety, or welfare, including conditions to safeguard the quality of the instruction provided by an instructor-coordinator or training officer. (Authorized by and implementing K.S.A. 2008 Supp. 65-6111; effective May 1, 1985; amended July 17, 1989; amended Jan. 31, 1997; amended July 10, 2009.)

**109-2-10a. Air safety program and informational publication.** (a) Each operator of an air ambulance service shall have an air safety training program for all air medical personnel. The program shall include the following:

(1) Air medical and altitude physiology;

(2) aircraft orientation, including specific capabilities, limitations, and safety measures for each aircraft used;

(3) depressurization procedures for fixed-wing aircraft;

(4) safety in and around the aircraft for all air medical personnel, patients, and lay individuals;

(5) rescue and survival techniques appropriate to the terrain and the conditions under which the air ambulance service operates;

(6) hazardous scene recognition and response for rotor-wing aircraft;

(7) aircraft evacuation procedures, including the rapid loading and unloading of patients;

(8) refueling procedures for normal and emergency situations; and

(9) in-flight emergencies and emergency landing procedures.

(b) Each operator of an air ambulance service shall maintain documentation demonstrating the initial completion and annual review of the air safety training program for all air medical personnel and shall provide this documentation to the board on request.

(c) Each operator of an air ambulance service shall provide an informational publication that promotes the proper use of air medical transport, upon request, to all ground-based ambulance services, law enforcement agencies, and hospitals that use the air ambulance service. Each publication shall address the following topics:

(1) Availability, accessibility, and scope of care of the air ambulance service;

(2) capabilities of air medical personnel and patient care modalities afforded by the air ambulance service;

(3) patient preparation before air medical transport;

(4) landing zone designation and preparation;

(5) communication and coordination between air and ground medical personnel; and

(6) safe approach and conduct around the aircraft. (Authorized by and implementing K.S.A. 65-6110, as amended by L. 2011, ch. 114, sec. 81, and K.S.A. 2010 Supp. 65-6111; effective Jan. 27, 2012.)

**109-2-11. Standards for type V air ambulances and equipment.** (a) The operator shall ensure that the patient compartment is configured in such a way that air medical personnel have adequate access to the patient in order to begin and maintain care commensurate with the patient's needs. The operator shall ensure that the air ambulance has adequate access and necessary space to maintain the patient's airway and to provide adequate ventilatory support by an attendant from the secured, seat-belted position within the air ambulance.

(b) Each air ambulance operator shall have a policy that addresses climate control of the aircraft for the comfort and safety of both the patient and air medical personnel. The air medical crew shall take precautions to prevent temperature extremes that could adversely affect patient care.

(c) The operator shall equip each type V air ambulance with the following:

(1) Either two portable functioning flashlights or a flashlight and one spotlight;

(2) a cot with an elevating head and at least three safety straps with locking mechanisms or an isolette;

(3) one emesis basin or convenience bag;

(4) one complete change of linen;

(5) one blanket;

(6) one waterproof cot cover; and

(7) a "no smoking" sign posted in the aircraft.

(d) Each fixed-wing air ambulance shall have a two-way communications system that is readily accessible to both the medical personnel and the pilot and that meets the following requirements:

(1) Allows communication between the aircraft and air traffic control systems; and

(2) allows air medical personnel to communicate at all times with medical control, exclusive of the air traffic control system.

(e) The pilot or pilots shall be sufficiently iso-

lated from the patient care area to minimize in-flight distractions and interference.

(f) The operator shall equip each type V air ambulance with an internal medical system that includes the following:

(1) An internal oxygen system with at least one outlet per patient located inside the patient compartment and with at least 2,500 liters of storage capacity with a minimum of 200 psi. The pressure gauge, regulator control valve, and humidifying accessories shall be readily accessible to attendants and medical personnel from inside the patient compartment during in-flight operations;

(2) an electrically powered suction aspirator system with an airflow of at least 30 liters per minute and a vacuum of at least 300 millimeters of mercury. The unit shall be equipped with large-bore, nonkinking suction tubing and a semirigid, nonmetallic oropharyngeal suction tip; and

(3) oxygen flowmeters and outlets that are padded, flush-mounted, or located to prevent injury to air medical personnel, unless helmets are worn by all crew members during all phases of flight operations.

(g) The operator shall equip each type V air ambulance with the following:

(1) A portable oxygen unit of at least 300-liter storage capacity complete with pressure gauge and flowmeter with a minimum of 200 psi. The unit shall be readily accessible from inside the patient compartment;

(2) a portable, self-contained battery or manual suction aspirator with an airflow of at least 28 liters per minute and a vacuum of at least 300 millimeters of mercury. The unit shall be fitted with large-bore, nonkinking suction tubing and semirigid, nonmetallic, oropharyngeal suction tip;

(3) medical supplies and equipment that include the following:

(A) Airway management equipment, including tracheal intubation equipment, adult, pediatric, and infant bag-valve masks, and ventilatory support equipment;

(B) a cardiac monitor capable of defibrillating and an extra battery or power source;

(C) cardiac advanced life support drugs and therapeutic modalities, as indicated by the ambulance service's medical protocols;

(D) neonate specialty equipment and supplies for neonatal missions and as indicated by the ambulance service's medical protocols;

(E) trauma advanced life support supplies and treatment modalities, as indicated in the ambulance service's medical protocols; and

(F) a pulse oximeter and an intravenous infusion pump; and

(4) blood-borne and body fluid pathogen protection equipment as described in K.A.R. 109-2-8.

(h) If an operator's medical protocols are amended, the operator shall submit these changes to the board with a letter of approval pursuant to K.S.A. 65-6112 (r), and amendments thereto, within 15 days of implementation of the change.

(i) Equipment and supplies obtained on a trial basis or for temporary use by the operator shall not be required to be reported to the board by the operator. If the operator's medical equipment list is amended, the operator shall submit these changes to the board within 15 days with a letter of approval from the ambulance service's medical director.

(j) Each air ambulance operator shall ensure that each air ambulance has on board, at all times, appropriate survival equipment for the mission and terrain of the ambulance service's geographic area of operations.

(k) Each air ambulance operator shall ensure that the aircraft has an adequate interior lighting system so that patient care can be provided and the patient's status can be monitored without interfering with the pilot's vision. The air ambulance operator shall ensure that the aircraft cockpit is capable of being shielded from light in the patient care area during night operations or that red lighting or a reduced lighting level is also provided for the pilot and air ambulance personnel.

(l) Each aircraft shall have at least one stretcher that meets the following requirements:

(1) Accommodates a patient who is up to six feet tall and weighs 212 pounds;

(2) is capable of elevating the patient's head at least 30 degrees for patient care and comfort;

(3) has three securing straps for adult patients; and

(4) has a specifically designed mechanism for securing pediatric patients.

(m) Each air ambulance operator shall ensure that all equipment, stretchers, and seating are so arranged as not to block rapid egress by air medical personnel or patients from the aircraft. The operator shall ensure that all equipment on board the aircraft is affixed or secured in either approved racks or compartments or by strap restraint while the aircraft is in operation.

(n) The aircraft shall have an electric inverter or appropriate power source that is sufficient to power patient-specific medical equipment without compromising the operation of any electrical aircraft equipment.

(o) When an isolette is used during patient transport, the operator shall ensure that the isolette is able to be opened from its secured in-flight position in order to provide full access to the infant.

(p) Each air ambulance operator shall ensure that all medical equipment is maintained according to the manufacturer's recommendations and does not interfere with the aircraft's navigation or on-board systems. (Authorized by and implementing K.S.A. 65-6110, as amended by L. 2011, ch. 114, sec. 81; effective May 1, 1987; amended July 17, 1989; amended Jan. 31, 1997; amended Jan. 27, 2012.)

**109-2-12. Standards for rotor-wing ambulance aircraft and equipment.** (a) Each operator of an air ambulance service shall comply with the requirements in K.A.R. 109-2-11.

(b) The aircraft configuration shall not compromise patient stability during any part of flight operations. The aircraft shall have an entry that allows loading and unloading of the patient without maneuvering the patient more than 45 degrees about the lateral axis and 30 degrees about the longitudinal axis and does not compromise the functioning of monitoring systems, intravenous lines, or manual or mechanical ventilation.

(c) The aircraft shall have an external search light, which shall meet the following requirements:

(1) Provide at least 400,000-candlepower illumination at 200 feet;

(2) be separate from the aircraft landing lights;

(3) be moveable 90 degrees longitudinally and 180 degrees laterally; and

(4) be capable of being controlled from inside the aircraft.

(d) Each rotor-wing aircraft shall have a two-way interoperable communications system that is readily accessible to both the attendants and the pilot and meets the following requirements:

(1) Allows communications between the aircraft and a hospital for medical control, exclusive of the air traffic control system; and

(2) allows communications between the aircraft and ground-based ambulance services, exclusive of the air traffic control system. (Authorized by and implementing K.S.A. 65-6110, as amended by L. 2011, ch. 114, sec. 81; effective May 1, 1987; amended July 17, 1989; amended Jan. 31, 1997; amended Jan. 27, 2012.)

**109-2-13. Standards for fixed-wing ambulance aircraft and equipment.** (a) Each operator shall ensure that each fixed-wing air ambulance is pressurized during patient transports according to the ambulance service's medical protocols and operational policies.

(b) The pilot or pilots shall be sufficiently isolated from the patient care area to minimize in-flight distractions and interference.

(c) Each fixed-wing air ambulance shall have a two-way, interoperable communications system that is readily accessible to both the attendants and the pilot and that meets the following requirements:

(1) Allows communications between the aircraft and a hospital; and

(2) allows an attendant to communicate at all times with medical control, exclusive of the air traffic control system.

(d) Fixed-wing ambulance aircraft shall have on board patient comfort equipment including the following:

(1) One urinal; and

(2) one bedpan.

(e)(1) Each operator of a type V ambulance service shall staff each type V air ambulance with a pilot and one of the following groups of individuals, who shall remain in the patient compartment during patient transport:

(A) At least two of the following: physician, physician assistant, advanced practice registered nurse, or professional nurse; or

(B) one of the individuals listed in paragraph (e)(1)(A) and one of the following:

(i) An MICT or paramedic; or

(ii) an optional staff member commensurate with the patient's care needs, as determined by the ambulance service's medical director or as described in the ambulance service's medical protocols, who shall be a health care provider as defined in K.A.R. 109-1-1 (cc). The medical personnel shall remain in the patient compartment during patient transport.

(2) Each of the individuals specified in paragraphs (e)(1)(A) and (B) shall meet the following requirements:

(A) Have current certification in advanced cardiac life support (ACLS), as adopted by reference

in K.A.R. 109-2-7 (e), or in an equivalent area approved by the board; and

(B) have current certification in either pediatric advanced life support, as adopted by reference in K.A.R. 109-2-7 (f), or an equivalent area approved by the board and in one of the following:

(i) International trauma life support-advanced (ITLS-A);

(ii) transport nurse advanced trauma course (TNATC);

(iii) trauma nurse core course (TNCC);

(iv) certified flight registered nurse (CFRN);

(v) certified transport registered nurse (CTRN);

(vi) pre-hospital trauma life support (PHTLS);

(vii) critical care emergency medical technician paramedic (CCEMTP); or

(viii) flight paramedic-certification (FP-C). (Authorized by and implementing K.S.A. 65-6110, as amended by L. 2011, ch. 114, sec. 81; effective Jan. 31, 1997; amended Jan. 27, 2012.)

## Article 3.—STANDARDS FOR AMBULANCE ATTENDANTS, FIRST RESPONDERS, AND DRIVERS

**109-3-1. Standards for ambulance attendants.** Each attendant shall be at least 17 years of age. (Authorized by and implementing K.S.A. 65-6110; effective July 17, 1989; amended Jan. 31, 1997; amended July 10, 2009.)

## Article 5.—CONTINUING EDUCATION

**109-5-1. Continuing education.** (a) One clock-hour of continuing education credit shall mean at least 50 minutes of instruction.

(b) One academic credit hour shall be equivalent to 15 clock-hours for the purpose of continuing education credit. Credit for auditing an academic course shall be for actual clock-hours attended during which instruction was given and shall not exceed the academic credit allowed.

(c) Acceptable forms of prior approved continuing education programs shall include the following:

(1) Academic medical courses, whether taken for credit or audited;

(2) seminars, workshops, or minicourses oriented to the enhancement of EMS practice, values, skills, and knowledge;

(3) programs presented by a provider of continuing education as defined in K.A.R. 109-1-1;

(4) medical or nursing continuing education programs approved by the appropriate licensing agency of this or another jurisdiction;

(5) programs approved by the CECBEMS;

(6) clinical training that meets the requirements of subsection (d);

(7) distance learning courses that meet the criteria established in paragraph (e)(2) and K.A.R. 109-10-7; and

(8) for instructor-coordinators and training officers, an educator conference approved by the board.

(d) All clinical training submitted for approval shall be in the form of prescheduled clinical training sessions. The training coordinator shall provide, to the student and the clinical training faculty, the clinical training objectives to be met during the training session. The clinical training faculty shall complete a clinical training evaluation form for each student.

(e)(1) Any student may be awarded one clock-hour of continuing education credit for each clock-hour of distance learning as verified by the certificate of completion, which shall not exceed the amount of credit awarded by CECBEMS or the provider of distance learning. The number of clock-hours received for continuing education credit during one calendar day shall not exceed 12.

(2) Each distance learning course shall include an examination over the material presented. The provider of the distance learning course shall provide each student with the results of the examination and a certificate of completion.

(3) Each student using one or more distance learning courses for the purpose of certification renewal shall keep a copy of the certificate of completion for at least three years.

(f) Any attendant may apply for retroactive approval of continuing education programs that did not receive prior approval by the board. The request shall include an application approved by the executive director and the other documentation specified in K.A.R. 109-5-5. The request shall be received in the board office within 90 days following the end of the program. (Authorized by K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1; implementing K.S.A. 2009 Supp. 65-6129, as amended by L. 2010, ch. 119, sec. 8, K.S.A. 65-6129b, and K.S.A. 65-6129c, as amended by L. 2010, ch. 119, sec. 9; effective, T-88-122, May 18, 1987; amended, T-88-24, July 15, 1987; amended May 1, 1988; amended July 17, 1989; amended Feb. 3, 1992; amended Aug. 16,

1993; amended Dec. 19, 1994; amended Nov. 1, 1996; amended Nov. 12, 1999; amended, T-109-8-8-00, Aug. 8, 2000; amended Nov. 13, 2000; amended Aug. 30, 2002; amended Sept. 10, 2010; amended, T-109-2-7-11, Feb. 7, 2011; amended June 3, 2011.)

**109-5-1a. First responder and emergency medical responder (EMR) continuing education.** (a) Each applicant for certification renewal as a first responder who is scheduled for renewal on or before December 31, 2012 shall have completed the board-approved transition course to transition to the emergency medical responder (EMR) certification as specified in K.S.A. 65-6144, and amendments thereto.

(b) Each applicant for certification renewal as an EMR shall have earned at least 16 clock-hours of documented and approved continuing education during the initial certification period and during each biennial period thereafter. (Authorized by K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1; implementing K.S.A. 2009 Supp. 65-6129, as amended by L. 2010, ch. 119, sec. 8; effective, T-109-2-7-11, Feb. 7, 2011; effective June 3, 2011.)

**109-5-1b. Emergency medical technician (EMT) continuing education.** (a) Each applicant for certification renewal as an EMT who is scheduled for renewal on or before December 31, 2012 shall have completed the board-approved transition course to transition to the EMT level of certification as specified in K.S.A. 65-6121, and amendments thereto.

(b) After January 1, 2013, each applicant for EMT shall have earned at least 28 clock-hours of documented and approved continuing education during the initial certification period and during each biennial period thereafter. (Authorized by K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1; implementing K.S.A. 2009 Supp. 65-6129, as amended by L. 2010, ch. 119, sec. 8; effective, T-109-2-7-11, Feb. 7, 2011; effective June 3, 2011.)

**109-5-1d. Mobile intensive care technician (MICT) and paramedic continuing education.** (a) Each applicant for certification renewal as an MICT shall have earned at least 60 clock-hours of documented and approved continuing education during the preceding biennial period to transition to paramedic.

(b) Each applicant for certification renewal as a paramedic shall have earned at least 60 clock-hours of documented and approved continuing education during the initial certification period and during each biennial period thereafter. (Authorized by K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1, and K.S.A. 65-6119, as amended by L. 2010, ch. 119, sec. 3; implementing K.S.A. 2009 Supp. 65-6119, as amended by L. 2010, ch. 119, sec. 3, and K.S.A. 65-6129, as amended by L. 2010, ch. 119, sec. 8; effective, T-109-2-7-11, Feb. 7, 2011; effective June 3, 2011.)

**109-5-1e. Instructor-coordinator (I-C) continuing education.** Each applicant for certification renewal as an I-C shall provide documentation of both of the following:

(a) The applicant is certified as an attendant at or above the level of EMT or is licensed as a physician or professional nurse, as defined by K.S.A. 65-1113 and amendments thereto.

(b) The applicant attended, during the biennial period immediately preceding the date of application for renewal, an educator conference approved by the board. (Authorized by K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1; implementing K.S.A. 65-6129b; effective, T-109-2-7-11, Feb. 7, 2011; effective June 3, 2011.)

**109-5-1f. Training officer continuing education.** Each applicant for certification renewal as a training officer shall provide documentation of the following:

(a) The applicant is certified as an attendant at or above the level of EMT or is licensed as a physician, physician's assistant, advance registered nurse practitioner, or professional nurse as defined by K.S.A. 65-1113, and amendments thereto.

(b) The applicant attended, during the biennial period immediately preceding the date of application for renewal, an educator conference approved by the board. (Authorized by K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1; implementing K.S.A. 65-6129c, as amended by L. 2010, ch. 119, sec. 9; effective, T-109-2-7-11, Feb. 7, 2011; effective June 3, 2011.)

**109-5-2. Documentation for continuing education.** (a) Each attendant, training officer, and instructor-coordinator shall keep documentation of completion of approved continuing education for at least three years and shall provide

this documentation to the board upon request by the executive director.

(b) Any of the following forms of documentation shall be accepted as proof of completion of continuing education:

(1) A transcript from a postsecondary educational institution with a course grade indicating pass, satisfactory completion, or a letter grade of C or higher for a course completed during the recertification period as specified in K.A.R. 109-5-1;

(2) a signed certificate of attendance from a provider of an approved EMS initial course of instruction that indicates the number of clock-hours attended for auditing the course;

(3) a signed certificate of attendance from a provider of an approved continuing education program;

(4) a signed certificate of attendance from the examination or site coordinator that the attendant participated as a lab assistant at an examination site;

(5) a signed statement and completed evaluation from a clinical training faculty member that the attendant completed clinical training at a medical facility;

(6) a signed certificate of attendance of a distance learning course approved by CECBEMS or the board; or

(7) a signed certificate of attendance of a continuing education course approved by CECBEMS.

(c) An acceptable certificate of attendance shall include the following:

(1) The name of the provider of the continuing education course;

(2) the name of the attendant being issued the certificate;

(3) the title of the course;

(4) the date or dates on which the course was conducted;

(5) the location where the course was conducted;

(6) the amount of approved continuing education credit issued to the attendant for attending the course;

(7) the course identification number issued by the board or by CECBEMS; and

(8) the printed name and signature of the person authorized by the provider to issue the certificate. (Authorized by K.S.A. 65-6111, as amended by L. 2008, ch. 47, sec. 1; implementing K.S.A. 65-6129, as amended by L. 2008, ch. 78, sec. 2, K.S.A. 65-6129b, and K.S.A. 65-6129c; effective, T-88-12, July 15, 1987; amended May 1, 1988; amended July 17, 1989; amended Nov. 12, 1999; amended May 15, 2009.)

**109-5-3. Continuing education approval for long-term providers.** (a) An application may be made to the board to become an approved long-term provider of continuing education training as defined in K.A.R. 109-1-1.

(b) Each provider desiring training program approval as a long-term provider of continuing education courses shall meet the following requirements:

(1) Submit a complete application to the executive director for long-term provider approval. The applicant shall allow up to 30 calendar days for the administrator to review the application. A complete application shall include the following:

(A) A complete application form provided by the board that includes the signatures of the program manager and the medical advisor; and

(B) a long-term continuing education training program management plan that describes how the requirements of paragraphs (b)(2) through (9) will be accomplished;

(2) appoint a training program manager who will serve as the liaison to the board. The training program manager for ambulance services, fire departments, other officially organized public safety agencies, corporations, and professional associations shall be a certified instructor-coordinator or training officer. The training program manager for postsecondary educational institutions and hospitals shall have training and experience in coordinating educational offerings. The training program manager shall sign and date the application;

(3) appoint a physician who will serve as the medical advisor for the training program;

(4) provide a sufficient number of lab instructors to maintain a student-to-instructor ratio of 6:1 during laboratory training sessions;

(5) provide a sufficient quantity of EMS training equipment to maintain a student-to-equipment ratio of 6:1 during laboratory training sessions;

(6) provide to each student, upon request, the following:

(A) A course schedule that includes the date and time of each class lesson, the title of each lesson, and the name of the instructor and the instructor's qualifications to teach each lesson; and

(B) a certificate of attendance that includes the name of the training program, a statement that the training program has been approved by the board as a long-term provider of continuing education training, the title of the continuing education offering, the date and location of the continuing education offering, the amount of continuing education credit awarded to each participant for the offering, the course identification number issued by the board, and the printed name and signature of the program manager;

(7) maintain training program records and continuing education course records for at least three years. The records that shall be maintained are as follows:

(A) A copy of all documents required to be submitted with the application for training program approval;

(B) student attendance rosters;

(C) course educational objectives; and

(D) master copies and completed copies of each student's evaluations of the educational offerings;

(8) establish a continuing education program quality management plan that includes the following:

(A) A description of the training needs assessment used to determine the continuing education courses to be conducted;

(B) a description of the training program evaluations to be conducted and a description of how a review and analysis of the completed evaluations by the training program's medical advisor and the training program manager will be conducted;

(C) equipment use, maintenance, and cleaning policies; and

(D) training program infection-control policies;

(9) submit quarterly reports to the executive director that include the following:

(A) The date, title, and location of each EMS continuing education course offered;

(B) the amount of EMS continuing education credit issued for each EMS course offered; and

(C) the printed name and signature of the training program manager; and

(10) if the training program will include continuing education offered in a distance learning format, submit the following:

(A) The process by which students can access the educator;

(B) the procedures to be used for ensuring timely delivery of and feedback on written materials at all sites;

(C) the procedures to be followed for ensuring that students are participating in the course; and

(D) a description of the format to be used for material delivery.

(c) Each approved long-term provider desiring to offer continuing education in a distance learning format shall incorporate the following items into the provider's long-term continuing education training program management plan:

(1) A definition of the process by which students can access the instructor during any distance learning offerings;

(2) a definition of the procedures used to ensure student participation in course offerings; and

(3) specification of each learning management system that will be used and how each system is to be used in the course.

(d) Training program approval as a long-term provider of continuing education courses shall be for a period of not more than 60 months and may be renewed by the executive director following receipt of an application for renewal of training program approval. The application shall be complete and shall be received in the board's office no later than 30 calendar days before expiration of the approval. Incomplete applications shall not be reviewed for determination of renewal approval.

(e) Each approved long-term provider of continuing education training shall provide the executive director with a copy of all training program records and continuing education course records upon the executive director's request. (Authorized by and implementing K.S.A. 2009 Supp. 65-6111; effective, T-88-12, May 18, 1987; amended, T-88-24, July 15, 1987; amended May 1, 1988; amended July 17, 1989; amended Nov. 12, 1999; amended May 15, 2009; amended Sept. 10, 2010.)

**109-5-4.** (Authorized by K.S.A. 65-6110, 65-6111, and 65-6129; implementing K.S.A. 65-6129, 65-6129b, and 65-6129c; effective Feb. 3, 1992; amended Nov. 12, 1999; amended, T-109-8-8-00, Aug. 8, 2000; amended Nov. 13, 2000; amended Oct. 31, 2003; revoked Feb. 12, 2010.)

**109-5-5. Retroactive approval of continuing education course.** (a) Any attendant may submit a request to the board for retroactive approval of a continuing education course that was completed not more than 90 days before the request is received in the board office.

(b) Each request shall be submitted on a form provided by the board.

(c) In order for retroactive approval of a continuing education course to be granted, the attendant shall provide the following, in addition to the request form:

(1) A certificate of attendance that includes the title of the course, the date and location of the course, and the amount of continuing education credit awarded by the presenter or presenting organization;

(2) documentation of the course objectives; and

(3) one of the following:

(A) The signature of the local emergency medical services medical advisor on the form provided by the board; or

(B) verification that the objectives of the course correspond to the objectives of the national standard curriculum of the federal department of transportation.

(d) The applicant shall be notified in writing by the board of any errors or omissions in the request for approval. Failure to correct any deficiency cited in the written notice of error or omission within 15 days shall constitute withdrawal of the request. (Authorized by K.S.A. 2010 Supp. 65-6111; implementing K.S.A. 2010 Supp. 65-6129; effective Oct. 31, 2008; amended Sept. 2, 2011.)

**109-5-6. Single-program approval for providers of continuing education.** (a) Any entity specified in K.A.R. 109-1-1(bb) may submit an application to the executive director to conduct single-program continuing education.

(b) Each provider of single-program continuing education shall meet the following requirements:

(1) Submit a complete application for single-program approval to the executive director at least 30 days before the requested offering. A complete application shall include the following:

(A) The signatures of the program manager and the program medical advisor; and

(B) a course schedule that includes the date and time of each continuing education program, the title of each continuing education topic in the program, and the instructor;

(2) provide each student with a certificate of attendance that includes the following:

(A) The name of the continuing education program;

(B) a statement that the continuing education program has been approved by the board;

(C) the title of the continuing education program;

(D) the date and location of the continuing education program;

(E) the amount of continuing education credit completed by the attendant for the continuing education program;

(F) the board-assigned course identification number; and

(G) the printed name and signature of the program coordinator; and

(3) maintain the following records for at least three years:

(A) A copy of all documents required to be submitted with the application for single-program approval;

(B) a copy of the curriculum vitae or other documentation of the credentials for each instructor and lab instructor;

(C) student attendance records;

(D) course educational objectives; and

(E) completed copies of student evaluations of the educational offering.

(c) Upon request by the executive director, each provider of single-program continuing education shall provide a copy of all continuing education program records and continuing education course records. (Authorized by and implementing K.S.A. 65-6111, as amended by L. 2008, ch. 47, sec. 1; effective May 15, 2009.)

**109-5-7a. Emergency medical responder (EMR) transition course approval.** (a) The transition course curriculum for the emergency medical responder shall be the document titled "EMR lesson plan" in the "emergency medical responder transition course," dated July 11, 2010, which is hereby adopted by reference.

(b) The train the trainer course curriculum for the EMR and EMT train the trainer courses shall be the "EMR/EMT train the trainer course," dated August 6, 2010, which is hereby adopted by reference.

(c) Each sponsoring organization shall submit a single-program continuing education application to the executive director to conduct, through teaching, coordinating, or both, a transition module or an entire transition course.

(d) Each sponsoring organization shall meet the following requirements:

(1) Ensure that the curriculum adheres to the requirements specified in subsection (a);

(2) submit a complete application for single-program approval to the executive director at least

30 days before the requested transition course. A complete application shall include the following:

(A) The signature of the instructor-coordinator or training officer who meets the requirements of K.A.R. 109-5-7d and is responsible for the coordination of the transition course;

(B) the signature of the identified sponsoring organization's medical advisor;

(C) a course schedule that includes the date and time of each transition course module or session, the title of each transition course topic, and the instructor for each transition course module or session; and

(D) assurance of use of the cognitive examination and psychomotor skills competency evaluation tools provided as part of the instructor manual for the transition course at the level of course to be taught;

(3) provide each student with a certificate of completion that includes the following:

(A) The name of the sponsoring organization;

(B) a statement that the transition course has been approved by the board;

(C) the title of the transition course module or entire transition course;

(D) the date and location of the transition course module or session;

(E) the amount of continuing education credit completed by the attendant for the transition course module or entire transition course;

(F) the board-assigned course identification number;

(G) the printed name and signature of the instructor-coordinator or training officer who meets the requirements specified in subsection (b) and is responsible for the coordination of the transition course; and

(H) the names of the primary instructor-coordinator (I-C), training officer (TO), and any person who provides teaching assistance including subject matter experts, lab assistants, clinical or field preceptors, and guest lecturers;

(4) provide a copy of all transition course rosters to the board office; and

(5) maintain the following records for at least five years:

(A) A copy of all documents required to be submitted with the application for single-program approval;

(B) a list of all persons used in the teaching of the course. The list shall include the name and credentials of the primary I-C, training officer, and any person who provides teaching assistance including subject matter experts, lab assistants, preceptors, and guest lecturers;

(C) student attendance records; and

(D) completed copies of student evaluations for each of the transition course modules or entire transition course.

(e) A subject matter expert may apply content taught by the subject matter expert during a transition course as content needed to complete the subject matter expert's transition course.

(f) Upon request by the executive director, each sponsoring organization shall provide a copy of all transition course records. (Authorized by K.S.A. 65-6110, K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1; implementing K.S.A. 65-6110, K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1, and K.S.A. 65-6144, as amended by L. 2010, ch. 119, sec. 11; effective, T-109-2-7-11, Feb. 7, 2011; effective June 3, 2011.)

**109-5-7b. Emergency medical technician (EMT) transition course approval.** (a) The transition course curriculum for the emergency medical technician shall be the document titled "EMT lesson plan" in the "emergency medical technician transition course," dated July 11, 2010, which is hereby adopted by reference.

(b) The train the trainer course curriculum for EMR and EMT train the trainer courses shall be the "EMR/EMT train the trainer course" adopted by reference in K.A.R. 109-5-7a.

(c) Each sponsoring organization shall submit a single-program continuing education application to the executive director to conduct, through teaching, coordinating, or both, a transition module or an entire transition course.

(d) Each sponsoring organization shall meet the following requirements:

(1) Ensure that the curriculum meets the requirements specified in subsection (a);

(2) submit a complete application for single-program approval to the executive director at least 30 days before the requested transition course. A complete application shall include the following:

(A) The signature of the instructor-coordinator or training officer who meets the requirements of K.A.R. 109-5-7d and is responsible for the coordination of the transition course;

(B) the signature of the identified sponsoring organization's medical advisor;

(C) a course schedule that includes the date and time of each transition course module or session,

the title of each transition course topic, and the instructor for each transition course module or session; and

(D) assurance of use of the cognitive examination and psychomotor skills competency evaluation tools provided as part of the instructor manual for the transition course at the level of course to be taught;

(3) provide each student with a certificate of completion that includes the following:

(A) The name of the sponsoring organization;

(B) a statement that the transition course has been approved by the board;

(C) the title of the transition course module or entire transition course;

(D) the date and location of the transition course module or session;

(E) the amount of continuing education credit completed by the attendant for the transition course module or entire transition course;

(F) the board-assigned course identification number;

(G) the printed name and signature of the instructor-coordinator or training officer who meets the requirements specified in subsection (b) and is responsible for the coordination of the transition course; and

(H) the names of the primary instructor-coordinator (I-C), training officer (TO), and any person who provides teaching assistance including subject matter experts, lab assistants, clinical or field preceptors, and guest lecturers;

(4) provide a copy of all transition course rosters to the board office; and

(5) maintain the following records for at least five years:

(A) A copy of all documents required to be submitted with the application for single-program approval;

(B) a list of all persons used in the teaching of the course. The list shall include the names and credentials of the primary I-C, training officer, and any person who provides teaching assistance including subject matter experts, lab assistants, preceptors, and guest lecturers;

(C) student attendance records; and

(D) completed copies of student evaluations for each of the transition course modules or entire transition course.

(e) A subject matter expert may apply content taught by the subject matter expert during a transition course as content needed to complete the subject matter expert's transition course.

(f) Upon request by the executive director, each sponsoring organization shall provide a copy of all transition course records. (Authorized by K.S.A. 65-6110, K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1; implementing K.S.A. 65-6110, K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1; effective, T-109-2-7-11, Feb. 7, 2011; effective June 3, 2011.)

**109-5-7d. EMR and EMT train the trainer transition course approval.** (a) The transition course curriculum for the EMR and EMT train the trainer shall be the "EMR/EMT train the trainer course" adopted by reference in K.A.R. 109-5-7a.

(b) Training officers and instructor-coordinators may coordinate transition courses after completion of the emergency medical responder and emergency medical technician transition train the trainer course.

(c) Upon request by the executive director, a training officer or instructor-coordinator shall provide a copy of all transition course records. (Authorized by K.S.A. 65-6110, K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1; implementing K.S.A. 65-6110 and K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1; effective, T-109-2-7-11, Feb. 7, 2011; effective June 3, 2011.)

## Article 6.—TEMPORARY CERTIFICATION

**109-6-1. Requirements for temporary certification for applicant with non-Kansas credentials.** (a) An applicant for temporary certification who is certified or licensed as an attendant in another jurisdiction but whose coursework is not substantially equivalent to that required in Kansas may be granted one-year temporary certification by meeting the following requirements:

(1) Providing verification of current attendant certification or licensure issued by that jurisdiction that is comparable to the certification level sought in Kansas; and

(2) providing either the name, address, and telephone number of or a signed statement from the physician, physician assistant, professional nurse, or attendant who is certified at the same or higher level as that of the applicant and who will directly supervise the applicant during the year of temporary certification.

(b) Within one year from the date on which the temporary certificate is issued, if the applicant provides verification of successful completion of

the required coursework, attendant's certification shall be granted. If the applicant does not provide this verification within one year from the date on which the temporary certificate is issued, the temporary certificate shall expire and the application for an attendant's certificate shall be denied. (Authorized by K.S.A. 2008 Supp. 65-6111; implementing K.S.A. 2008 Supp. 65-6129; effective, T-88-24, July 15, 1987; amended May 1, 1988; amended Jan. 22, 1990; amended Nov. 1, 1996; amended Feb. 12, 2010.)

**109-6-2. Renewal of attendant, training officer, and instructor-coordinator certificates.** (a) Each attendant certificate shall expire on December 31 of the second complete calendar year following the date of issuance.

(b) An attendant, an instructor-coordinator who is also an attendant, and a training officer who is also an attendant may renew that person's certificate for each biennial period in accordance with this regulation and with K.A.R. 109-5-1.

(c) Each application for certification renewal shall be submitted on a form provided by the executive director or through the online renewal process. Copies, facsimiles, and other reproductions of the certification renewal form shall not be accepted.

(d) Each application for renewal shall be deemed sufficient when the following conditions are met:

(1) The applicant provides in full the information requested on the form, and no additional information is required by the board to complete the processing of the application.

(2) The applicant submits a renewal fee in the applicable amount specified in K.A.R. 109-7-1.

(e) The date of receipt of a document shall mean the date stamped on the document when the document is received in the board office. (Authorized by K.S.A. 65-6111; implementing K.S.A. 2008 Supp. 65-6129, K.S.A. 65-6129b, and K.S.A. 65-6129c; effective Nov. 1, 1996; amended Oct. 31, 1997; amended Nov. 12, 1999; amended, T-109-8-8-00, Aug. 8, 2000; amended Nov. 13, 2000; amended Feb. 12, 2010.)

**109-6-3.** (Authorized by K.S.A. 2001 Supp. 65-6110, 65-6111; implementing K.S.A. 2001 Supp. 65-6129; effective, T-109-8-8-00, Aug. 8, 2000; effective Nov. 13, 2000; amended Aug. 30, 2002; revoked May 15, 2009.)

## Article 8.—EXAMINATIONS

**109-8-1. Examination.** (a)(1) The cognitive certification examination for first responders, emergency medical responders, emergency medical technicians trained under the 1994 national standard curriculum modified and adopted by the board, emergency medical technicians trained under the "2010 Kansas emergency medical services education standards: emergency medical technician," advanced emergency medical technicians, mobile intensive care technicians, and paramedics shall be the national registry examination.

(2) Any applicant for certification who fails the national registry cognitive examination may retake the examination the maximum allowable number of times pursuant to national registry policy.

(b) The cognitive certification examination for emergency medical technician-intermediate shall be the examination approved by the board on October 4, 1991.

(c) The cognitive certification examination for instructor-coordinator shall be the final cognitive examination developed by the sponsoring organization and approved by the board.

(d) The cognitive certification examinations for training officer I and training officer II approval shall be the final cognitive examinations developed by the sponsoring organization and approved by the board.

(e) Any emergency medical technician-intermediate, instructor-coordinator, training officer I, or training officer II who fails the examination may retake it a maximum of three times. An applicant who has failed the examination three times shall not submit a new application for examination until documentation of successful completion of additional board-approved education has been received from the applicant's instructor and reviewed by the executive director.

(f) Each emergency medical technician-intermediate applicant shall be required to obtain a score of at least 70 percent on each cognitive examination and shall be required to demonstrate competency in psychomotor skills as evaluated by the executive director, using criteria approved by the board.

(g) Each first responder, emergency medical responder, or emergency medical technician applicant shall be required to successfully complete the national registry of emergency medical technicians' cognitive examination and shall be required to demonstrate competency in psycho-

motor skills as evaluated by the vendor contracted by the board, using criteria approved by the board.

(h) Each advanced emergency medical technician, mobile intensive care technician, or paramedic applicant shall successfully complete the national registry of emergency medical technicians' cognitive examination and psychomotor skills evaluation.

(i) Any first responder, emergency medical responder, or emergency medical technician applicant who is tested in such psychomotor skills and who fails any psychomotor skill station may retest each failed station a maximum of three times.

(j) Any advanced emergency medical technician, mobile intensive care technician, or paramedic applicant who is tested on such psychomotor skills in accordance with national registry criteria and who fails any psychomotor skill station may retest each failed portion the maximum allowable times under national registry policies.

(k) Any examination for certification may be modified by the board as a pilot project to evaluate proposed changes to the psychomotor skills examination. (Authorized by K.S.A. 65-6110 and K.S.A. 65-6111, as amended by L. 2010, ch. 119, sec. 1; implementing K.S.A. 65-6111, as amended by L. 2010, ch. 119, sec. 1, K.S.A. 2009 Supp. 65-6129, as amended by L. 2010, ch. 119, sec. 8, K.S.A. 65-6129b, and K.S.A. 65-6129c, as amended by L. 2010, ch. 119, sec. 9; effective, T-109-1-19-89, Jan. 19, 1989; effective July 17, 1989; amended Aug. 27, 1990; amended Feb. 3, 1992; amended Dec. 19, 1994; amended Jan. 5, 1996; amended Nov. 8, 1996; amended May 16, 1997; amended, T-109-2-7-11, Feb. 7, 2011; amended June 3, 2011.)

## Article 9.—INSTRUCTOR-COORDINATOR

**109-9-1. Instructor-coordinator certification.** (a) Each applicant for certification as an I-C shall apply to the executive director using forms approved by the board and shall meet the following requirements:

(1) Validate current certification as an attendant or licensure as a physician or professional nurse;

(2) complete an approved I-C initial course of instruction, except as specified in subsection (b);

(3) attain a score of 70% or higher on the final cognitive examination developed by the educational program and approved by the board; and

(4) complete, with a satisfactory evaluation, an assistant teaching experience in one EMT initial course of instruction applied for, approved, and taught in its entirety within one year after the completion of the instructor-coordinator course. The assistant teaching experience shall include evaluation of the candidate's ability to organize, schedule, implement, and evaluate educational experiences in the classroom, laboratory, clinical, and field environments and shall have been directly supervised by a certified I-C approved by either the executive director or any person so authorized by any state or United States territory and shall be verified on forms approved by the board.

(b) An applicant shall not be required to complete the department of transportation national highway traffic safety administration "emergency medical services instructor training program: national standard curriculum" or modules 2 through 23 of the national guidelines for educating EMS instructors, as specified in K.A.R. 109-10-1e, if the applicant establishes one of the following:

(1) Successful completion of a United States department of transportation EMS instructor training program national standard curriculum or a program that included the content from module 2 through 23 of the national guidelines for educating EMS instructors, as specified in K.A.R. 109-10-1;

(2) successful completion of a fire service instructor course approved by the national board on fire service professional qualifications or the international fire service accreditation;

(3) successful completion of any United States military instructor trainer course that is substantially equivalent to the United States department of transportation national highway traffic safety administration "emergency medical services instructor training program: national standard curriculum," or modules 2 through 23 of the national guidelines for educating EMS instructors as specified in K.A.R. 109-10-1; or

(4) attainment of a bachelor's, master's, or doctoral degree that focuses on the philosophy, scope, and nature of educating adults. This degree shall have been conferred by an accredited postsecondary education institution.

(c) If within two years following the date of expiration of an I-C's certificate, this person applies for renewal of the certificate, the certificate may be granted by the board if the applicant completes 40 contact hours in education theory and methodology approved by the board and successfully

completes an educator conference approved by the board. (Authorized by K.S.A. 65-6110, K.S.A. 2010 Supp. 65-6111; implementing K.S.A. 65-6129b; effective, T-109-1-19-89, Jan. 19, 1989; effective July 17, 1989; amended Aug. 27, 1990; amended Feb. 3, 1992; amended Nov. 12, 1999; amended Nov. 9, 2001; amended Sept. 2, 2011.)

**109-9-4. Requirements for acceptance into an instructor-coordinator initial course of instruction.** (a) Each applicant for initial training as an I-C shall apply to the executive director using forms approved by the board. Only a complete application shall be accepted. A complete application shall include the following documentation:

(1) Proof that the applicant is currently certified or licensed and the applicant has been certified or licensed for at least two years as any of the following:

(A) An attendant;

(B) a physician; or

(C) a professional nurse;

(2) proof that the applicant has at least one year of field experience with an ambulance service;

(3) a letter from a certified I-C verifying the I-C's commitment to evaluate the applicant on the competencies of the assistant teaching experience defined in K.A.R. 109-9-1; and

(4) proof that the applicant has met the following requirements:

(A) Has current approval as a cardiopulmonary resuscitation instructor at the professional rescuer level. This approval shall be by the American heart association, the American red cross, or the national safety council;

(B) has instructed at least 15 hours of material; and

(C) possesses a current teaching certificate granted by the Kansas state board of education or is currently certified as a training officer II.

(b) If an applicant does not meet the requirement of paragraph (a)(4)(C), the applicant may satisfy the requirement by establishing that the applicant possesses both of the following:

(1) Authorization by any state or territory of the United States to be a primary instructor of EMS initial course of instruction at or above the level of EMT; and

(2) (A) A baccalaureate, master's, or doctorate in education conferred by an accredited post-secondary education institution;

(B) certification as a fire service instructor by the national board on fire service professional qualifications or the international fire service accreditation from the national fire academy; or

(C) certification by any United States military organization verifying successful completion of any United States military instructor trainer course that is substantially equivalent to the United States department of transportation national highway traffic safety administration "emergency medical services instructor training program: national standard curriculum," as identified in K.A.R. 109-10-1.

(c) Each applicant who meets the requirements in subsection (a) and, if applicable, subsection (b) shall successfully complete an evaluation of knowledge and skills as follows:

(1) A written medical knowledge examination at the EMT level; and

(2) a practical skills examination at the EMT level.

(d) An applicant meeting the requirements in subsection (a) and, if applicable, subsection (b) may be approved by the executive director for training based upon the following criteria:

(1) A score of at least 80% on the written medical knowledge examination described in paragraph (c)(1); and

(2) a passing score for each practical skill station described in paragraph (c)(2). (Authorized by K.S.A. 65-6110, K.S.A. 2010 Supp. 65-6111; implementing K.S.A. 65-6110, K.S.A. 2010 Supp. 65-6111, and K.S.A. 65-6129b; effective, T-109-1-19-89, Jan. 19, 1989; effective July 17, 1989; amended Feb. 3, 1992; amended Jan. 31, 1994; amended Nov. 12, 1999; amended Nov. 9, 2001; amended Sept. 2, 2011.)

## Article 10.—CURRICULA

**109-10-1a. Approved emergency medical responder education standards.** (a) The document titled "Kansas emergency medical services education standards: emergency medical responder (EMR)," dated July 2010, is hereby adopted by reference to implement the new scope of practice pursuant to K.S.A. 65-6144, and amendments thereto, for emergency medical responder initial courses of instruction.

(b) Proposed curricula or proposed curricular revisions may be approved by the board to be taught as a pilot project, for a maximum of three initial courses of instruction, so that the board can evaluate the proposed curricula or proposed cur-

ricular revisions and consider permanent adoption of the proposed curricula or proposed curricular revisions. Students of each approved pilot project course shall, upon successful completion of the approved pilot project course, be eligible to take the board-approved examination for certification at the attendant level for the approved pilot project course. All examination regulations shall be applicable to students successfully completing an approved pilot project course. (Authorized by K.S.A. 65-6110 and K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1; implementing K.S.A. 65-6144, as amended by L. 2010, ch. 119, sec. 11; effective, T-109-2-7-11, Feb. 7, 2011; effective June 3, 2011.)

**109-10-1b. Approved emergency medical technician education standards.** (a) The document titled "Kansas emergency medical services education standards: emergency medical technician (EMT)," dated July 2010, is hereby adopted by reference to implement the new scope of practice pursuant to K.S.A. 65-6121, and amendments thereto, for emergency medical technician initial courses of instruction under the new emergency medical technician scope of practice.

(b) Proposed curricula or proposed curricular revisions may be approved by the board to be taught as a pilot project, for a maximum of three initial courses of instruction, so that the board can evaluate the proposed curricula or proposed curricular revisions and consider permanent adoption of the proposed curricula or proposed curricular revisions. Students of each approved pilot project course shall, upon successful completion of the approved pilot project course, be eligible to take the board-approved examination for certification at the attendant level for the approved pilot project course. All examination regulations shall be applicable to students successfully completing an approved pilot project course. (Authorized by K.S.A. 65-6110 and K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1; implementing K.S.A. 65-6121, as amended by L. 2010, ch. 119, sec. 5; effective, T-109-2-7-11, Feb. 7, 2011; effective June 3, 2011.)

**109-10-1d. Approved paramedic education standards.** (a) The document titled "Kansas emergency medical services education standards: paramedic," dated July 2010, is hereby adopted by reference to implement the new scope of practice pursuant to K.S.A. 65-6119, and amendments thereto, for paramedic initial courses of instruction.

(b) Proposed curricula or proposed curricular revisions may be approved by the board to be taught as a pilot project, for a maximum of three initial courses of instruction, so that the board can evaluate the proposed curricula or proposed curricular revisions and consider permanent adoption of the proposed curricula or proposed curricular revisions. Students of each approved pilot project course shall, upon successful completion of the approved pilot project course, be eligible to take the board-approved examination for certification at the attendant level for the approved pilot project course. All examination regulations shall be applicable to students successfully completing an approved pilot project course. (Authorized by K.S.A. 65-6110 and K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1; implementing K.S.A. 2009 Supp. 65-6119, as amended by L. 2010, ch. 119, sec. 3; effective, T-109-2-7-11, Feb. 7, 2011; effective June 3, 2011.)

**109-10-1e. Approved instructor-coordinator standards.** (a) Modules 2 through 23 in the "national guidelines for educating EMS instructors," dated August 2002 and published by the United States department of transportation, national highway traffic safety administration, are hereby adopted by reference for instructor-coordinator (IC) initial courses of instruction. These courses shall include an evaluated assistant teaching experience for each student as specified in K.A.R. 109-9-1.

(b) Proposed curricula or proposed curricular revisions may be approved by the board to be taught as a pilot project, for a maximum of three initial courses of instruction, so that the board can evaluate the proposed curricula or proposed curricular revisions and consider permanent adoption of the proposed curricula or proposed curricular revisions. Students of each approved pilot project course shall, upon successful completion of the approved pilot project course, be eligible to take the board-approved examination for certification at the attendant level for the approved pilot project course. All examination regulations shall be applicable to students successfully completing an approved pilot project course. (Authorized by K.S.A. 65-6110 and K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1; implementing K.S.A. 65-6129b; effective, T-109-2-7-11, Feb. 7, 2011; effective June 3, 2011.)

**109-10-1f. Approved training officer I education standards.** (a) The document titled "Kansas board of EMS training officer I: initial course standards," dated January 3, 2011, is hereby adopted by reference for training officer I initial courses of instruction.

(b) Proposed curricula or proposed curricular revisions may be approved by the board to be taught as a pilot project, for a maximum of three initial courses of instruction, so that the board can evaluate the proposed curricula or proposed curricular revisions and consider permanent adoption of the proposed curricula or proposed curricular revisions. Students of each approved pilot project course shall, upon successful completion of the approved pilot project course, be eligible to take the board-approved examination for certification at the attendant level for the approved pilot project course. All examination regulations shall be applicable to students successfully completing an approved pilot project course. (Authorized by K.S.A. 65-6110 and K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1; implementing K.S.A. 65-6129c, as amended by L. 2010, ch. 119, sec. 9; effective, T-109-2-7-11, Feb. 7, 2011; effective June 3, 2011.)

**109-10-1g. Approved training officer II education standards.** (a) The document titled "Kansas board of EMS training officer II: initial course standards," dated August 2010, is hereby adopted by reference for training officer II initial courses of instruction.

(b) Proposed curricula or proposed curricular revisions may be approved by the board to be taught as a pilot project, for a maximum of three initial courses of instruction, so that the board can evaluate the proposed curricula or proposed curricular revisions and consider permanent adoption of the proposed curricula or proposed curricular revisions. Students of each approved pilot project course shall, upon successful completion of the approved pilot project course, be eligible to take the board-approved examination for certification at the attendant level for the approved pilot project course. All examination regulations shall be applicable to students successfully completing an approved pilot project course. (Authorized by K.S.A. 65-6110 and K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1; implementing K.S.A. 65-6129c, as amended by L. 2010, ch. 119, sec. 9; effective, T-109-2-7-11, Feb. 7, 2011; effective June 3, 2011.)

**109-10-3. Late enrollment.** (a) Instructor-coordinators and training officers II may allow students to enroll late in an initial course of instruction if the first 10 percent of the didactic and laboratory training sessions in the course as described in the course syllabus has not yet been completed. Once the first 10 percent of the didactic and laboratory training sessions of the course as described in the course syllabus has been completed, an individual shall not be allowed to enroll for the purpose of obtaining state certification.

(b) Instructor-coordinators and training officers II who admit late enrollees into initial courses of instruction shall submit to the executive director, within 20 days of the student's enrollment, a make-up schedule for each late enrollee. The make-up schedule shall include all classes that the late enrollee missed.

(c) The instructor-coordinator or training officer II shall also submit to the executive director, within 20 days after enrollment, an application for certification and an application fee for each late enrollee. (Authorized by and implementing K.S.A. 2010 Supp. 65-6111; effective Jan. 31, 1994; amended Sept. 2, 2011.)

**109-10-5.** (Authorized by K.S.A. 1993 Supp. 65-6110; implementing K.S.A. 65-6129; effective Dec. 19, 1994; revoked Sept. 2, 2011.)

**109-10-6. Required training equipment and supplies.** Each sponsoring organization approved to conduct initial courses of instruction shall ensure that EMS training equipment and supplies necessary to facilitate the teaching of all psychomotor skills for the level of course being provided are available for use with that course. The training equipment and supplies provided shall be functional, clean, serviceable, and in sufficient quantity to maintain a ratio of no more than six students practicing together on one piece of equipment. The pharmaceuticals necessary for training shall be either simulation models or actual empty pharmaceutical packages or containers, or both. Training equipment and supplies that are for the purpose of protecting the student from exposure to bloodborne and airborne pathogens shall be functional and clean and shall be provided in sufficient quantity to ensure that students have their own. (Authorized by and implementing K.S.A. 65-6110 and K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1; effective

Nov. 12, 1999; amended, T-109-2-7-11, Feb. 7, 2011; amended June 3, 2011.)

**109-10-7. Distance learning.** (a) Any EMS educational program accredited by the committee on accreditation of emergency medical services-paramedic or offered by an accredited postsecondary institution may be granted approval to provide an initial course of instruction or continuing education programs in a distance learning format.

(b) Any instructor-coordinator, training officer I, or training officer II not affiliated with a program accredited by the committee on accreditation of emergency medical services-paramedic or with an accredited postsecondary institution may be granted approval to offer an initial course of instruction or continuing education programs in a distance learning format if the course or program meets the requirements of this regulation.

(c) Each instructor-coordinator, training officer I, or training officer II not affiliated with a program specified in subsection (a) shall submit a request for initial course approval or an application for single-program provider to the executive director or the executive director's designee. The request or application shall include the following, in addition to meeting the requirements of K.A.R. 109-5-3, 109-5-6, 109-10-2, 109-10-6, 109-11-1, 109-11-3, 109-11-4, 109-11-5, 109-11-6, 109-11-7, or 109-11-10:

(1) The procedures to be used for conducting progress counseling sessions for all students, including at those sites where distance learning is provided;

(2) the process by which students can access the instructor for an initial course of instruction or continuing education program;

(3) the procedures to be used for ensuring timely delivery of and feedback on written materials at all sites;

(4) the procedures to be followed for ensuring that students are participating in the course;

(5) the procedures to be used to ensure the competency of those completing didactic and psychomotor skills training;

(6) identification of the learning management system to be used during the course; and

(7) identification of each program's quality assurance plan that at a minimum shall include the following:

(A) An advisory committee that includes the program coordinator, program medical adviser, and representatives of the following:

(i) Current students;

(ii) former students;

(iii) graduates;

(iv) employees;

(v) faculty;

(vi) all communities of interest; and

(vii) local ambulance service;

(B) an advisory committee meeting schedule; and

(C) a copy of the evaluation tools to be completed by the students, employees, staff, faculty, medical adviser, and program coordinator.

(d) Any approved class may be monitored by the executive director or the executive director's designee. (Authorized by K.S.A. 2008 Supp. 65-6111; implementing K.S.A. 2008 Supp. 65-6111 and 65-6129 and K.S.A. 65-6129b; effective Feb. 12, 2010.)

## Article 11.—COURSE APPROVALS

**109-11-1. First responder course approval.** (a) First responder initial courses of instruction may be approved by the executive director or the executive director's designee to be conducted only by sponsoring organizations. A sponsoring organization shall mean a provider of training, as defined in K.S.A. 65-6112 and amendments thereto.

(b) Each sponsoring organization requesting approval to conduct initial courses of instruction shall submit an application packet to the executive director that is completed in its entirety, including all required signatures, and includes the following documents:

(1) A course syllabus for each level of training offered that includes at a minimum the following information:

(A) A summary of the course goals and objectives;

(B) student prerequisites, if any, for admission into the course;

(C) instructional and any other materials required to be purchased by the student;

(D) student attendance policies;

(E) student evaluation policies;

(F) student requirements for successful course completion;

(G) a description of the clinical and field training requirements, if applicable;

(H) student and participant safety policies;

(I) Kansas requirements for certification;

(J) student dress and hygiene requirements;

(K) student progress conferences;

(L) student discipline policies;

(M) policies concerning student use of equipment; and

(N) a statement that the course provides a sufficient number of lab instructors to maintain a 6:1 student-to-instructor ratio during lab sessions;

(2) a course schedule that identifies the following:

(A) The date of each class session;

(B) the times each class session is to start and end;

(C) the title of the subject matter of each class session;

(D) the instructor of each class session;

(E) the United States department of transportation or Kansas enrichment lesson number; and

(F) the number of psychomotor skills laboratory hours for each session; and

(3) letters from the training program medical advisor, the director of the ambulance service that will provide field training to the students, if applicable, and the administrator or the administrator's designee of the hospital in which the clinical rotation is provided, if applicable, indicating their commitment to provide the support as defined in the curriculum.

(c) Each application shall be received in the board office not later than 30 calendar days before the first scheduled course session.

(d) Each approved initial course shall meet the following conditions:

(1) Meet or exceed the described in K.A.R. 109-10-1; and

(2) maintain course records for at least three years. The following records shall be maintained:

(A) A copy of all documents required to be submitted with the application for course approval;

(B) student attendance;

(C) student grades;

(D) student conferences;

(E) course curricula;

(F) lesson plans for all lessons;

(G) clinical training objectives, if applicable;

(H) field training objectives, if applicable;

(I) completed clinical and field internship training preceptor evaluations for each student;

(J) master copies and completed copies of the outcome assessment and outcome analyses tools used for the course that, at a minimum, address the following:

(i) Each student's ability to perform competently in a simulated or actual field situation, or both; and

(ii) each student's ability to integrate cognitive and motor skills to appropriately care for sick and injured patients;

(K) a copy of each student's psychomotor skills evaluations as specified in the course syllabus;

(L) completed copies of each student's evaluations of each course, all instructors for the course, and all lab instructors for the course; and

(M) a copy of the course syllabus.

(e) Each primary instructor shall provide the executive director with an application form from each student within 20 days of the date of the first class session.

(f) Each approved course shall provide any course documentation requested by the executive director.

(g) Any approved course may be monitored by the executive director or the executive director's designee.

(h) Program approval may be withdrawn by the board if the provider violates any regulation. (Authorized by K.S.A. 65-6110, K.S.A. 2009 Supp. 65-6111; implementing K.S.A. 65-6110, K.S.A. 2009 Supp. 65-6111, K.S.A. 2009 Supp. 65-6129; effective, T-109-1-19-89, Jan 19, 1989; effective July 17, 1989; amended Jan. 31, 1994; amended Nov. 12, 1999; amended Sept. 10, 2010.)

**109-11-1a. Emergency medical responder course approval.** (a) Emergency medical responder initial courses of instruction pursuant to K.S.A. 65-6144, and amendments thereto, may be approved by the executive director and shall be conducted only by sponsoring organizations.

(b) Each sponsoring organization requesting approval to conduct initial courses of instruction shall submit a complete application packet to the executive director, including all required signatures, and the following documents:

(1) A course syllabus that includes at least the following information:

(A) A summary of the course goals and objectives;

(B) student prerequisites, if any, for admission into the course;

(C) instructional and any other materials required to be purchased by the student;

(D) student attendance policies;

(E) student requirements for successful course completion;

(F) a description of the clinical and field training requirements, if applicable;

(G) student discipline policies; and

(H) instructor information, which shall include the following:

(i) Instructor name;

(ii) office hours or hours available for consultation; and

(iii) instructor electronic mail address;

(2) course policies that include at least the following information:

(A) Student evaluation of program policies;

(B) student and participant safety policies;

(C) Kansas requirements for certification;

(D) student dress and hygiene policies;

(E) student progress conferences;

(F) equipment use policies; and

(G) a statement that the course provides a sufficient number of lab instructors to maintain a 6:1 student-to-instructor ratio during lab sessions;

(3) a course schedule that identifies the following:

(A) The date and time of each class session, unless stated in the syllabus;

(B) the title of the subject matter of each class session;

(C) the instructor of each class session; and

(D) the number of psychomotor skills laboratory hours for each session; and

(4) letters from the initial course of instruction medical advisor, the ambulance service director of the ambulance service that will provide field training to the students, if applicable, and the administrator of the medical facility in which the clinical rotation is provided, if applicable, indicating their commitment to provide the support as defined in the curriculum.

(c) Each application shall be received in the board office not later than 30 calendar days before the first scheduled course session.

(d) Each approved initial course shall meet the following conditions:

(1) Meet or exceed the course requirements described in the regulations of the Kansas board of EMS; and

(2) maintain course records for at least three years. The following records shall be maintained:

(A) A copy of all documents required to be submitted with the application for course approval;

(B) student attendance;

(C) student grades;

(D) student conferences;

(E) course curriculum;

(F) lesson plans for all lessons;

(G) clinical training objectives, if applicable;

(H) field training objectives, if applicable;

(I) completed clinical and field training preceptor evaluations for each student;

(J) master copies and completed copies of the outcome assessment and outcome analyses tools used for the course that address at least the following:

(i) Each student's ability to perform competently in a simulated or actual field situation, or both; and

(ii) each student's ability to integrate cognitive and psychomotor skills to appropriately care for sick and injured patients;

(K) a copy of each student's psychomotor skills evaluations as specified in the course syllabus;

(L) completed copies of each student's evaluations of each course, all instructors for the course, and all lab instructors for the course; and

(M) a copy of the course syllabus.

(e) Each primary instructor shall provide the executive director with an application for certification form from each student within 20 days of the date of the first class session.

(f) Each sponsoring organization shall ensure that the sponsoring organization's instructor-coordinators and training officers provide any course documentation requested by the executive director.

(g) Any approved course may be monitored by the executive director.

(h) Program approval may be withdrawn by the board if the sponsoring organization fails to comply with or violates any regulation or statute that governs sponsoring organizations. (Authorized by K.S.A. 65-6110, K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1; implementing K.S.A. 65-6110, K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1, and K.S.A. 2009 Supp. 65-6129, as amended by L. 2010, ch. 119, sec. 8; effective, T-109-2-7-11, Feb. 7, 2011; effective June 3, 2011.)

**109-11-3. Emergency medical technician-basic course approval.** (a) EMT-basic initial courses of instruction may be approved by the executive director or the executive director's designee to be conducted only by sponsoring organizations as defined in K.A.R. 109-11-1.

(b) Each sponsoring organization requesting

approval to conduct initial courses of instruction shall meet the following requirements:

(1) Meet the requirements in K.A.R. 109-11-1(b)-(f); and

(2) in each initial course of instruction, include hospital clinical training and ambulance field training that provide the following:

(A) An orientation to the hospital and to the ambulance service; and

(B) supervised participation in patient care and assessment, including the performance of a complete patient assessment on at least one patient. In the absence of participatory clinical or field training, contrived experiences may be substituted. (Authorized by K.S.A. 65-6110, K.S.A. 2008 Supp. 65-6111; implementing K.S.A. 2008 Supp. 65-6111, K.S.A. 2008 Supp. 65-6129; effective, T-109-1-19-89, Jan. 19, 1989; effective July 17, 1989; amended Nov. 12, 1999; amended Sept. 10, 2010.)

**109-11-3a. Emergency medical technician (EMT) course approval.** (a) Emergency medical technician (EMT) initial courses of instruction pursuant to K.S.A. 65-6121, and amendments thereto, may be approved by the executive director and shall be conducted only by sponsoring organizations.

(b) Each sponsoring organization requesting approval to conduct initial courses of instruction shall meet the following requirements:

(1) Meet the course requirements specified in K.A.R. 109-11-1(b)-(f); and

(2) in each initial course of instruction, include hospital clinical training and ambulance field training that provide the following:

(A) An orientation to the hospital and to the ambulance service; and

(B) supervised participation in patient care and assessment, including the performance of a complete patient assessment on at least one patient in compliance with K.S.A. 65-6129a and amendments thereto. In the absence of participatory clinical or field training, contrived experiences may be substituted.

(c) Each sponsoring organization shall ensure that the sponsoring organization's instructor-coordinators and training officers provide any course documentation requested by the executive director.

(d) Any approved course may be monitored by the executive director.

(e) Program approval may be withdrawn by the board if the sponsoring organization fails to comply with or violates any regulation or statute that governs sponsoring organizations. (Authorized by K.S.A. 65-6110, K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1; implementing K.S.A. 65-6110, K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1, K.S.A. 65-6121, as amended by L. 2010, ch. 119, sec. 5, K.S.A. 2009 Supp. 65-6129, as amended by L. 2010, ch. 119, sec. 8, and K.S.A. 65-6129a; effective, T-109-2-7-11, Feb. 7, 2011; effective June 3, 2011.)

**109-11-4. Emergency medical technician-intermediate course approval.** (a) EMT-I initial courses of instruction may be approved by the executive director or the executive director's designee to be conducted only by sponsoring organizations as defined in K.A.R. 109-11-1.

(b) Each sponsoring organization requesting approval to conduct EMT-I initial courses of instruction shall meet the following requirements:

(1) Meet the requirements in K.A.R. 109-11-1(b)-(f); and

(2) provide letters from the director of each ambulance service that will provide field training to the students, if applicable, and administrator or administrator's designee of the hospital in which the clinical training is provided, indicating their commitment to provide the support as defined in the curriculum.

(c) Each application shall be received in the board's office not later than 30 calendar days before the first scheduled class. Only a complete application packet shall be accepted.

(d) Each approved EMT-I course shall meet the following conditions:

(1) Meet or exceed the curriculum as described in K.A.R. 109-10-1; and

(2) require that each student meet the following conditions in order to successfully complete the course:

(A) Successfully perform 20 venipunctures, of which 10 shall be for the purpose of initiating intravenous infusions;

(B) administer one nebulized breathing treatment during clinical training;

(C) successfully perform three endotracheal intubations on live patients, with written verification by a physician or certified registered nurse anesthetist competent in the procedure that the student is competent in performing the procedure, if applicable; and

(D) ensure that each student completes hospital clinical training and ambulance field training that provide the student the opportunities necessary to complete the requirements of Kansas enrichments, module 4.

(e) Each primary instructor shall provide the administrator with an enrollment form from each student within 15 days of the first class session.

(f) Any approved class may be monitored by the executive director or the executive director's designee.

(g) Each approved course shall provide any program documentation requested by the executive director.

(h) Course approval may be withdrawn by the board if the provider violates any regulation. (Authorized by K.S.A. 65-6110, K.S.A. 2008 Supp. 65-6111; implementing K.S.A. 2008 Supp. 65-6111, K.S.A. 2008 Supp. 65-6129; effective, T-109-1-19-89, Jan. 19, 1989; effective July 17, 1989; amended Aug. 16, 1993; amended Nov. 12, 1999; amended Sept. 10, 2010.)

**109-11-6. Mobile intensive care technician course approval.** (a) MICT initial courses of instruction may be approved by the executive director or the executive director's designee to be conducted only by accredited postsecondary educational institutions.

(b) Each sponsoring organization requesting approval to conduct MICT initial courses of instruction shall meet the following requirements:

(1) Meet the requirements in K.A.R. 109-11-1(b)-(f);

(2) provide letters from the director of each ambulance service that will provide field training to the students and the administrator or the administrator's designee of the hospital in which the clinical training is provided, indicating their commitment to provide the support as defined in the curriculum;

(3) require that, on or before completion of the course, all students provide confirmation of eligibility to be conferred, at a minimum, an associate degree in applied science by the postsecondary institution; and

(4) (A) Provide verification that the sponsoring organization has applied for accreditation to the committee on accreditation of allied health education programs' joint review committee for emergency medical technician-paramedic; or

(B) provide evidence of accreditation from the committee on accreditation of allied health education programs' joint review committee for emergency medical technician-paramedic before the commencement of the third course.

(c) Each application shall be received in the board office not later than 30 calendar days before the first scheduled class. Only a complete application packet shall be accepted.

(d) Each approved MICT course shall meet the following requirements:

(1) Meet or exceed the curriculum standards as described in K.A.R. 109-10-1;

(2) consist of a minimum of 1200 hours of training, including at least the following:

(A) Four hundred hours of didactic and skills laboratory instruction by qualified instructors;

(B) two hundred and thirty-two hours of clinical training at a hospital by qualified instructors; and

(C) four hundred hours of field internship training with a type I ambulance service by qualified instructors;

(3) ensure, and establish in writing, how each student is provided experiences, which shall include at a minimum the following:

(A) The performance of 20 successful venipunctures, of which at least 10 shall be for the purpose of initiating intravenous infusions;

(B) successful performance of three endotracheal intubations on live patients, with written verification by a physician or certified registered nurse anesthetist competent in the procedure that the student is competent in performing the procedure;

(C) successful performance of five intraosseous infusions;

(D) administration of one nebulized breathing treatment during clinical training;

(E) performance of a complete patient assessment on 50 patients, of which at least 25 shall be accomplished during field internship training;

(F) participation in, as an observer or as an assistant, three vaginal-delivered childbirths during clinical training;

(G) in increasing positions of responsibility, be a part of a type I service crew responding to 30 ambulances calls;

(H) performance of 10 intramuscular or subcutaneous injections;

(I) completion of 30 patient charts or patient care reports, or both; and

(J) performance of monitoring and interpreting the electrocardiogram on 30 patients during clinical training and field internship training.

(e) The primary instructor shall provide the ad-

ministrator with an enrollment form from each student within 15 days after the first class session.

(f) Any approved class may be monitored by the executive director or the executive director's designee.

(g) Each approved course shall provide any program documentation requested by the executive director.

(h) Course approval may be withdrawn by the board if the provider violates any regulation. (Authorized by K.S.A. 65-6110 and K.S.A. 2008 Supp. 65-6111; implementing K.S.A. 2008 Supp. 65-6111 and K.S.A. 2008 Supp. 65-6129; effective, T-109-1-19-89, Jan. 19, 1989; effective July 17, 1989; amended Feb. 3, 1992; amended Nov. 12, 1999; amended Nov. 13, 2000; amended Sept. 10, 2010.)

**109-11-6a. Paramedic course approval.** (a) Paramedic initial courses of instruction pursuant to K.S.A. 65-6119, and amendments thereto, may be approved by the executive director and shall be conducted only by sponsoring organizations that are accredited postsecondary educational institutions.

(b) Each sponsoring organization requesting approval to conduct paramedic initial courses of instruction shall meet the following requirements:

(1) Meet the requirements in K.A.R. 109-11-1(b)-(f);

(2) provide letters from the director of each ambulance service that will provide field training to the students and the administrator or the administrator's designee of each hospital in which the clinical training is provided, indicating their commitment to provide the support as defined in the curriculum;

(3) require that, on or before completion of the required paramedic course, each student provide confirmation of eligibility to be conferred, at a minimum, an associate degree in applied science by the postsecondary institution; and

(4) (A) Provide verification that the sponsoring organization has applied for accreditation to the committee on accreditation of allied health education programs' joint review committee for emergency medical technician-paramedic; or

(B) provide evidence of accreditation from the committee on accreditation of allied health education programs' joint review committee for emergency medical technician-paramedic before the commencement of the third course.

(c) Each application shall be received in the board office not later than 30 calendar days before the first scheduled class. Only a complete application packet shall be processed.

(d) Each approved paramedic course shall meet the following requirements:

(1) Meet or exceed the curriculum requirements in K.A.R. 109-10-1;

(2) consist of at least 1,200 hours of training, including at least the following:

(A) 400 hours of didactic and psychomotor skills laboratory instruction by qualified instructors;

(B) 232 hours of clinical training at a hospital by qualified instructors; and

(C) 400 hours of field internship training with a type I ambulance service by qualified instructors; and

(3) ensure, and establish in writing, how each student is provided with experiences, which shall include at least the following:

(A) The performance of 20 successful venipunctures, of which at least 10 shall be for the purpose of initiating intravenous infusions;

(B) successful performance of three endotracheal intubations on live patients, with written verification by a physician or certified registered nurse anesthetist competent in the procedure that the student is competent in performing the procedure;

(C) successful performance of five intraosseous infusions;

(D) administration of one nebulized breathing treatment during clinical training;

(E) performance of a complete patient assessment on 50 patients, of which at least 25 shall be accomplished during field internship training;

(F) participation in, as an observer or as an assistant, three vaginal-delivered childbirths during clinical training;

(G) in increasing positions of responsibility, being a part of a type I service crew responding to 30 ambulance calls;

(H) performance of 10 intramuscular or subcutaneous injections;

(I) completion of 30 patient charts or patient care reports, or both; and

(J) performance of monitoring and interpreting the electrocardiogram on 30 patients during clinical training and field internship training.

(e) The primary instructor shall provide the executive director with an application for certification form from each student within 20 days after the first class session.

(f) Any approved class may be monitored by the executive director.

(g) Each sponsoring organization shall ensure that the sponsoring organization's instructor-coordinators and training officers provide any program documentation requested by the executive director.

(h) Program approval may be withdrawn by the board if the sponsoring organization fails to comply with or violates any regulation or statute that governs sponsoring organizations. (Authorized by K.S.A. 65-6110 and K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1; implementing K.S.A. 65-6110, K.S.A. 2009 Supp. 65-6111, as amended by L. 2010, ch. 119, sec. 1, K.S.A. 2009 Supp. 65-6119, as amended by L. 2010, ch. 119, sec. 3, and K.S.A. 2009 Supp. 65-6129, as amended by L. 2010, ch. 119, sec. 8; effective, T-109-2-7-11, Feb. 7, 2011; effective June 3, 2011.)

## Article 15.—CERTIFICATION

**109-15-1. Reinstating attendant certificate after expiration.** (a) The certificate of a person who applies for attendant certification within 31 calendar days after the person's certificate has expired may be reinstated by the board if the person meets the following requirements:

(1) Applies to the board on board-approved forms;

(2) pays the applicable fee specified in K.A.R. 109-7-1;

(3) for MICT and paramedic, has met the continuing education requirements for the certification level held during the previous certification period;

(4) for first responder and EMT, meets one of the following requirements:

(A) Before January 1, 2012, has met the continuing education requirements for the certification level held during the previous certification period; or

(B) after December 31, 2011, has completed the transition training program approved by the board for emergency medical responder or EMT certification, whichever is applicable; and

(5) for EMT-I, meets one of the following requirements:

(A) Before January 1, 2014, has met the continuing education requirements for the certification level held during the previous certification period; or

(B) after December 31, 2013, has completed the transition training program approved by the board for AEMT certification.

(b) The certificate of a person who applies for reinstatement of attendant certification more than 31 days but less than two years after the person's certificate has expired may be reinstated by the board if the applicant meets the following requirements:

(1) Applies to the board on board-approved forms;

(2) pays the applicable fee specified in K.A.R. 109-7-1; and

(3) (A) For each MICT, has completed at least 120 hours of documented and board-approved continuing education;

(B) before January 1, 2015, meets one of the following requirements:

(i) For each first responder, completes at least 16 clock-hours of continuing education and the transition course approved by the board to transition to EMR;

(ii) for each EMT, completes at least 28 clock-hours of continuing education and the transition course approved by the board to transition to the new EMT scope of practice;

(iii) for each EMT-I, completes at least 36 clock-hours of continuing education and the transition course approved by the board to transition to AEMT;

(iv) for each EMT-D, completes at least 36 clock-hours of continuing education and the transition course approved by the board to transition to the AEMT and an initial EMT-I course of instruction;

(v) for each EMT-I who is also certified as an EMT-D, completes at least 44 clock-hours of continuing education and the transition course approved by the board to transition to the AEMT;

(C) for each emergency medical responder, completes at least 32 clock-hours of continuing education;

(D) for each EMT who has completed the transition, completes at least 56 clock-hours of continuing education; and

(E) for each AEMT, completes at least 72 clock-hours of continuing education.

(c) Only board-approved and documented continuing education obtained during the biennial period immediately preceding the expiration of certification and continuing education or transition training courses obtained during the biennial period immediately after expiration of certifica-

tion shall be accepted for the requirements of subsection (b).

(d) Each person who applies for reinstatement of first responder, EMT, EMT-I, EMT-D, or EMT-I/D certification two or more years after the person's certificate expires shall take the entire course for EMR, the new EMT scope of practice, or AEMT.

(e) The certificate of a person who applies for reinstatement of attendant certification two or more years after the person's certificate expires may be reinstated by the board if the applicant meets the following requirements:

(1) Applies to the board on board-approved forms;

(2) pays the applicable fee specified in K.A.R. 109-7-1; and

(3) has completed continuing education applicable to the attendant level previously held according to the following time frames:

(A) For applications submitted two or more years but less than four years after certificate expiration, the following amounts of continuing education:

(i) For each emergency medical responder, at least 64 clock-hours;

(ii) for each EMT who has completed the new scope of practice transition, at least 112 clock-hours;

(iii) for each AEMT, at least 144 clock-hours; and

(iv) for each MICT, at least 240 clock-hours;

(B) for applications submitted four or more years but less than six years after certificate expiration, the following amounts of continuing education:

(i) For each emergency medical responder, at least 128 clock-hours;

(ii) for each EMT who has completed the new scope of practice transition, at least 224 clock-hours;

(iii) for each AEMT, at least 288 clock-hours; and

(iv) for each MICT, at least 480 clock-hours;

(C) for applications submitted six or more years but less than eight years after certificate expiration, the following amounts of continuing education:

(i) For each emergency medical responder, at least 256 clock-hours;

(ii) for each EMT who has completed the new scope of practice transition, at least 448 clock-hours;

(iii) for each AEMT, at least 576 clock-hours; and

(iv) for each MICT, at least 960 clock-hours; and

(D) for applications submitted eight or more years after certificate expiration, the following amounts of continuing education:

(i) For each emergency medical responder, at least 512 clock-hours;

(ii) for each EMT who has completed the new scope of practice transition, at least 896 clock-hours;

(iii) for each AEMT, at least 1,152 clock-hours; and

(iv) for each MICT, at least 1,920 clock-hours;

(3) has completed continuing education applicable to the attendant level sought during the two years immediately preceding or immediately following application for reinstatement;

(4) provides documentation of successful completion of a United States department of transportation refresher training course that includes both cognitive and psychomotor examinations approved by the executive director at the level for which the individual is requesting reinstatement; and

(5) provides documentation of successful completion of a cardiopulmonary resuscitation course for healthcare providers. (Authorized by K.S.A. 2010 Supp. 65-6111; implementing K.S.A. 2010 Supp. 65-6129; effective May 15, 2009; amended Sept. 2, 2011.)

**109-15-2. Recognition of non-Kansas credentials.** (a) Any applicant who is currently certified as an attendant in another jurisdiction may apply for Kansas attendant certification by meeting the following requirements:

(1) Submitting a completed application for certification to the board;

(2) providing documentation that enables the board to determine whether the applicant's coursework is substantially equivalent to that required by Kansas for the certification level requested;

(3) providing verification that the applicant has successfully completed an examination approved by the board;

(4) providing documentation from the certifying authority that the applicant is in good standing; and

(5) paying the applicable fee specified in K.A.R. 109-7-1.

(b) Any applicant who is not currently certified as an attendant in another jurisdiction but has completed attendant coursework in another jurisdiction may apply for Kansas attendant certification by meeting the following requirements:

(1) Submitting a completed application for certification to the board;

(2) providing documentation that enables the board to determine whether the applicant's coursework is substantially equivalent to that required in Kansas for the certification level requested;

(3) successfully completing the examination for certification prescribed in K.A.R. 109-8-1 for the level of attendant certification requested; and

(4) paying the applicable fee specified in K.A.R. 109-7-1.

(c) Each applicant meeting the criteria in subsection (a) or (b) whose coursework is deemed not substantially equivalent to that required by the board shall obtain additional coursework for the level of certification sought, as follows:

(1) For first responder, emergency medical responder, emergency medical technician, emergency medical technician-intermediate, or advanced emergency medical technician, the requirements listed in K.A.R. 109-10-1, which shall be provided by a Kansas-certified EMS instructor-coordinator or training officer; or

(2) for mobile intensive care technician or paramedic, coursework attained through a paramedic program accredited by the commission on accreditation of allied health education programs.

(d) For the purposes of this regulation, "substantially equivalent" coursework shall mean an initial course of instruction that includes at least 90 percent of the content in the Kansas emergency medical services education standards for the level of training sought, as required by K.A.R. 109-10-1, and the following:

(1) For first responders, emergency medical responders, emergency medical technicians, emergency medical technicians-intermediate, and advanced emergency medical technicians, the requirements listed in K.A.R. 109-10-1; and

(2) for mobile intensive care technicians and paramedics, completion of at least 90 percent of each of the following requirements specified in K.A.R. 109-10-1 and 109-11-6:

(A) The didactic hours;

(B) the clinical hours;

(C) the field internship hours; and

(D) the total number of required course hours.

(Authorized by K.S.A. 2010 Supp. 65-6111; implementing K.S.A. 2010 Supp. 65-6129; effective May 15, 2009; amended Sept. 2, 2011.)

# Agency 110

# Kansas Department of Commerce

**Editor's Note:**

Effective July 1, 2003, Executive Reorganization Order No. 30 separated the Kansas department of commerce and housing into the Kansas department of commerce and the Kansas department of housing. Except with respect to the powers, duties, and functions that are transferred by this order to the Kansas development finance authority or to the division of housing within the Kansas development finance authority, the department of commerce established by this order shall be the successor in every way to the powers, duties and functions of the department of commerce and housing in which such powers, duties and functions were vested prior to the effective date of this order.

*Articles*

110-4. INVESTMENTS IN MAJOR PROJECTS AND COMPREHENSIVE TRAINING (IMPACT) ACT.
110-21 PROMOTING EMPLOYMENT ACROSS KANSAS (PEAK) PROGRAM.
110-22. STUDENT LOAN REPAYMENT PROGRAM.

## Article 4.—INVESTMENTS IN MAJOR PROJECTS AND COMPREHENSIVE TRAINING (IMPACT) ACT

**110-4-1. Definitions.** As used in these regulations and for purposes of administering the IMPACT act, the following terms shall have the following meanings: (a) "Department" means department of commerce.

(b) "Existing job" means a job of an employer meeting the following criteria:

(1) Has the same or similar description, or involves performing the same or a similar function as that for a job being created by that employer; and

(2) was filled or in use within the 18 months before the date of filing an application with the secretary for funding from the IMPACT program services fund, unless the job was lost due to an act of God and the secretary finds that the IMPACT program or project will be a major factor for the Kansas basic enterprise to remain in Kansas.

(c) "Maximum funding amount" means the maximum dollar amount for which a qualified project would be eligible under the IMPACT act, assuming that sufficient funds exist to fund the maximum dollar amount permitted for all qualified projects as determined by the secretary according to K.A.R. 110-4-2(c).

(d) "MPI" means major project investment as defined in K.S.A. 74-50,103 and amendments thereto.

(e) "Project cost" for a qualified project means the total of program costs and the cost of program services as these terms are defined by K.S.A. 74-50,103 and amendments thereto.

(f) "Qualified project" means any project described in an application that has been determined by the secretary to be complete, in compliance with the funding limitations set forth in the IMPACT act, and qualified for funding from the IMPACT program services fund. (Authorized by and implementing K.S.A. 2009 Supp. 74-50,104; effective, T-110-3-27-92, March 27, 1992; effective, T-110-7-23-92, July 23, 1992; effective Sept. 8, 1992; amended Aug. 29, 1997; amended, T-110-5-31-01, May 31, 2001; amended Sept. 21, 2001; amended Jan. 28, 2011.)

**110-4-2. Review standards and priorities for approval of proposed agreements; limits on program costs and on project and program size.** (a) Each proposal for an agreement concerning a SKILL project or a combined SKILL project and financial assistance through an MPI shall be submitted by an employer to the secretary. Each proposal for an agreement concerning only financial assistance through an MPI shall be submitted by an employer to the secretary. Each proposal shall be submitted as an application on a form provided by the secretary. Each proposal shall include the following, as applicable:

(1) General information, as follows:

(A) The project start and end dates;

(B) the employer's legal name;

(C) the employer's code designation according to the "North American industry classification system" (NAICS), as established by the executive office of the president, office of management and budget, dated 2007;

(D) a description of the employer's business operation or industry;

(E) the employer's federal taxpayer identification number;

(F) the name and title of the employer's designated contact person;

(G) the electronic mail address of the employer's contact person;

(H) the employer's mailing address;

(I) the address of the project facility;

(J) the phone number and fax number of the contact person;

(K) the total number of existing jobs in the state, including annual average wage;

(L) the estimated capital investment;

(M) the projected number of new jobs and retrained jobs, including annual average wage;

(N) the performance percentage of the new and retrained jobs;

(O) a description of the type of training;

(P) a summary of the benefits package offered by a company; and

(Q) the anticipated hiring schedule for all positions;

(2) a description of the company's business operations, including the following:

(A) A company overview, including a brief company history and current information;

(B) a summary of the financial condition of the company; and

(C) a description of type of products or services;

(3) if a company will be using a Kansas educational institution for direct services, the following information for each participating institution:

(A) The name of the educational institution;

(B) the educational institution's address;

(C) the name and title of the contact person;

(D) the phone number and fax number of the contact person;

(E) the electronic mail address of the contact person;

(F) the federal identification number;

(4) for any proposal that includes a SKILL project, information relating to the new jobs or retrained jobs, as follows:

(A) A summary of the type of training or instruction to be provided to each trainee;

(B) the number of hours of instruction for each trainee by course area or title;

(C) the salaries of instructors, including the number of hours of instruction and hourly rates;

(D) the costs of adult basic education and job-related instruction;

(E) the costs of vocational and skill-assessment services and testing;

(F) the costs for lease of training equipment, including the costs of installation;

(G) the costs to the educational institution for purchase of training equipment, including the costs of installation;

(H) the costs of training materials and supplies;

(I) the costs of services with educational institutions, federal, state, or local agencies, vendors, or consultants;

(J) the costs of contractual or professional services;

(K) the training curriculum planning and development costs;

(L) the costs of textbooks, manuals, audiovisual materials, or other training aids;

(M) the travel expenses of trainers or trainees;

(N) the costs of temporary training facilities;

(O) the amount, if any, of tuition, student fees, or special charges included in the project costs;

(P) the total estimated project costs;

(Q) the amount of project costs proposed to be paid by the employer, by the educational institution, and by federal, state, or other public or private grants;

(R) the amount of project costs requested to be paid from the IMPACT program services fund; and

(5) for any proposal that includes a request for financial assistance through an MPI, information relating to the financial assistance requested as follows:

(A) An itemization of the business costs to be paid through an MPI, and the estimates of these business costs;

(B) background information relating to the undertaking and an explanation of how the financial assistance provided through an MPI will contribute to the relocation of the employer in the state; and

(C) if the proposal includes only a request for financial assistance through an MPI, an explanation of the training or education programs to be undertaken or funded by the employer for its em-

ployees each year during the term of the agreement, with evidence demonstrating that the employer will meet the minimum training and education requirement in K.S.A. 74-50,106(d)(1), and amendments thereto; and

(D) for all proposals, any other information deemed necessary by the secretary.

(b) Each application shall be reviewed by the secretary for completeness and compliance with the funding limitations in the IMPACT act. Additional data may be requested by the secretary to verify the accuracy and completeness of the information in an application. The review of each application shall be completed by the secretary within 30 days of the date a complete application is filed.

(c)(1) The best method of funding the qualified projects shall be determined by the secretary and the funding requirements of part or all of two or more qualified projects may be pooled to facilitate the issuance of bonds by the Kansas development finance authority. One or more qualified projects may be funded from amounts on deposit or anticipated to be on deposit in the IMPACT program services fund that are not required to be used to pay program costs for other qualified projects.

(2) The maximum funding amount for any qualified project may be funded in more than one increment as may be necessary to accommodate the needs, funding resources, and limitations of the IMPACT program. However, the sum of these increments shall not exceed the maximum funding amount for the qualified project. The determinations by the secretary as to whether a qualified project will be funded in increments and the amount of these increments shall be made on the basis of the considerations listed in subsection (d).

(d) The following factors shall be used to determine whether a qualified project should be funded and the amount of the funding. If two or more qualified projects compete for limited funds, these same factors shall be applied to determine the level of funding for each project:

(1) The per capita cost of training expenses to be funded from the IMPACT program services fund;

(2) the amount of funds used to pay project costs from sources other than funds from the IMPACT program services fund;

(3) the local economic needs and the impact of the project, including current local employment conditions, resultant new economic activity, the project schedule, leveraging of other resources, beneficial impact on the tax base and project feasibility, as well as the probability that the project will accomplish the projected benefits;

(4) the quality of jobs to be created, with priority given to those full-time jobs that have a higher wage scale, higher benefit levels, a low turnover rate, an opportunity for career development or advancement, or other related factors;

(5) the extent to which the project is being coordinated with other projects of that applicant or other applicants to be funded from the IMPACT program services fund. Priority shall be given to projects that are able to share training facilities, instructors, training equipment, and other program services;

(6) the extent to which the project or components of the project do not duplicate existing training resources;

(7) the extent to which the project utilizes funds in the most efficient and effective manner to train employees. Each proposal that includes a SKILL project shall demonstrate that a reasonable effort has been made to investigate alternate training methods and has selected the most efficient and effective method of training;

(8) the extent to which funding from the IMPACT program services fund is essential to the training of the employees, the creation of the new jobs, or both;

(9) the extent to which the employer requesting assistance can continue in business at the levels necessary to retain the new jobs created for the periods indicated in its application if provided with the requested assistance;

(10) the extent to which the employer intends to continue its operations in Kansas for the periods indicated in its application;

(11) if an MPI is requested, the extent to which the project utilizes funds in the most efficient and effective manner to defray business costs;

(12) the extent to which the business costs to be defrayed and paid through an MPI are directly related to the creation of new jobs in Kansas; and

(13) the extent to which the financial assistance provided through an MPI will confer benefits on the state, the community, local educational institutions or other persons or entities in addition to the benefits it will confer on the employer. (Authorized by K.S.A. 2009 Supp. 74-50,104, 74-50,106; implementing K.S.A. 2009 Supp. 74-50,104, 74-50,105, 74-50,106; effective,

T-110-3-27-92, March 27, 1992; effective, T-110-7-23-92, July 23, 1992; effective Sept. 8, 1992; amended Aug. 29, 1997; amended Jan. 28, 2011.)

**110-4-3. Limit on maximum funding amount.** The limitation on program costs specified in K.S.A. 74-50,104(b), and amendments thereto, of the IMPACT act shall limit only the maximum funding amount for each qualified project and shall not limit the amount of project costs that are to be paid from sources other than the IMPACT program services fund. (Authorized by K.S.A. 2009 Supp. 74-50,104; implementing K.S.A. 2009 Supp. 74-50,104, 74-50,105; effective, T-110-3-27-92, March 27, 1992; effective, T-110-7-23-92, July 23, 1992; effective Sept. 8, 1992; amended Aug. 29, 1997; amended Jan. 28, 2011.)

**110-4-4. Enforcement of agreements by the secretary.** Each agreement, as defined by K.S.A. 74-50,103 and amendments thereto, shall be enforced by the secretary. In order to facilitate enforcement by the secretary, each agreement shall include the department as a party to the agreement with enforcement rights. (Authorized by K.S.A. 2009 Supp. 74-50,104; implementing K.S.A. 2009 Supp. 74-50,104, 74-50,105; effective, T-110-3-27-92, March 27, 1992; effective, T-110-7-23-92, July 23, 1992; effective Sept. 8, 1992; amended Aug. 29, 1997; amended Jan. 28, 2011.)

**110-4-5. Compliance with K.S.A. 74-50,106(d), and amendments thereto.** (a) Each employer receiving financial assistance through an MPI shall comply with K.S.A. 74-50,106(d) and amendments thereto. For purposes of complying with K.S.A. 74-50,106(d)(1) and amendments thereto, the employer shall make an investment in training and education of the employer's employees in each of the employer's fiscal years during the term of the agreement.

(b) Training and education expenditures that qualify for compliance with K.S.A. 74-50,106(d)(1), and amendments thereto, shall include those expenditures made for all necessary and incidental costs of providing the following:

(1) New jobs training, including training development costs;

(2) adult basic education and job-related instruction;

(3) vocational and skill-assessment services and testing;

(4) training materials and supplies;

(5) subcontracted services with educational institutions, private colleges or universities, or federal, state, or local agencies;

(6) contractual or professional services; and

(7) wages paid to persons receiving education or training, but only for the periods during which the person is receiving classroom training. (Authorized by and implementing K.S.A. 2009 Supp. 74-50,104 and 74-50,106; effective Aug. 29, 1997; amended Jan. 28, 2011.)

## Article 21.—PROMOTING EMPLOYMENT ACROSS KANSAS (PEAK) PROGRAM

**110-21-1. Definitions.** For the purposes of these regulations and the act, the following terms and definitions shall apply:

(a) "Adequate health insurance coverage" means health insurance that is offered by a company to all full-time employees within the first 180 days of their employment and provides for the following:

(1) At least 50 percent of the premium paid by the employer;

(2) coverage of basic hospital care and procedures;

(3) coverage of physician care;

(4) coverage for mental health care;

(5) coverage for substance abuse treatment;

(6) coverage for prescription drugs; and

(7) coverage for prenatal and postnatal care.

(b) "Administrative or back office" means a business facility that meets the following requirements:

(1) Is operated by a company;

(2) provides ancillary support services to the company, but is not directly engaged in the company's primary function;

(3) generates only de minimis outside revenue at the facility; and

(4) is capable of being located anywhere geographically.

(c) "Agreement" means an agreement entered into between the secretary and a qualified company as authorized by the act.

(d) "Agreement date" means the date the department of commerce receives a company's application.

(e) "Applicant" means a company that has submitted an application to the secretary for determination of eligibility under the act.

(f) "Base employment level" means the average number of full-time employees in addition to any part-time employees calculated as full-time

equivalent positions working 2,080 hours annually that existed in Kansas in the 12 months before the agreement date.

(g) "Benefit period" means the period of time during which a qualified company shall be authorized to retain withholding taxes for PEAK-eligible jobs.

(h) "Business facility" means each physical location in Kansas where any located, relocated, or expanded functions will be performed.

(i) "Effective date" means the date the benefit period commences. The effective date shall meet the following requirements:

(1) Be established by the qualified company in writing;

(2) be within one year of the date of the agreement; and

(3) begin on the first day of a calendar quarter.

(j) "Full-time employment" means an average of at least 35 hours per week for 52 consecutive weeks.

(k) "Functions" means the activities of a business facility, office, department, or other operation, including a unit or production line.

(l) "Headquarters" means the location of a business facility that meets the following requirements:

(1) Physically houses principal officers of the business;

(2) is where primary direction, management, and administrative support for company operations are provided;

(3) serves multiple company work sites internationally, nationally, or regionally within the United States;

(4) generates only de minimis outside revenue; and

(5) is capable of being located anywhere geographically.

(m) "Located or relocated functions" means functions that are being initially located or relocated to Kansas.

(n) "PEAK" means promoting employment across Kansas.

(o) "PEAK benefits" means the payroll withholding taxes authorized to be retained by a qualified company.

(p) "PEAK-eligible jobs" means PEAK jobs that are being paid at least the county median wage for the county in which the business facility is located and for which PEAK benefits are received.

(q) "PEAK job" means an employee-occupied job performing a located, relocated, or expanded function. PEAK jobs are used to satisfy program eligibility requirements including minimum jobs and wage standard comparison.

(r) "PEAK jobs' median wage" means the middle wage of the total number of wages that divides the PEAK jobs into two equal groups, half having wages above the median wage and half having wages below the median wage. This term is used to determine initial eligibility for benefits, continued eligibility, and extended benefit periods.

(s) "Wages" has the meaning specified in K.S.A. 79-3295 and amendments thereto. (Authorized by K.S.A. 2010 Supp. 74-5002r and K.S.A. 2010 Supp. 74-50,213; implementing K.S.A. 2010 Supp. 74-50,211; effective April 29, 2011.)

**110-21-2. Eligibility and application requirements.** (a) Companies shall submit applications and any supporting documentation to the secretary to determine eligibility for benefits. In addition to meeting the requirements in the act, each applicant shall meet the following requirements:

(1) The application shall be submitted before any position for which PEAK benefits are requested may be filled.

(2) The PEAK jobs' median wage shall meet or exceed the annual county median wage as reported by the department of labor in its annual report for the previous year for the county in which the business facility is located on the date the department receives the application.

(3) The company shall locate, relocate, or expand the minimum number of required jobs within two years from the agreement date.

(4) If an applicant applies as a headquarters, the business facility shall meet the definition of a headquarters.

(5) If applicant is applying as an administrative or back office, the business facility shall meet the definition of an administrative or back office.

(b) The application shall include the following:

(1) The applicant's legal name and address;

(2) The applicant's North American industry classification system (NAICS) category;

(3) the federal employer identification number (FEIN);

(4) the physical address, contact information,

NAICS category, and FEIN for all related entities, including the following:

(A) The corporate headquarters;

(B) the parent company;

(C) the business facility; and

(D) any existing Kansas work sites;

(5) the type of ownership structure for the business facility;

(6) a description of the function to be located, relocated, or expanded, including evidence of relocation satisfactory to the secretary;

(7) a description of the company's products or services and its customers;

(8) the hire or start date in Kansas for PEAK jobs;

(9) the identification of any third-party legal employer;

(10) the projected total number of PEAK jobs, including how many of those jobs are PEAK-eligible jobs;

(11) the projected hiring schedule of PEAK jobs over five years;

(12) the median wage of the PEAK jobs;

(13) the total project capital investment, including leases;

(14) the base employment level if relocating to or expanding at an existing Kansas company or work site;

(15) the job title, description, number of positions, Kansas start or hire date, wages per hour, number of hours worked per week, and total annual wages for PEAK jobs;

(16) if applicable, information regarding whether the applicant is performing either of the following:

(A) Locating, relocating, or expanding a company's headquarters; or

(B) locating, relocating, or expanding an administrative or back office;

(17) certification that the applicant is "for-profit" unless applying as a headquarters or an administrative or back office;

(18) certification that the applicant will provide adequate health insurance coverage;

(19) certification that the applicant is not under the protection of the federal bankruptcy code;

(20) certification that the applicant is not delinquent on any federal, state, or local taxes;

(21) if applicable, payroll service company information as requested;

(22) an ownership disclosure and signature statement;

(23) the written authorization to inspect company records for verification of employment and wages;

(24) the certification by a company officer that the information provided in the application is true and accurate; and

(25) any other relevant information that the secretary deems necessary.

(c) If the application is approved by the secretary, the qualified company shall enter into an agreement with the secretary before receiving benefits. (Authorized by K.S.A. 2010 Supp. 74-5002r and K.S.A. 2010 Supp. 74-50,213; implementing K.S.A. 2010 Supp. 74-50,213; effective April 29, 2011.)

**110-21-3. Reconsideration of application.** (a) If an application is not approved, the reasons for the denial shall be provided to the applicant by the secretary. The applicant may ask the secretary for reconsideration of the decision within 30 days of the date of denial of the application.

(b) Decisions on reconsideration shall be the final agency action and subject to review under the Kansas judicial review act, K.S.A. 77-601 et seq. and amendments thereto. (Authorized by K.S.A. 2010 Supp. 74-5002r and K.S.A. 2010 Supp. 74-50,213; implementing K.S.A. 2010 Supp. 74-50,213; effective April 29, 2011.)

**110-21-4. Agreement.** (a) If an applicant meets the eligibility requirements and is approved by the secretary, the applicant shall be considered to be a qualified company. An agreement may be entered into by the secretary as to the terms and conditions by which the qualified company may receive benefits.

(b) The agreement shall be on a form prescribed by the department and, in addition to the requirements of the act, shall include the following:

(1) A description of the project;

(2) the length of the benefit period;

(3) the number of PEAK jobs, including projected PEAK jobs' median wage;

(4) the quarterly and annual reporting requirements;

(5) the agreement date;

(6) the county median wage for the business facility on the date the application is received by the department;

(7) an acknowledgement that the qualified company is ineligible to participate in other economic programs as listed in the act;

(8) the terms of default and conditions of repayment;

(9) a condition that the qualified company has one year from the agreement date to establish in writing an effective date;

(10) a condition that the qualified company shall satisfy program eligibility requirements and pay an average annual PEAK jobs' median wage greater than the county median wage in order to remain eligible for program benefits;

(11) a condition that the qualified company has two years from the agreement date to fill the minimum number of PEAK jobs necessary for program eligibility;

(12) a condition that the benefit period may be extended if the qualified company pays an average annual PEAK jobs' median wage of at least 110 percent as compared to the county median wage on the agreement date for each year that the company is in the program; and

(13) an acknowledgement that the qualified company receiving high-impact benefits that fails to create 100 or more jobs within two years of the agreement date shall have its benefit period reduced accordingly. (Authorized by K.S.A. 2010 Supp. 74-5002r and K.S.A. 2010 Supp. 74-50,213; implementing K.S.A. 2010 Supp. 74-50,213; effective April 29, 2011.)

**110-21-5. Reporting requirements.** (a) Each qualified company shall file quarterly and annual reports for the term of the agreement. The quarterly reports shall be due within 30 days from the end of each calendar quarter following the effective date. One year after the effective date, the qualified company shall provide an annual report summarizing the quarterly report data. The annual report shall be due within 30 days of each subsequent effective date.

(b) Each quarterly report and each annual report shall include the following:

(1) The company name, address, and federal employer identification number;

(2) the PEAK agreement number;

(3) the effective date;

(4) the reporting period; and

(5) the PEAK jobs' median wage for the period.

(c) Each quarterly report shall include the following for each employee:

(1) The job title;

(2) the employee's name;

(3) the last four digits of the social security number or position number;

(4) the date hired in Kansas and, if applicable, the date terminated;

(5) the wages paid per hour;

(6) the number of hours worked per week; and

(7) the total wages for the quarter.

(d) Each quarterly report shall include the following for all PEAK jobs:

(1) The individual amount of payroll withholding tax retained and the amount remitted to the department of revenue for each PEAK job;

(2) the total amount of payroll withholding tax retained and remitted to department of revenue for all PEAK jobs during the period; and

(3) any other relevant information as deemed necessary by the secretary, including the following:

(A) A copy of the qualified company's Kansas department of labor quarterly wage report and unemployment return, form K-CNS 100, for the period; and

(B) a copy of the qualified company's department of revenue monthly Kansas withholding tax deposit reports, form KW-5, for the period.

(e) Each annual report shall include the following:

(1) Total wages of PEAK jobs and PEAK-eligible jobs;

(2) the annual average number of PEAK jobs and how many of those jobs are PEAK-eligible jobs;

(3) the total payroll withholding taxes remitted to the department of revenue for the PEAK jobs and a separate total of five percent remitted for PEAK-eligible jobs;

(4) the total PEAK benefits for PEAK-eligible jobs for the period;

(5) the total capital investment for the period;

(6) the qualified company's certification that it continues to meet program eligibility requirements, including supplying requested documentation; and

(7) a copy of the company's department of revenue annual withholding tax deposit report, KW-3 form, as filed during the period. (Authorized by K.S.A. 2010 Supp. 74-5002r and K.S.A. 2010 Supp. 74-50,213; implementing K.S.A. 2010 Supp. 74-50,213; effective April 29, 2011.)

## Article 22.—STUDENT LOAN REPAYMENT PROGRAM

**110-22-1. Definitions.** As used in these regulations and for purposes of administering the act, the following terms shall have the meanings specified in this regulation: (a) "Act" means the rural opportunity zone act, L. 2011, ch. 22 and amendments thereto.

(b) "County" means a county listed as a "rural opportunity zone" in L. 2011, ch. 22, sec. 1(b), and amendments thereto.

(c) "Department" means the Kansas department of commerce.

(d) "Domicile" means the physical location where an individual intends to permanently reside. The following factors may be considered in determining whether or not an individual meets the eligibility requirements of the act, although none of these factors by itself shall be a determinant of domicile:

(1) Acceptance or an offer of permanent employment;

(2) admission to a licensed practicing profession in Kansas;

(3) registration of a vehicle in a county designated by the act;

(4) the location at which the individual votes or is registered to vote;

(5) a Kansas driver's license; and

(6) lease of living quarters or ownership of a home in a county designated by the act.

(e) "Eligible participant" means an individual who has met all eligibility requirements of the act.

(f) "Participating county" means a county, as defined in this regulation, that has enacted a resolution to participate in the student loan repayment program as specified in L. 2011, ch. 22, sec. 3, and amendments thereto.

(g) "Student loan repayment program" means the program specified in L. 2011, ch. 22, sec. 3, and amendments thereto. (Authorized by L. 2011, ch. 22, sec. 3 and K.S.A. 2010 Supp. 74-5002r; implementing L. 2011, ch. 22, secs. 1 and 3; effective, T-110-7-5-11, July 5, 2011; effective Oct. 28, 2011.)

**110-22-2. Application for student loan repayment program.** (a) Each applicant shall submit the application and any supporting documentation to the secretary to determine eligibility for the student loan repayment program.

(b) Each application shall contain the following for each applicant:

(1) Name;

(2) telephone and electronic mail address;

(3) current address and, if different, intended address;

(4) social security number;

(5) county of current residence or future intended domicile;

(6) list of all addresses where the applicant has resided during the five years immediately preceding the date of application;

(7) list of previous employers' names and addresses for the five years immediately preceding the date of application;

(8) prospective employer's name, address, and county;

(9) if applicable, proof of degree earned;

(10) anticipated date for moving to the county;

(11) a short description of why the individual intends to move to the county;

(12) if applicable, proof of a Kansas professional license;

(13) if applicable, the balance of each student loan on the date of submission of the application and the name and address of each loan institution; and

(14) any other relevant information that the secretary deems necessary.

(c) Notification that the applicant has applied for the student loan repayment program shall be electronically forwarded by the department to the county designated in that application.

(d) The county may, within 15 days of the department's electronic notification, provide any supplementary information regarding the applicant to the department for consideration. (Authorized by L. 2011, ch. 22, sec. 3 and K.S.A. 2010 Supp. 74-5002r; implementing L. 2011, ch. 22, sec. 3; effective, T-110-7-5-11, July 5, 2011; effective Oct. 28, 2011.)

**110-22-3. Determination of eligibility.** (a) A preliminary determination of whether each applicant is eligible to participate in student loan repayment program shall be made by the secretary.

(b) For each preliminary determination of eligibility, the applicant and the county shall be notified by the department.

(c) If the applicant is initially approved as eligible, the applicant and the county shall be provided by the secretary with a preliminary deter-

mination setting forth the conditions for final program eligibility.

(d) Final program eligibility shall be conditioned upon applicant's submission of all requested documentation to the department, including the following:

(1) Student loan documents;

(2) transcript for an associate, bachelor's, or postgraduate degree; and

(3) proof of having established domicile in the participating county.

(e) If the applicant meets the requirements for preliminary determination, a determination of final eligibility for the resident individual to participate in the student loan repayment program shall be issued by the secretary.

(f) Any applicant or county may appeal a preliminary or final determination of eligibility by the secretary as specified in these regulations. (Authorized by L. 2011, ch. 22, sec. 3 and K.S.A. 2010 Supp. 74-5002r; implementing L. 2011, ch. 22, sec. 3; effective, T-110-7-5-11, July 5, 2011; effective Oct. 28, 2011.)

**110-22-4. Appeal process.** (a) If an application for preliminary determination is not approved or if final eligibility determination is denied, each reason for the denial shall be provided in writing to the applicant by the secretary. The applicant may ask for reconsideration of either the preliminary determination or final eligibility determination within 30 calendar days after the date of the decision. If the applicant does not ask for reconsideration within 30 calendar days of the date of the decision, the decision shall become a final agency action. The county shall be notified of any application denied by the secretary.

(b) The county may ask for reconsideration of the decision of the secretary within 30 calendar days after the date of either the preliminary determination or final eligibility determination. If the county does not ask for reconsideration within 30 calendar days of the date of the secretary's decision, the decision shall become a final agency action.

(c) Each decision on reconsideration shall be the final agency action and shall be subject to review under the Kansas judicial review act, K.S.A. 77-601 et seq. and amendments thereto. (Authorized by L. 2011, ch. 22, sec. 3 and K.S.A. 2010 Supp. 74-5002r; implementing L. 2011, ch. 22, sec. 3; effective, T-110-7-5-11, July 5, 2011; effective Oct. 28, 2011.)

**110-22-5. Resolution by county; intent to participate in student loan repayment program.** (a) As required by the act, each county intending to participate in the student loan repayment program shall provide the department with a copy of the county resolution. The county resolution shall contain the following statements:

(1) The county is listed as a rural opportunity zone, as defined by L. 2011, ch. 22, sec. 1 and amendments thereto.

(2) The county is obligated to participate in the student loan repayment program for an enrollment period of five years.

(3) The county obligation to each eligible participant is for a repayment period of five years.

(4) The county agrees to pay, with the state of Kansas, equal shares of the outstanding student loan balance of any eligible participant.

(5) The student loan balance for each eligible participant, in an amount not to exceed $15,000, will be repaid jointly by the county and the state of Kansas for a period of five years.

(6) The county will allocate monies for the purpose of matching payments from the state of Kansas to eligible participants.

(7) The county will revise its student loan repayment budget on an annual basis and inform the department of any changes to the annual allocation.

(b) Each resolution shall be published once in the official county newspaper and shall be in effect from the date of its publication. (Authorized by L. 2011, ch. 22, sec. 3 and K.S.A. 2010 Supp. 74-5002r; implementing L. 2011, ch. 22, sec. 3; effective, T-110-7-5-11, July 5, 2011; effective Oct. 28, 2011.)

**110-22-6. Repayment of outstanding student loan balance.** (a) Each participating county shall transmit funds to the department for repayment of the student loan within 30 calendar days after the end of each calendar year. Each participating county and each eligible participant shall be notified by the department of receipt of the funds.

(b) The following shall be performed by the department:

(1) Transmission of the state funds and participating county funds to the lending institution for repayment of each eligible participant's student loan;

(2) payment to the lending institution of the student loan repayment funds, which shall be within 30 calendar days of receipt of funds from the participating county; and

(3) notification to each participating county and eligible participant of the transmitted student loan payment.

(c) Repayment of student loan funds may be made directly to the eligible participant if both of the following conditions are met:

(1) The student loan has been paid in full during the preceding 12 months.

(2) The eligible participant has no other student loan debt. (Authorized by L. 2011, ch. 22, sec. 3 and K.S.A. 2010 Supp. 74-5002r; implementing L. 2011, ch. 22, sec. 3; effective Oct. 28, 2011.)

# Agency 112

# Kansas Racing and Gaming Commission

*Articles*


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## Article 12.—KANSAS HORSE BREEDING DEVELOPMENT FUND

**112-12-15. Live horse racing purse supplement fund.** (a) The balance of the money credited to the live horse racing purse supplement fund that is subject to distribution pursuant to K.S.A. 74-8767(a)(3), and amendments thereto, shall be apportioned by the commission to purses for the various horse breeds according to the following formula:

(1) One-third based on the average percentage of each breed's Kansas-bred horse starters at Kansas racetracks for the previous three calendar years;

(2) one-third based on the average percentage of each breed's Kansas-certified horses for the previous three calendar years; and

(3) one-third based on average percentage of each breed's non-Kansas-bred starters at Kansas racetracks for the previous three calendar years.

(b) The official registering agency pursuant to K.S.A. 74-8830, and amendments thereto, shall submit a recommendation to the commission for approval of the amount of all proposed payments pursuant to K.S.A. 74-8767(a)(3), and amendments thereto, based on the contribution to the Kansas horse racing and breeding industries and recommendations by each respective breed group. The commission's staff may also submit a recommendation to the commission under this subsection.

(c) The proposed amount of the distribution shall be submitted to the commission for approval no later than March 1 of each distribution year. (Authorized by and implementing K.S.A. 2008 Supp. 74-8767 and 74-8830; effective June 12, 2009.)

## Article 13.—KANSAS WHELPED PROGRAM

**112-13-6. Kansas greyhound breeding development fund.** (a) The balance of the money credited to the live greyhound racing purse supplement fund under K.S.A. 74-8747(a)(3), and amendments thereto, shall be apportioned as follows, unless otherwise specified:

(1) 80 percent to the Kansas-bred purse supplements to be paid monthly to owners of Kansas-bred greyhounds, with the registering agency specifying the following:

(A) A procedure for calculating purse supplement payments to owners of Kansas-bred grey-

hounds on a point basis, as specified in K.A.R. 112-13-5(c), ensuring that payments will be made each month during a fiscal year; and

(B) a procedure for issuing Kansas-bred purse supplements on a monthly basis; and

(2) 20 percent to supplement stakes races at all Kansas racetrack facilities offering greyhound races and to create special stakes races designed to promote and develop the Kansas greyhound industry, with the registering agency specifying the following:

(A) A procedure for the distribution of funds to supplement stakes races at all Kansas racetrack facilities offering greyhound racing; and

(B) a procedure for the administration of special stakes races created to promote and develop the Kansas greyhound industry, including plans for promotion and operation of the races in a manner that includes opportunities for the participation of all racetrack facilities in Kansas.

(b) The official greyhound breed registering agency shall submit the amount of all proposed payments specified in subsection (a) to the commission for approval.

(c) The proposed amount of the distribution shall be submitted to the commission for approval no later than March 1 of each distribution year based on the recommendations of the registering agency. (Authorized by K.S.A. 2007 Supp. 74-8767; implementing K.S.A. 2007 Supp. 74-8767(b) and 74-8831; effective April 17, 2009.)

## Article 100.—GENERAL PROVISIONS AND DEFINITIONS

**112-100-2. Duty to disclose material and complete information.** (a) An applicant for a certificate, certificate renewal, license, or license renewal shall not provide false information on any application form or to commission staff.

(b) Each applicant for a certificate, certificate renewal, license, or license renewal shall disclose any material fact required on any application form.

(c) Unless otherwise provided in these regulations, each applicant for a certificate, certificate renewal, license, or license renewal and each holder of one of those documents shall report any change in the application or renewal information. The applicant or holder shall notify the commission in writing within 11 days of each change.

(d) Each licensee and each certificate holder shall report any suspected illegal activity or regulatory violations that impact Kansas to the commission security staff within 24 hours of becoming aware of the matter. (Authorized by and implementing K.S.A. 2010 Supp. 74-8751 and 74-8772; effective Sept. 26, 2008; amended Dec. 9, 2011.)

## Article 101.—FACILITY MANAGER CERTIFICATION

**112-101-1. Prohibition against uncertified management of a gaming facility.** No person may manage a gaming facility unless that person is a lottery gaming facility manager or racetrack gaming facility manager certified by the commission with a current facility manager's certificate. (Authorized by K.S.A. 2007 Supp. 74-8751 and 74-8772; implementing K.S.A. 2007 Supp. 74-8751; effective April 17, 2009.)

**112-101-2. Facility manager application procedure.** Each lottery gaming facility manager and each racetrack gaming facility manager that seeks to be certified as a facility manager shall submit the following to the commission staff:

(a) A completed application for the certificate on a commission-approved form;

(b) any supporting documents;

(c) all plans required by these regulations, including the internal controls system plan, surveillance system plan, security plan, responsible gaming plan, and, if applicable, the plan for compliance with the requirements for live racing and purse supplements established pursuant to the act;

(d) a background investigation deposit as specified in K.A.R. 112-101-5;

(e) prospective financial statements, including a one-year forecast and a three-year projection, that have been audited by an independent certified public accountant or independent registered certified public accounting firm as to whether the prospective financial information is properly prepared on the basis of the assumptions and is presented in accordance with the relevant financial reporting framework; and

(f) any other information that the commission deems necessary for investigating or certifying the applicant and its officers, directors, and key employees and any persons directly or indirectly owning an interest of at least 0.5% in the applicant. (Authorized by K.S.A. 2007 Supp. 74-8751 and 74-8772; implementing K.S.A. 2007 Supp. 74-8734, 74-8741, 74-8751 and 74-8772; effective April 17, 2009.)

**112-101-3. Background investigations.** (a) Each applicant for a facility manager's certificate and each person whom the executive director deems to have a material relationship to the applicant, including the applicant's officers, directors, and key gaming employees and any persons known to directly or indirectly own an interest of at least 0.5% in the applicant, shall submit to a background investigation conducted by the commission's director of security or other person designated by the executive director. For purposes of this regulation, a material relationship shall mean a relationship in which the person has an influence on the applicant or facility manager or its business and shall be determined according to the criteria in paragraphs (b)(1) through (3).

(b) In determining the level of background investigation that a person shall undergo, all relevant information, including the following, may be considered by the executive director:

(1) The person's relationship to the applicant;

(2) the person's interest in the management of the applicant;

(3) the person's participation with the applicant;

(4) if applicable, identification of the person as a shareholder in a publicly traded company; and

(5) the extent to which the person has been investigated in another jurisdiction or by other governmental agencies.

(c) Each person subject to a background investigation shall submit a complete personal disclosure to the commission on a commission-approved form and shall submit any supporting documentation that the commission staff requests.

(d) Each person that is subject to investigation shall have a duty to fully cooperate with the commission during any investigation and to provide any information that the commission requests. (Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective April 17, 2009.)

**112-101-4. Affirmative duty to demonstrate qualifications.** Each applicant for a facility manager's certificate shall have an affirmative duty to the commission to demonstrate that the applicant, including the applicant's directors, officers, owners, and key employees, is qualified for certification. (Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective April 17, 2009.)

**112-101-5. Fees and costs.** (a) Each applicant for a facility manager's certificate and each applicant for a certificate as a racetrack gaming facility manager shall provide a background investigation deposit to the commission. That deposit shall be assessed for all fees and costs incurred by the commission in performing the background investigation of the applicant, its officers, directors, and key gaming employees, any persons known to directly or indirectly own an interest of at least 0.5% in the applicant, and any other person as the executive director deems necessary, including any person specified in article 102 or 103.

(b) Any facility manager that wishes to renew its certificate may be required to provide a background investigation deposit. The facility manager shall be assessed for all fees and costs incurred by the commission in performing the background investigation of the applicant, its officers, directors, and key gaming employees, any persons known to directly or indirectly own an interest of at least 0.5% in the applicant, and any other person as the executive director deems necessary, including any person specified in article 102 or 103.

(c) All fees paid to the commission shall be nonrefundable. (Authorized by K.S.A. 2007 Supp. 74-8751 and 74-8772; implementing K.S.A. 2007 Supp. 74-8734, 74-8741, 74-8751, and 74-8772; effective April 17, 2009.)

**112-101-6. Disqualification criteria.** (a) A facility manager's certificate shall be denied or revoked by the commission if the applicant or certificate holder itself has been convicted of any felony, crime involving gambling, or crime of moral turpitude.

(b) A certificate may be denied, suspended, or revoked by the commission, and a certificate holder may be otherwise sanctioned by the commission as specified in K.A.R. 112-113-1 if the certificate holder or its officers, directors, key gaming employees, or any person directly or indirectly owning an interest of at least 0.5% in the applicant meets any of the following conditions:

(1) Has any employees who have knowingly or negligently provided false or misleading material information to the commission or its staff;

(2) fails to notify the commission staff about a material change in the applicant's or certificate holder's application within seven days;

(3) is delinquent in paying for the cost of regulation, oversight, or background investigations required under the act or any regulations adopted under the act;

(4) has violated any provision of the act or any regulation adopted under the act;

(5) has failed to meet any monetary or tax obligation to the federal government or to any state or local government;

(6) is financially delinquent to any third party;

(7) has failed to provide information or documentation requested in writing by the commission in a timely manner;

(8) does not consent to or cooperate with investigations, inspections, searches, or having photographs and fingerprints taken for investigative purposes;

(9) has failed to meet the requirements of K.A.R. 112-101-4;

(10) has officers, directors, key gaming employees, or persons directly or indirectly owning an interest of at least 0.5% that have any present or prior activities, criminal records, reputation, habits, or associations meeting either of the following criteria:

(A) Pose a threat to the public interest or to the effective regulation of gaming; or

(B) create or enhance the dangers of unfair or illegal practices in the conduct of gaming; or

(11) has violated any contract provision with the Kansas lottery. (Authorized by and implementing K.S.A. 2009 Supp. 74-8751 and 74-8772; effective April 17, 2009; amended April 1, 2011.)

**112-101-7. Certificate duration.** Each certificate for a gaming manager shall be issued by the commission for no longer than two years and one month. Each certificate shall expire on the last day of the month of the anniversary date of issue. (Authorized by K.S.A. 2007 Supp. 74-8751 and 74-8772; implementing K.S.A. 2007 Supp. 74-8751; effective April 17, 2009.)

**112-101-8. Certificate renewal.** (a) Each renewal application for a facility manager's certificate shall be submitted to the commission staff at least 120 days before the expiration of the current certificate. Each certificate holder shall submit the renewal application on a commission-approved form along with any supporting documents.

(b) Each person seeking to renew its gaming certificate shall be required to meet all requirements for an initial gaming certificate.

(c) An applicant's timely submission of a renewal application shall suspend the expiration of the certificate until the commission has taken action on the application. This suspended expiration shall not exceed six months. (Authorized by K.S.A. 2010 Supp. 74-8751 and 74-8772; implementing K.S.A. 2010 Supp. 74-8751; effective April 17, 2009; amended Dec. 9, 2011.)

**112-101-9. Notice of anticipated or actual change.** (a) Each facility manager or applicant shall notify the commission in writing of any reasonably anticipated or actual change in its directors, officers, or key employees or persons directly or indirectly owning an interest of at least 0.5% in the facility manager or applicant.

(b) Each new director, officer, key employee, or person directly or indirectly owning an interest of at least 0.5% in the facility manager shall submit to a background investigation as specified in K.A.R. 112-101-3 before acting in the person's new capacity.

(c) Failure to comply with this regulation may result in a sanction as specified in K.A.R. 112-113-1. (Authorized by K.S.A. 2007 Supp. 74-8751 and 74-8772; implementing K.S.A. 2007 Supp. 74-8751; effective April 17, 2009.)

**112-101-10. Advertising; promotion of responsible gaming.** (a) As used in this regulation, the term "advertisement" shall mean any notice or communication to the public of any information concerning the gaming-related business of an applicant or facility manager through broadcasting, publication or any other means of dissemination. The following notices and communications shall be considered advertisements for purposes of this regulation:

(1) Any sign, notice, or other information required to be provided by the act or by regulation, including the following:

(A) Notices regarding the rules of the games;

(B) information about rules of the games, payoffs of winning wagers, and odds;

(C) gaming guides;

(D) information imprinted upon gaming table layouts; and

(E) information imprinted, affixed, or engraved on slot machines or bill changers;

(2) any signs or other directional devices contained in a gaming facility for the purpose of identifying the location of authorized games; and

(3) press releases.

(b) Each facility manager and each applicant shall provide to the executive director any proposed advertisement that references the Kansas lottery at least seven business days in advance of its anticipated publication, broadcast, or other

use. The advertisement may be inspected and approved by the executive director before its publication, broadcast, or use.

(c) Advertisements shall be based on fact and shall not be false, deceptive, or misleading. No advertisement may use any type, size, location, lighting, illustration, graphic depiction, or color resulting in the obscuring of any material fact or fail to specifically designate any material conditions or limiting factors. Each advertisement that the executive director finds to reflect negatively on the state of Kansas or upon the integrity of gaming shall be deemed to be in violation of this regulation, and the facility manager or applicant may be subject to sanction.

(d) Each applicant or facility manager shall be responsible for all advertisements that are made by its employees or agents regardless of whether the applicant or facility manager participated directly in its preparation, placement, or dissemination.

(e) Each on-site advertisement of a facility manager's business shall comply with the facility manager's responsible gaming plan that has been approved by the commission pursuant to article 112. Each advertisement shall reference the Kansas toll-free problem gambling help line in a manner approved by the executive director.

(f) Each applicant and each facility manager shall submit all proposed text and planned signage informing patrons of the toll-free number regarding compulsive or problem gambling to the executive director with its responsible gaming plan required in article 112.

(g) Each advertisement shall be maintained by the facility manager or applicant for at least one year from the date of broadcast, publication, or use, whether that advertisement was placed by, for, or on behalf of the facility manager or applicant. Each advertisement required to be maintained by this subsection shall be maintained at the principal place of business of the facility manager or applicant and shall be made available or produced for inspection upon the request of the commission.

(h) Each gaming facility manager and each applicant shall maintain a file containing samples of the types and forms of promotional materials not directly related to gaming activity for at least six months from the date of placement of the promotional materials. The promotional materials shall be maintained at the principal place of business of the facility manager or applicant and shall be made available or produced for inspection upon the request of the executive director. (Authorized by K.S.A. 2007 Supp. 74-8772; implementing K.S.A. 2007 Supp. 74-8752 and 74-8772; effective April 17, 2009.)

**112-101-11. Material debt transaction.** (a)(1) No facility manager shall consummate a material debt transaction that involves either of the following without the prior approval of the commission:

(A) Any agreement that provides for any borrowing for a purpose other than capital and maintenance expenditures; or

(B) a guarantee of debt of an affiliate, whether signing a note or otherwise, an assumption of the debt of an affiliate, or an agreement to impose a lien on the approved gaming facility to secure the debts of an affiliate.

(2) A transaction not specified in this subsection shall not require the approval of the commission.

(b) In reviewing any material debt transaction specified in paragraph (a)(1), whether the transaction would deprive the facility manager of financial stability shall be considered by the commission, taking into account the financial condition of the affiliate and the potential impact of any default on the gaming facility manager. (Authorized by and implementing K.S.A. 2007 Supp. 74-8772; effective April 17, 2009.)

**112-101-12. Notice of bankruptcy or liquidation.** Each facility manager shall notify the commission within one hour following the filing of bankruptcy or an agreement to liquidate any of the following:

(a) The facility manager;

(b) any parent company of the facility manager; or

(c) any subsidiary of the facility manager's parent company. (Authorized by and implementing K.S.A. 2007 Supp. 74-8772; effective April 17, 2009.)

**112-101-13. Access to gaming facility and information.** (a) Each applicant and each facility manager, including their intermediary companies and holding companies, shall consent to inspections of the gaming facility by commission staff.

(b) Each applicant and each facility manager shall provide all information requested by the commission. The access to information shall be

granted upon the commission's request. The applicant or facility manager shall deliver any requested copies of the information within seven calendar days, at the commission's request. (Authorized by K.S.A. 2008 Supp. 74-8772; implementing K.S.A. 2008 Supp. 74-8752 and 74-8772; effective April 17, 2009.)

**112-101-14. Certification of employees.** (a) Each employee, contractor, and agent of an applicant or facility manager shall be certified by the commission with a current occupation license before performing any tasks or duties or assuming any responsibilities for matters regulated by the commission for the applicant or facility manager pursuant to article 103.

(b) Each applicant and each facility manager shall coordinate the submission of all occupation license applications and background costs and expenses to the commission. (Authorized by and implementing K.S.A. 2007 Supp. 74-8772; effective April 17, 2009.)

**112-101-15. Reporting requirements.** (a) Each facility manager shall submit a monthly report to the commission listing all contracts the facility manager has had with gaming and nongaming suppliers for the previous month and cumulatively for the past 12 months.

(b) Each facility manager shall submit a monthly report to the commission listing all persons working in the gaming facility and any ancillary facilities and each person's department, job duty, and function.

(c) At the end of its tax year, each facility manager shall submit to the commission a copy of its certified financial statements, along with an opinion from a certified public accountant or independent registered certified public accounting firm certifying the total revenue from all lottery facility games.

(d) Each facility manager and each applicant for a gaming certificate shall disclose in writing within 11 days any material change in any information provided in the application forms and requested materials submitted to the commission. Each change in information that is not material shall be disclosed to the commission during the facility manager's subsequent application for renewal. For the purpose of this regulation, a change shall be deemed material if the change includes any of the following:

(1) The personal identification or residence information;

(2) the officers, directors, or key employees or any persons owning an interest of at least 0.5% in a lottery gaming facility or racetrack gaming facility manager; or

(3) other information that might affect an applicant's or facility manager's suitability to hold a gaming certificate, including any of the following occurrences that happen to the applicant, facility manager, or its material people as determined by the executive director pursuant to K.A.R. 112-101-3:

(A) Arrests;

(B) convictions or guilty pleas;

(C) disciplinary actions or license denials in other jurisdictions;

(D) significant changes in financial condition, including any incurrence of debt equal to or exceeding $1,000,000; or

(E) relationships or associations with persons having criminal records or criminal reputations. (Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective April 17, 2009.)

**112-101-16. Prohibitions.** Each facility manager shall be prohibited from and subject to sanctions as specified in K.A.R. 112-113-1 for the following:

(a) Failing to exercise discretion and judgment to prevent any incident that might adversely reflect on the reputation of the state of Kansas or act as a detriment to the development of the lottery industry, including allowing lewd entertainment at a gaming facility;

(b) failing to conduct advertising and public relations activities in accordance with honest and fair representation;

(c) knowingly or negligently catering to, assisting, employing, or associating with, either socially or in business affairs, persons who have a criminal reputation or who have felony police records, or employing either directly through a contract or other means, any firm or individual in any capacity in which the repute of the state of Kansas or the lottery industry is liable to be damaged because of the unsuitability of the firm or the individual;

(d) failing to conduct gaming in accordance with the act and these regulations or permitting conduct that could reflect negatively on the reputation of the state of Kansas or act as a detriment to the lottery industry;

(e) failing to report to the commission any

known or suspected violations of commission regulations and applicable law;

(f) failing to comply with any regulation or order of the commission or its employees relating to gaming; and

(g) receiving goods or services from a person or business that does not hold a certificate under article 103 but is required to do so. (Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective April 17, 2009.)

## Article 102.—GAMING SUPPLIER AND NON-GAMING SUPPLIER CERTIFICATION

**112-102-1. Prohibition against uncertified business.** No person identified in K.A.R. 112-102-2 as a gaming or non-gaming supplier may provide any equipment or services to a gaming facility or manager unless the person is certified by the commission with a current gaming supplier certificate, non-gaming supplier certificate, or temporary supplier permit. (Authorized by and implementing K.S.A. 2008 Supp. 74-8751 and 74-8772; effective Aug. 14, 2009.)

**112-102-2. Gaming supplier and non-gaming supplier defined.** (a) Each person that performs one or more of the following shall be considered a gaming supplier:

(1) Manufactures, sells, leases, supplies, or distributes devices, machines, equipment, accessories, or items that meet at least one of the following conditions:

(A) Are designed for use in a gaming facility;

(B) are needed to carry out a lottery facility game;

(C) have the capacity to affect the result of the play of a lottery facility game; or

(D) have the capacity to affect the calculation, storage, collection, or control of the revenues from a gaming facility;

(2) provides maintenance services or repairs gaming equipment, including slot machines;

(3) provides services directly related to the management or administration of a gaming facility;

(4) provides junket services; or

(5) provides items or services that the commission has determined are used in or are incidental to gaming or to an activity of a gaming facility.

(b)(1) Any person that is not a gaming supplier but otherwise meets one or more of the following may be considered a non-gaming supplier:

(A) Acts as a manager of an ancillary lottery gaming facility;

(B) is not a public utility and provides goods or services to a facility manager or ancillary lottery gaming facility in an amount of $100,000 or more within a one-year period; or

(C) provides goods or services to a gaming facility and could present a security, integrity, or safety concern to the gaming operations as determined by the executive director.

(2) A person that is any of the following shall not be considered a non-gaming supplier:

(A) Regulated insurance company providing insurance to a facility manager, an ancillary lottery gaming facility, or the employees of either;

(B) employee benefit or retirement plan provider, including the administrator;

(C) regulated bank or savings and loan association that provides financing to a facility manager or ancillary lottery gaming facility; or

(D) professional service provider, including an accountant, architect, attorney, and engineer. (Authorized by and implementing K.S.A. 2010 Supp. 74-8751 and 74-8772; effective Aug. 14, 2009; amended Dec. 9, 2011.)

**112-102-3. Gaming and non-gaming supplier employees.** Any employee or agent of a gaming or non-gaming supplier may be required by the commission to be separately investigated or licensed. (Authorized by and implementing K.S.A. 2007 Supp. 74-8772; effective Aug. 14, 2009.)

**112-102-4. Application for a certificate.** Each person that does not qualify for reciprocal certification under K.S.A. 74-8751(b), and amendments thereto, and any directives of the executive director and is seeking a gaming supplier certificate or a non-gaming supplier certificate shall submit the following to the commission staff:

(a) A completed application for the certificate on a commission-approved form;

(b) any supporting documents;

(c) a copy of the applicant's contractual agreement or statement of intent with a facility manager that the applicant expects to be supplying its goods or services. As a part of that contract or statement of intent, the applicant shall describe any arrangement it has made with the facility manager to cover the fees and costs incurred by the commission in performing the background investigation of the applicant pursuant to K.A.R. 112-102-7; and

(d) any other information that the commission deems necessary for investigating or considering the applicant. (Authorized by and implementing K.S.A. 2008 Supp. 74-8751; effective Aug. 14, 2009.)

**112-102-5. Temporary supplier permit.** (a) The commission staff may issue a temporary supplier permit if all of the following conditions are met:

(1) The commission staff determines that the applicant has filed a completed application for a gaming or non-gaming supplier certificate.

(2) The applicant has no immediately known present or prior activities, criminal records, reputation, habits, or associations that meet either of these conditions:

(A) Pose a threat to the public interest or to the effective regulation of gaming; or

(B) create or enhance the dangers of unfair or illegal practices in the conduct of gaming.

(3) The applicant has completed a supplier-sponsored agreement with each gaming facility that the applicant proposes to conduct business with.

(b) A temporary supplier permit may be issued for a period not to exceed 90 days. Any temporary supplier permit may be extended by the commission's licensing staff for an additional 90 days.

(c) The issuance of a temporary supplier permit shall not extend the duration of the gaming or non-gaming supplier certificate for which the applicant has applied. (Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective Aug. 14, 2009.)

**112-102-6. Affirmative duty to demonstrate qualifications.** Each applicant for a certificate as a gaming supplier or non-gaming supplier shall have an affirmative duty to the commission to demonstrate that the applicant, including the applicant's directors, officers, stockholders, and principal employees and any persons deemed necessary by the executive director because of that person's relationship to the applicant, is qualified for certification. (Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective Aug. 14, 2009.)

**112-102-7. Background investigations.** (a) Each applicant and each person whom the executive director deems to have a material relationship to the applicant, including officers, directors, key gaming employees, and any persons known to directly or indirectly own an interest of at least 0.5% in the applicant, shall submit to a background investigation conducted by the commission's director of security or other person designated by the executive director.

For purposes of this regulation, a material relationship shall mean a relationship in which a person participates in the business decisions or finances of the applicant or can exhibit control over the applicant, as determined by the executive director.

(b) To determine the known owners as required in subsection (a), each applicant or certificate holder that is a publicly traded company or is owned by a publicly traded company shall rely on the publicly traded company's most recent annual certified shareholder list.

(c) Each applicant or certificate holder shall identify any passive investing company that owns between 0.5% and 10% as a candidate for completing a commission-approved institutional investor background form. (Authorized by and implementing K.S.A. 2008 Supp. 74-8751 and 74-8772; effective Aug. 14, 2009.)

**112-102-8. Disqualification criteria.** (a) A certificate shall be denied or revoked by the commission if the applicant or certificate holder has been convicted of any felony, crime involving gambling, or crime of moral turpitude.

(b) A certificate may be denied, suspended, or revoked by the commission, and a certificate holder may be sanctioned by the commission under K.A.R. 112-113-1 if the certificate holder or its officers, directors, key gaming employees, or any person known to directly or indirectly own an interest of at least 0.5% in the applicant meets any of the following conditions:

(1) Has knowingly provided false or misleading material information through its employees to the commission or commission staff;

(2) fails to notify the commission staff about a material change in the application within seven days;

(3) has violated any provision of the act or any regulation adopted under the act;

(4) has failed to meet any monetary or tax obligation to the federal government or to any state or local government;

(5) is financially delinquent to any third party;

(6) has failed to provide information or documentation requested in writing by the commission in a timely manner;

(7) does not consent to or cooperate with investigations, interviews, inspections, searches, or having photographs and fingerprints taken for investigative purposes;

(8) has failed to meet the requirements of K.A.R. 112-102-6;

(9) has any officers, directors, key gaming employees, or any person known to directly or indirectly own an interest of at least 0.5% in the applicant that has any present or prior activities, criminal records, reputation, habits, or associations meeting either of the following criteria:

(A) Pose a threat to the public interest or to the effective regulation of gaming; or

(B) create or enhance the dangers of unfair or illegal practices in the conduct of gaming; or

(10) has violated any contract with the Kansas lottery. (Authorized by and implementing K.S.A. 2009 Supp. 74-8751 and 74-8772; effective Aug. 14, 2009; amended April 1, 2011.)

**112-102-9. Certificate duration.** Each certificate for a gaming supplier or non-gaming supplier shall be issued by the commission for no longer than two years and one month. Each certificate shall expire on the last day of the month of the anniversary date of issue. (Authorized by and implementing K.S.A. 2007 Supp. 74-8751; effective Aug. 14, 2009.)

**112-102-10. Certificate renewal application.** Each renewal application for a gaming or non-gaming supplier certificate shall be filed with the commission staff at least 120 days before the expiration date of the license. Each certificate holder shall submit the renewal application on a commission-approved form along with any supporting documents. An applicant's timely submission of a renewal application shall suspend the expiration of the certificate until the commission has taken action on the application. This suspended expiration shall not exceed six months. (Authorized by and implementing K.S.A. 2010 Supp. 74-8751; effective Aug. 14, 2009; amended Dec. 9, 2011.)

**112-102-11. Change in ownership.** (a) Each change in either of the following shall be sufficient cause for revoking any certificate or temporary permit granted by the commission:

(1) The ownership of the applicant or the holder of a gaming supplier or non-gaming supplier certificate; or

(2) the ownership of any holding or intermediary company of the applicant or certificate holder, unless the holding or intermediary company is a publicly traded corporation.

(b) Each proposed new owner shall submit to the commission an application for initial certification as a gaming supplier or non-gaming supplier and all supporting material. (Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective Aug. 14, 2009.)

**112-102-12. Certificates, temporary supplier permits, and badges to be commission property.** (a) Each gaming supplier certificate, non-gaming supplier certificate, temporary supplier permit, and badge issued by the commission shall be the property of the commission.

(b) Possession of a certificate, temporary supplier permit, or badge shall not confer any right upon the certificate holder or temporary permittee to contract with or work for a gaming facility.

(c) Each certificate holder or temporary permittee shall return that person's certificate or temporary supplier permit and each badge in that person's possession to commission staff no later than one day after the certificate holder's or temporary supplier permit holder's business is terminated. (Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective Aug. 14, 2009.)

**112-102-13. Records.** (a) Each gaming supplier and each non-gaming supplier certified by the commission shall maintain that supplier's business records in a place secure against loss and destruction. Each certificate holder shall make these records available to the commission upon the commission's request. The records shall include the following:

(1) Any correspondence with the commission and any other governmental agencies;

(2) any correspondence related to the business with a gaming facility, whether proposed or existing;

(3) a copy of any publicity and promotional materials;

(4) the personnel files for every employee of the certified gaming supplier or non-gaming supplier, including sales representatives; and

(5) the financial records for all the transactions related to the certificate holder's business with a gaming facility, whether proposed or existing.

(b) Each certificate holder shall keep the records listed in subsection (a) for at least five years

from the date of creation. (Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective Aug. 14, 2009.)

## Article 103.—EMPLOYEE LICENSING

**112-103-1. Prohibition of unlicensed employment with a facility manager.** No person may work as an employee or independent contractor of a facility manager unless the person is certified to do so with a current occupation license or temporary work permit issued by the commission for the actual job, duty, or position that the person is seeking to perform. (Authorized by and implementing K.S.A. 2007 Supp. 74-8772; effective April 17, 2009.)

**112-103-2. License levels.** (a) Each of the following persons who will be employed by or working for a facility manager in a position that includes the responsibility or authority specified in this subsection, regardless of job title, shall be considered key employees and shall be required to hold a current and valid temporary work permit or level I occupation license issued in accordance with the act and these regulations:

(1) Any person who has authority to perform any of the following:

(A) Hire or fire employees of a facility manager;

(B) establish working policies for a facility manager;

(C) act as the chief financial officer or have financial management responsibility for a facility manager;

(D) manage all or part of a gaming facility; or

(E) direct, control, manage, or engage in discretionary decision making over a facility manager;

(2) any person who has the authority to develop or administer policy or long-term plans or to make discretionary decisions about the management of a gaming facility or ancillary lottery gaming facility, including any of the following persons:

(A) General manager or chief executive officer;

(B) electronic gaming machine director;

(C) director of surveillance;

(D) director of security;

(E) controller;

(F) director of internal audit;

(G) manager of the management information systems section or of any information system of a similar nature;

(H) marketing department manager;

(I) administrative operations manager;

(J) hotel general manager; or

(K) restaurant or bar general manager; or

(3) any other person designated as a key employee by the executive director.

(b) Each person whose responsibilities predominantly involve the maintenance of gaming equipment or assets associated with gaming activities or whose responsibilities predominantly involve conducting gaming activities shall obtain a temporary work permit or a level II occupation license. Each person who will be employed by or working for a facility manager in a position that includes any of the following responsibilities shall obtain a temporary work permit or a level II occupation license:

(1) Supervising the pit area;

(2) functioning as a dealer or croupier;

(3) conducting or supervising any table game;

(4) repairing and maintaining gaming equipment, including slot machines and bill validators;

(5) functioning as a gaming cashier or change person;

(6) assisting in the operation of electronic gaming machines and bill validators, including any person who participates in the payment of jackpots and in the process of filling hoppers, or supervising those persons;

(7) identifying patrons for the purpose of offering them complimentaries, authorizing the complimentaries, or determining the amount of complimentaries;

(8) analyzing facility manager operations data and making recommendations to key personnel of the facility manager relating to facility manager marketing, complimentaries, gaming, special events and player ratings, and other similar items;

(9) entering data into the gaming-related computer systems or developing, maintaining, installing, or operating gaming-related computer software systems;

(10) collecting and recording patron checks and personal checks that are dishonored and returned by a bank;

(11) developing marketing programs to promote gaming in the gaming facility;

(12) processing coins, currency, chips, or cash equivalents of the facility manager;

(13) controlling or maintaining the electronic gaming machine inventory, including replacement parts, equipment, and tools used to maintain electronic gaming machines;

(14) having responsibilities associated with the installation, maintenance, or operation of com-

puter hardware for the facility manager computer system;

(15) providing surveillance in a gaming facility;

(16) providing security in a gaming facility;

(17) supervising areas, tasks, or staff within a gaming facility or ancillary lottery gaming facility operations; or

(18) any other person designated by the executive director.

(c) Each person who will be employed by or working for a facility manager or with an ancillary lottery gaming facility operator and who is not required under the act or these regulations to obtain a level I or level II occupation license shall obtain a temporary work permit or a level III occupation license. (Authorized by and implementing K.S.A. 2009 Supp. 74-8772; effective April 17, 2009; amended April 1, 2011.)

**112-103-3. Temporary work permit.** (a) The commission staff may issue a temporary work permit to an applicant if both of the following conditions are met:

(1) The commission staff determines that the applicant has filed a completed application for a level I, level II, or level III occupation license.

(2) The applicant has no immediately known present or prior activities, criminal records, reputation, habits, or associations that meet either of these conditions:

(A) Pose a threat to the public interest or to the effective regulation of gaming; or

(B) create or enhance the dangers of unfair or illegal practices in the conduct of gaming.

(b) A temporary work permit may be issued for an initial period not to exceed 90 days. Any temporary work permit may be extended by the commission's licensing staff for an additional 90 days.

(c) The issuance of a temporary work permit shall not extend the duration of the level I, level II, or level III license for which the applicant has applied. (Authorized by and implementing K.S.A. 2007 Supp. 74-8772; effective April 17, 2009.)

**112-103-4. Application for a license.** Each applicant for a level I, level II, or level III occupation license shall submit a completed application on a commission-approved form to the human resources department of the facility manager with which the applicant seeks employment. The human resources staff shall ensure the form's completeness and shall submit the form to the commission's licensing staff. (Authorized by and implementing K.S.A. 2009 Supp. 74-8772; effective April 17, 2009; amended April 1, 2011.)

**112-103-5. Applicant identification.** (a) Each applicant shall have the responsibility to provide identification when submitting an application by presenting one of the following:

(1) A current and valid state-issued driver's license that has a photograph of the applicant on the license;

(2) documentation for American citizens or persons born in the United States that includes one or more of the following:

(A) A certified United States birth certificate;

(B) a certified birth certificate from a United States territory;

(C) a current and valid United States passport or passport card;

(D) a current and valid United States military card;

(E) a certified order of adoption that is an original United States document;

(F) a certificate of naturalization with intact photo or a certificate of United States citizenship;

(G) a United States military common access card with photo, date of birth, and name and branch of service; or

(H) a United States government-issued consular report of birth abroad;

(3) documentation for persons not born in the United States or persons who are not American citizens that includes one or more of the following:

(A) A valid foreign passport with a form I-94 or valid "processed for I-551" stamp with a mandated departure date more than 60 days in the future. This shall exclude border-crossing cards;

(B) a form I-94 with refugee status;

(C) a valid form I-551 green card or alien registration; or

(D) a valid photo employment authorization issued by the United States department of justice; or

(4) documentation for proof of name change that includes one or more of the following:

(A) A certified United States marriage certificate indicating the city, county, and state where issued;

(B) a certified United States divorce decree containing an official signature;

(C) a certified United States court order of name change;

(D) a certified court order of adoption; or

(E) a marriage certificate from a foreign country. If the marriage certificate from a foreign county is not in English, the certificate shall be translated into English.

(b) The facility manager shall review the identification documents, ensure to the best of that person's ability the authenticity of the documents, and ensure that the applicant is legally in the United States.

(c) Each applicant shall have the responsibility to identify that person to the commission enforcement agents by submitting the applicable documents listed in this regulation, upon request. (Authorized by and implementing K.S.A. 2010 Supp. 74-8772; effective April 17, 2009; amended April 1, 2011.)

**112-103-6. Affirmative duty to demonstrate qualifications.** Each applicant for an occupation license shall have an affirmative duty to the commission to demonstrate that the applicant is qualified for licensure. (Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective April 17, 2009.)

**112-103-7. Background investigation.** Each applicant shall submit to a background investigation conducted by the commission's director of security or other person designated by the executive director. (Authorized by and implementing K.S.A. 2007 Supp. 74-8772; effective April 17, 2009.)

**112-103-8. Disqualification criteria for a level I, level II, or level III license.** (a) A level I license shall be denied or revoked by the commission if the applicant or licensee is or has been convicted of any felony, crime involving gambling, or crime of moral turpitude.

(b) Any license may be denied, suspended, or revoked by the commission, and any licensee may be sanctioned by the commission if the applicant or licensee meets any of the following conditions:

(1) Has knowingly provided false or misleading material information to the commission or its staff;

(2) fails to notify the commission staff about a material change in the applicant's or licensee's application within seven days;

(3) has violated any provision of the act or any regulation adopted under the act;

(4) is unqualified to perform the duties required;

(5) has failed to meet any monetary or tax obligation to the federal government or to any state or local government;

(6) is financially delinquent to any third party;

(7) has failed to provide information or documentation requested in writing by the commission in a timely manner;

(8) does not consent to or cooperate with investigations, interviews, inspections, searches, or having photographs and fingerprints taken for investigative purposes;

(9) has failed to meet the requirements of K.A.R. 112-103-6; or

(10) has any present or prior activities, criminal records, reputation, habits, or associations that meet either of the following criteria:

(A) Pose a threat to the public interest or to the effective regulation of gaming; or

(B) create or enhance the dangers of unfair or illegal practices in the conduct of gaming. (Authorized by and implementing K.S.A. 2009 Supp. 74-8772; effective April 17, 2009; amended April 1, 2011.)

**112-103-9. Examinations.** (a) Any applicant for an occupation license may be required to demonstrate knowledge, qualifications, and proficiency related to the license for which application is made through an examination approved by the commission or its designee.

(b) Any applicant who fails the examination may be retested no earlier than 30 days following the first failure and no earlier than six months following the second failure. Each applicant failing the examination on the third attempt shall be ineligible to retake the examination for one year from the date of the third failure. (Authorized by and implementing K.S.A. 2007 Supp. 74-8772; effective April 17, 2009.)

**112-103-10. License duration.** Each occupation license shall be issued for a period of no longer than two years and one month. Each license shall expire on the last day of the month in which the licensee was born. (Authorized by and implementing K.S.A. 2007 Supp. 74-8772; effective April 17, 2009.)

**112-103-11. License renewal.** Each occupation licensee wanting to renew the license shall file an application for occupation license renewal with the commission staff. Each application shall be submitted on a form approved by the commission. The completed renewal application shall be filed with the commission staff at least 90

days before expiration of the license. An applicant's failure to timely file the renewal application may result in expiration of the license and an inability to work with or for the facility manager. An applicant's timely submission of a renewal application shall suspend the expiration of the license until the commission has taken action on the application. This suspended expiration shall not exceed six months. (Authorized by and implementing K.S.A. 2010 Supp. 74-8772; effective April 17, 2009; amended Dec. 9, 2011.)

**112-103-12. Reapplication after license denial or revocation.** A person who is denied licensure or whose license is revoked shall not reapply for the same or higher level of license for at least one year from the date of the denial or revocation. (Authorized by and implementing K.S.A. 2007 Supp. 74-8772; effective April 17, 2009.)

**112-103-13. Reserved.**

**112-103-14. Reserved.**

**112-103-15. License mobility; limitations.** (a) Any licensee may work in any other position at or below that license level. If a licensee changes positions for more than one shift in a seven-day period, the facility manager shall request approval from the commission's licensing staff about the change.

(b) If the commission's licensing staff determines that the person's license no longer reflects that person's actual position, the person shall be required to reapply for the appropriate occupation license.

(c) Each licensee who wants to work for a different lottery gaming facility shall request approval from the commission's licensing staff before commencing employment at the other lottery gaming facility. That employee shall submit an updated license application and a personal disclosure form. (Authorized by and implementing K.S.A. 2010 Supp. 74-8772; effective April 17, 2009; amended April 1, 2011.)

**112-103-16. Licenses, temporary work permits, and badges to be commission property.** (a) Each license, temporary work permit, and badge issued by the commission shall be the property of the commission.

(b) Possession of a license, temporary permit, or badge shall not confer any right upon the temporary permittee or licensee to employment with a facility manager.

(c) Each licensee or temporary permittee shall return the license or temporary work permit and each badge in that person's possession to commission staff within one day if the temporary permittee's or licensee's employment or contract is terminated. (Authorized by and implementing K.S.A. 2007 Supp. 74-8772; effective April 17, 2009.)

## Article 104.—MINIMUM INTERNAL CONTROL SYSTEM

**112-104-1. Definitions; internal control system.** (a) The following words and terms, when used in this article, shall have the following meanings unless the context indicates otherwise:

(1) "Accounting department" means a facility manager's internal department that is responsible for the management of the financial and accounting activities relating to electronic gaming machines being utilized on an approved gaming floor.

(2) "Asset number" means a unique number assigned to an electronic gaming machine by a facility manager for the purpose of tracking the electronic gaming machine.

(3) "Bill validator" means an electronic device designed to interface with an electronic gaming machine for the purpose of accepting and validating any combination of United States currency, gaming tickets, coupons, or other instruments authorized by the commission for incrementing credits on an electronic gaming machine.

(4) "Bill validator canister" means a mechanical or electronic device designed to interface with an electronic gaming machine for the purpose of storing any combination of United States currency, gaming tickets, coupons, or other instruments authorized by the commission for recording credits on an electronic gaming machine.

(5) "Blind count" means the counting of currency or gaming chips by a person who does not know the inventory balance.

(6) "Cash equivalents" means instruments with a value equal to United States currency or coin, including certified checks, cashier's checks, traveler's checks, money orders, gaming tickets, and coupons.

(7) "Cashier's booth" means an area from which a cashier conducts transactions associated with gaming cashiers or window cashiers.

(8) "Change person" means a person who ex-

changes coins, currency, and coupons with patrons.

(9) "Complimentary" means any lodging, service, or item that is provided directly or indirectly to an individual at no cost or at a reduced cost and that is not generally available to the public. This term shall include lodging provided to a person at a reduced price due to the anticipated or actual gaming activities of that person. Group rates, including convention and government rates, shall be deemed generally available to the public.

(10) "Count room" means a room secured by keys controlled by two separate facility manager departments with limited access, where the contents, including currency, gaming tickets, and coupons, of bill validator canisters are counted by the count team.

(11) "Currency counters" means a device that counts currency and tickets.

(12) "Critical program storage media" and "CPSM" mean any media storage device that contains data, files, or programs and is determined by the commission to be capable of affecting the integrity of gaming.

(13) "Drop" means the total amount of money, tickets, and coupons removed from any lottery facility game or kiosk.

(14) "Drop team" means the group of employees of a facility manager who participate in the transportation of the drop.

(15) "EGM" means electronic gaming machine.

(16) "Gaming day" means a period not to exceed 24 hours corresponding to the beginning and ending times of gaming activities for the purpose of accounting reports and determination by the central computer system of net lottery facility game income.

(17) "Generally accepted accounting principles" and "GAAP" have the meaning specified in K.A.R. 74-5-2.

(18) "Imprest" means the basis on which the operating funds of general cashiers and gaming cashiers are maintained. The opening and closing values shall be equal, and any difference shall result in a variance. The funds may be replenished as needed in exactly the value of the net of expenditures made from the funds for value received.

(19) "Incompatible functions" means functions or duties that place any person or department in a position to perpetuate and conceal errors, fraudulent or otherwise.

(20) "LFG" means lottery facility game.

(21) "Main bank" means the central location in the gaming facility where acts that include the following are performed:

(A) Transactions for recording currency, coin, tokens, cash equivalents, and negotiable instruments;

(B) preparation of bank deposits;

(C) acceptance of currency from the count room; and

(D) reconciliation of all cage transactions.

(22) "Trolley" means a wheeled apparatus used for the secured transport of electronic gaming cash storage boxes and drop boxes.

(23) "Unclaimed winnings" means gaming winnings that are held by the facility manager as a liability to a patron until that patron is paid.

(24) "Unredeemed ticket" means a ticket issued from an LFG containing value in U.S. dollars that has not been presented for payment or accepted by a bill acceptor at a gaming machine and has not been marked as paid in the ticket file.

(25) "Weigh scale" means a scale that is used to weigh coins and tokens and that converts the weight to dollar values in the count process.

(b) Each applicant for a facility manager certificate shall submit to the commission and the Kansas lottery a written plan of the applicant's initial system of administrative and accounting procedures, including its internal controls and audit protocols, at least 180 days before opening a gaming facility, unless the executive director finds good cause for a shorter deadline. This plan shall be called the internal control system and shall include the following:

(1) Organization charts depicting segregation of functions and responsibilities;

(2) a description of the duties and responsibilities of each licensed or permitted position shown on the organization charts and the lines of authority;

(3) a detailed narrative description of the administrative and accounting procedures designed to satisfy the requirements of this article;

(4) a record retention policy in accordance with K.A.R. 112-104-8;

(5) procedures to ensure that assets are safeguarded and counted in conformance with effective count procedures;

(6) the following controls and procedures:

(A) Administrative controls that include the procedures and records that relate to the decision making processes leading to management's authorization of transactions;

(B) accounting controls that have as their primary objectives the safeguarding of assets and revenues and the reliability of financial records. The accounting controls shall be designed to provide reasonable assurance that all of the following conditions are met:

(i) The transactions or financial events that occur in the operation of an LFG are executed in accordance with management's general and specific authorization;

(ii) the transactions or financial events that occur in the operation of an LFG are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles, the act, and this article;

(iii) the transactions or financial events that occur in the operation of an LFG are recorded in a manner that provides reliable records, accounts and reports, including the recording of cash and evidence of indebtedness, for use in the preparation of reports to the commission related to LFGs;

(iv) the transactions or financial events that occur in the operation of an LFG are recorded to permit proper and timely reporting and calculation of net LFG income and fees to maintain accountability for assets;

(v) access to assets is permitted only in accordance with management's general and specific authorization; and

(vi) the recorded accountability for assets is compared with existing physical assets at reasonable intervals, and appropriate action is taken with respect to any discrepancies;

(C) procedures and controls for ensuring that all functions, duties, and responsibilities are segregated and performed in accordance with legitimate financial practices by trained personnel;

(D) procedures and controls for ensuring all applicable technical standards as adopted by the commission under article 110 are followed;

(7) a completed internal control checklist; and

(8) any other items that the commission may require to be included in the internal controls.

(c) The internal control system shall be accompanied by the following:

(1) An attestation by the chief executive officer or other competent person with a direct reporting relationship to the chief executive officer attesting that the officer believes in good faith that the submitted internal controls conform to the requirements of the act and this article; and

(2) an attestation by the chief financial officer or other competent person with a direct reporting relationship to the chief financial officer attesting that the officer believes in good faith that the submitted internal controls are designed to provide reasonable assurance that the financial reporting conforms to generally accepted accounting principles and complies with all applicable laws and regulations, including the act and this article.

(d) Each internal control system shall be reviewed by the commission in consultation with the Kansas lottery to determine whether the system conforms to the requirements of the act and this article and provides adequate and effective controls to ensure the integrity of the operation of LFGs at a gaming facility. If the commission determines that the system is deficient, a written notice of the deficiency shall be provided by the executive director to the applicant or facility manager. The applicant or facility manager shall be allowed to submit a revision to its submission. Each facility manager shall be prohibited from commencing gaming operations until its internal control system is approved by the commission.

(e) If a facility manager intends to update, change, or amend its internal control system, the facility manager shall submit to the commission for approval and to the Kansas lottery a written description of the change or amendment and the two original, signed certifications described in subsection (c).

(f) A current version of the internal control system of a facility manager shall be maintained in or made available in electronic form through secure computer access to the accounting and surveillance departments of the facility manager and the commission's on-site facilities. The facility manager shall also maintain a copy, in either paper or electronic form, of any superseded internal control procedures, along with the two certifications required to be submitted with these procedures, for at least seven years. Each page of the internal control system shall indicate the date on which the page was approved by the commission. (Authorized by and implementing K.S.A. 2009 Supp. 74-8772; effective Sept. 26, 2008; amended April 1, 2011.)

**112-104-5. Standard financial reports.** (a) Each facility manager's internal control system shall include internal controls for standard financial reports. The internal controls shall be submitted to and approved by the commission under

K.A.R. 112-104-1. A facility manager shall file the following financial data reports:

(1) A balance sheet submitted monthly, quarterly, and annually;

(2) an income statement submitted monthly, quarterly, and annually;

(3) a cash flow statement submitted monthly, quarterly, and annually;

(4) daily net EGM income submitted daily, monthly, quarterly, and annually; and

(5) a comparison of net EGM income to projected net EGM income submitted monthly, quarterly, and annually.

(b) Standard reporting forms and corresponding filing instructions may be prescribed by the executive director to be used by a facility manager in filing the monthly reports specified in subsection (a).

(c) The annual reports shall be based on a fiscal year beginning July 1 and ending June 30, unless otherwise approved by the executive director. The quarterly reports shall be based on the quarters ending September 30, December 31, March 31, and June 30, unless otherwise approved by the executive director. The monthly reports shall be based on calendar months. Interim reports shall contain a cumulative year-to-date column.

(d) The annual financial statements shall be prepared on a comparative basis for the current and prior years and shall present financial position, results of operations, and cash flows in conformity with GAAP.

(e) The electronically transmitted reports or hard copy reports required to be filed pursuant to this regulation shall be authorized by individuals designated by the facility manager. In addition, the facility manager shall submit a letter attesting to the completeness and accuracy of the reports. The letter shall be signed by the facility manager's chief financial officer or controller.

(f) The reports required to be filed pursuant to this regulation shall be addressed as prescribed by the executive director and received no later than the required filing date. The required filing dates shall be the following:

(1) Monthly reports shall be due on the last calendar day of the following month or the next business day if the day falls on a weekend or legal holiday.

(2) Quarterly reports for the first three quarters shall be due on the last calendar day of the second month following the end of the facility manager's quarter. Quarterly reports for the fourth quarter shall be due on the last calendar day of the third month following the end of the facility manager's fourth quarter.

(3) Annual reports shall be due on the last calendar day of the third month following the end of the facility manager's year or 10 days after form 10-K is filed with the securities and exchange commission, whichever comes first.

(g) In the event of a license termination, change in business entity, or a change in ownership of at least 20%, the facility manager shall file with the commission the required financial and statistical reports listed in paragraphs (a)(1) through (3) for the previous month through the date of occurrence. The facility manager shall file the reports within 30 calendar days of the occurrence.

(h) All significant adjustments resulting from the annual audit required in K.A.R. 112-104-6 shall be recorded in the accounting records of the year to which the adjustment relates. If the adjustments were not reflected in any annual report and the commission concludes that the adjustments are significant, the facility manager may be required by the executive director to file a revised annual report. The revised filing shall be due within 30 calendar days after written notification to the facility manager, unless the facility manager submits a written request for an extension before the required filing date and the extension is granted by the executive director.

(i) Additional financial reports may be requested in writing by the executive director to determine compliance by the facility manager with the act and this article. (Authorized by and implementing K.S.A. 2010 Supp. 74-8772; effective Sept. 26, 2008; amended Dec. 9, 2011.)

**112-104-6. Annual audit; other reports; currency transaction reporting; suspicious transaction reporting.** (a) Each facility manager's internal control system shall include internal controls for annual and other audit reports. The internal controls shall be submitted to and approved by the commission according to K.A.R. 112-104-1. Each facility manager shall cause its annual financial statements to be audited by an independent certified public accountant or, when appropriate, an independent registered certified public accounting firm licensed to practice in this state. The audit shall be in accordance with generally accepted auditing standards and, when applicable, the standards of the public company accounting oversight board. The independent

certified public accountant or, when appropriate, independent registered certified public accounting firm shall be approved by the executive director before the audit engagement.

(b) Independent certified public accountants and independent registered certified public accounting firms performing annual audits or special reports shall not perform internal audit services for the same facility manager.

(c) The annual financial statements audit shall be prepared on a comparative basis for the current and prior fiscal years and present financial position and results of operations in conformity with generally accepted accounting principles.

(d) The financial audit required by this regulation shall include a footnote reconciling and explaining any differences between the financial statements included in any annual report filed in conformity with K.A.R. 112-104-5 and the audited financial statements. The footnote shall disclose the effect of adjustments on the following:

(1) Revenue from the operation of EGMs;

(2) EGM revenue minus expenses for complimentaries;

(3) total costs and expenses;

(4) income before extraordinary items, as that term is used within GAAP; and

(5) net income.

(e) The facility manager shall require the independent certified public accountant or independent registered certified public accounting firm auditing the facility manager's financial statements to render the following additional reports:

(1) A report on the prospective financial statements, including a one-year forecast and three-year projection, expressing an opinion as to whether the prospective financial information is properly prepared on the basis of the assumptions and is presented in accordance with the relevant financial reporting framework; and

(2) any additional relevant reports if required by the executive director.

(f) At any time a special audit of a facility manager may be required by the commission to be conducted by commission personnel, an independent certified public accountant, or an independent registered certified public accounting firm licensed to practice in the state of Kansas. The scope, procedures, and reporting requirements of any special audit shall be established by the executive director.

(g) Copies of the audited financial statements in an amount determined by the executive director, together with any management letter or report prepared regarding that statement by the facility manager's independent certified public accountant or independent registered certified public accounting firm, shall be filed with the commission not later than 120 days after the end of the facility manager's fiscal year.

(h) The facility manager shall prepare a written response to the independent certified public accountant's or independent registered certified public accounting firm's reports required by subsection (e). The response shall indicate, in detail, any corrective actions taken. The facility manager shall submit a copy of the response to the commission within 90 days of receipt of the reports.

(i) The facility manager shall file with the commission copies of the reports required by subsection (e) in an amount determined by the executive director and copies in an amount determined by the executive director of any other reports on internal controls, administrative controls, or other matters relative to the facility manager's accounting or operating procedures rendered by the facility manager's independent certified public accountant or independent registered certified public accounting firm within 120 days following the end of the facility manager's fiscal year or upon receipt, whichever is earlier.

(j) The facility manager shall submit to the commission three copies of any report that is filed, or required to be filed, with the securities and exchange commission (SEC) or other securities regulatory agency. The reports shall include any S-1, 8-K, 10-Q, 10-K, proxy or information statements, and registration statements. The reports shall be filed with the commission within 10 days of whichever of the following occurs first:

(1) The filing of the report with the SEC or other securities regulatory agency; or

(2) the due date prescribed by the SEC or other securities regulatory agency.

(k) If an independent certified public accountant or independent registered certified public accounting firm previously engaged as the principal accountant to audit the facility manager's financial statements resigns or is dismissed as the facility manager's principal accountant or if another independent certified public accountant or independent registered certified public accounting firm is engaged as principal accountant, the facility manager shall file a report with the commission within 10 days following the end of the month in

which the event occurs, setting forth the following:

(1) The date of the resignation, dismissal, or engagement;

(2) an indication of whether in connection with the audits of the two most recent years preceding a resignation, dismissal, or engagement there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, including a description of each disagreement. The disagreements to be reported shall include those resolved and those not resolved; and

(3) an indication of whether the principal accountant's report on the financial statements for either of the past two years contained an adverse opinion or disclaimer of opinion or was qualified. The nature of the adverse opinion, disclaimer of opinion, or qualification shall be described.

(l) The facility manager shall request the former accountant to furnish to the facility manager a letter addressed to the commission stating whether that accountant agrees with the statements made by the facility manager in response to paragraph (k)(2). The letter shall be filed with the commission as an exhibit to the report required by paragraph (k)(2).

(m) All of the audits and reports required by this regulation that are performed by independent certified public accountants or independent registered certified public accounting firms shall be prepared at the sole expense of the facility manager.

(n) Each facility manager's internal control system shall include internal controls to meet the requirements of 31 C.F.R. Part 103 for the reporting of certain currency transactions. The internal controls shall be submitted to and approved by the commission according to K.A.R. 112-104-1.

(1) The facility manager shall file with the commission a copy of any suspicious activity report-casino (SARC) that the facility manager is required to file under 31 C.F.R. §103.21. Each SARC shall be filed with the commission concurrently with the federal filing.

(2) A facility manager, director, officer, employee, or agent who reports a suspicious activity under paragraph (n)(1) shall not notify any person involved in the suspicious activity that the suspicious activity has been reported.

(3) The facility manager shall file with the commission a copy of any currency transaction report by casino (CTRC) that the facility manager is required to file under 31 C.F.R. §103.22. Each CTRC shall be filed with the commission concurrently with the federal filing.

(o) An annual audit of the facility manager's compliance with commission regulations may be required by the executive director to be conducted in accordance with generally accepted auditing standards and the standards for financial audits under government auditing standards. The audit report shall require the expression of an opinion on compliance. The audit shall be conducted by either commission staff or an independent certified public accountant firm selected by the commission. (Authorized by and implementing K.S.A. 2010 Supp. 74-8772; effective Sept. 26, 2008; amended Dec. 9, 2011.)

**112-104-8. Retention, storage, and destruction of books, records, and documents.** (a) Each facility manager's internal control system shall include internal controls for retention, storage, and destruction of books, records, and documents.

(b) For the purposes of this regulation, "books, records, and documents" shall mean any book, record, or document pertaining to, prepared in, or generated by the operation of the gaming facility, including all forms, reports, accounting records, ledgers, subsidiary records, computer-generated data, internal audit records, correspondence, and personnel records required by this article to be generated and maintained by this article. This definition shall apply without regard to the medium through which the record is generated or maintained, including, paper, magnetic media, and encoded disk.

(c) The facility manager shall ensure that all original books, records, and documents pertaining to the operation of a gaming facility meet the following requirements:

(1) Are prepared and maintained in a complete, accurate, and legible form. Electronic data shall be stored in a format that ensures readability, regardless of whether the technology or software that created or maintained the data has become obsolete;

(2) are retained at the site of the gaming facility or at another secure location approved under subsection (e);

(3) are kept available for inspection by agents

of the commission and the Kansas lottery during all hours of operation;

(4) are organized and indexed in a manner to provide accessibility upon request to agents of the commission and the Kansas lottery; and

(5) are destroyed only after expiration of the minimum retention period specified in subsection (d). However, upon the written request of a facility manager and for good cause shown, the destruction at an earlier date may be permitted by the executive director.

(d) Each facility manager shall retain the original books, records, and documents for at least seven years, with the following exceptions:

(1) Gaming tickets reported to the commission as possibly counterfeit, altered, or tampered with shall be retained for at least two years.

(2) Coupons entitling patrons to cash or LFG credits, whether unused, voided, or redeemed, shall be retained for at least six months.

(3) Voided gaming tickets and gaming tickets redeemed at a location other than an LFG or a kiosk shall be retained for at least six months.

(4) Gaming tickets redeemed at an LFG or a kiosk shall be retained for at least 30 days.

(e) Any facility manager may request, in writing, that the executive director approve a location outside the gaming facility to store original books, records, and documents. The request shall include the following:

(1) A detailed description of the proposed off-site facility, including security and fire safety systems; and

(2) the procedures under which the commission and the Kansas lottery will be able to gain access to the original books, records, and documents retained at the off-site facility.

(f) Any facility manager may request in writing that the executive director approve an unalterable media system for the copying and storage of original books, records, and documents. The request shall include a description of the following:

(1) The processing, preservation, and maintenance methods that will be employed to ensure that the books, records, and documents are available in a format that makes them readily available for review and copying;

(2) the inspection and quality control methods that will be employed to ensure that the media, when displayed on a viewing machine or reproduced on paper, exhibit a high degree of legibility and readability;

(3) the accessibility by the commission and the Kansas lottery at the gaming facility or other location approved by the executive director and the readiness with which the books, records, or documents being stored on media can be located, read, and reproduced; and

(4) the availability of a detailed index of all stored data maintained and arranged in a manner to permit the location of any particular book, record, or document, upon request.

(g) Nothing in this regulation shall be construed as relieving a facility manager from meeting any obligation to prepare or maintain any book, record, or document required by any other federal, state, or local governmental body, authority, or agency. (Authorized by and implementing K.S.A. 2009 Supp. 74-8772; effective Sept. 26, 2008; amended April 1, 2011.)

**112-104-13. Patron deposits.** (a) Each facility manager's internal control system shall include internal controls for the receipt and withdrawal of patron deposits. The internal controls shall be submitted to and approved by the commission according to K.A.R. 112-104-1.

(b) At the request of a patron, a facility manager may hold cash, funds accepted by means of wire transfer in accordance with K.A.R. 112-104-11, or cash equivalents accepted in accordance with K.A.R. 112-104-12 for a patron's subsequent use for gaming purposes. For the purposes of this regulation, non-cash items shall be considered converted to cash and deposited as cash for credit to the patron in a patron deposit account maintained in the cage.

(c) The internal controls developed and implemented by the facility manager under subsection (a) shall include the following:

(1) A requirement that patron deposits be accepted at the cage according to the following requirements:

(A) A file for each patron shall be prepared manually or by computer before the acceptance of a cash deposit from a patron by a gaming cashier, and the file shall include the following:

(i) The name of the patron;

(ii) a unique identifying number obtained from a United States government-issued photo identification card or a government-issued passport;

(iii) the date and amount of each cash deposit initially accepted from the patron;

(iv) the date and amount of each request accepted from the patron, as a draw against a cash deposit; and

(v) the date and amount of each cash deposit redemption;

(B) the gaming cashier accepting a deposit shall prepare a patron deposit form and other necessary documentation evidencing the receipt;

(C) patron deposit forms shall be serially prenumbered, each series of patron deposit forms shall be used in sequential order, and the series number of all patron deposit forms shall be accounted for by employees with no incompatible function. All original and duplicate void patron deposit forms shall be marked void and shall require the signature of the preparer;

(D) for establishments in which patron deposit forms are manually prepared, a prenumbered two-part form shall be used;

(E) for establishments in which patron deposit forms are computer-prepared, each series of patron deposit forms shall be a two-part form and shall be inserted in a printer that will simultaneously print an original and duplicate and store, in machine-readable form, all information printed on the original and duplicate. The stored data shall not be susceptible to change or removal by any personnel after preparation of a patron deposit form;

(F) on the original and duplicate of the patron deposit form, or in stored data, the gaming cashier shall record the following information:

(i) The name of the patron making the deposit;

(ii) a unique identifying number obtained from a United States government-issued photo identification card or a government-issued passport;

(iii) the total amount being deposited;

(iv) the date of deposit;

(v) the signature of the gaming cashier or, if computer-prepared, the identification code of the gaming cashier; and

(vi) nature of the amount received, including cash, cash equivalents, wire transfer, or electronic fund transfer; and

(G) after preparation of the patron deposit form, the gaming cashier shall obtain the patron's signature on the duplicate copy and shall distribute the copies in the following manner:

(i) If an original, give a copy to the patron as evidence of the amount placed on deposit with the facility manager; and

(ii) if a duplicate copy, forward the copy along with any other necessary documentation to the main bank cashier, who shall maintain the documents;

(2) a requirement that patron deposits be withdrawn by the patron at the cage or upon receipt by the facility manager of a written request for withdrawal whose validity has been established:

(A) A patron shall be allowed to use the deposit by supplying information as required by K.A.R. 112-104-10 to verify the patron's identification:

(i) The gaming cashier shall ascertain, from the cage, the amount of the patron deposit available and request the amount the patron wishes to use against this balance. The gaming cashier shall prepare a patron deposit withdrawal form, which shall include the signature of the patron; and

(ii) the gaming cashier shall verify the signature on the patron deposit withdrawal form with the signature on the patron deposit form and sign the patron deposit withdrawal form to indicate verification;

(B) the patron's deposit balance shall be reduced by an amount equal to that on the patron deposit withdrawal form issued at the cage;

(C) a patron may obtain a refund of any unused portion of the patron's funds on deposit by performing either of the following:

(i) Sending the facility manager a signed, written request for a refund together with a signed, original patron deposit form; or

(ii) appearing personally at the cage, requesting the refund, and returning the original patron deposit form;

(D) once the original patron deposit form is presented at a cage, a gaming cashier shall perform the following:

(i) Verify the unused balance with the main bank gaming cashier;

(ii) require the patron to sign the original of the patron deposit form;

(iii) prepare necessary documentation evidencing the refund, including a patron deposit withdrawal form or any other similar document that evidences the date and shift of preparation, the amount refunded, the nature of the refund made, the patron's name, and the signature of the gaming cashier preparing the documentation; and

(iv) verify the patron's identity with a United States government-issued photo identification card or a government-issued passport;

(E) the gaming cashier shall forward each original patron deposit form tendered by the patron pursuant to paragraph (c)(2)(D), along with any other necessary documentation, to the main bank gaming cashier, who shall compare the patron's signature on the original patron deposit form and any attached written, signed request required by

paragraph (c)(2)(A)(i) to the patron's signature on the duplicate patron deposit form and on the original patron deposit withdrawal form. The main bank gaming cashier shall sign the original patron deposit form if the signatures are in agreement, notify the gaming cashier of the results of the comparison, and maintain the original patron deposit form and the documentation supporting the signature verification; and

(F) if the patron has requested the return of the patron's original deposit, the main bank gaming cashier shall return the patron's original patron deposit form to the gaming cashier. After the main bank gaming cashier has notified the gaming cashier that the signatures contained in paragraph (c)(2)(E) are a match, the gaming cashier shall then refund the unused balance of the deposit to the patron and, if applicable, return the original patron deposit form to the patron. The gaming cashier shall maintain any necessary documentation to support the signature verification and to evidence the refund;

(3) a requirement that the patron receive a receipt for any patron deposit accepted reflecting the total amount deposited, the date of the deposit, and the signature of the cage employee accepting the patron deposit; and

(4) procedures for verifying the identity of the patron at the time of withdrawal. Signature verification shall be accomplished in accordance with the signature verification procedures under K.A.R. 112-104-10. The facility manager shall maintain adequate documentation evidencing the patron identification process and the procedure for signature verification:

(A) A log of all patron deposits received and returned shall be prepared manually or by a computer on a daily basis by main bank gaming cashiers. The log shall include the following:

(i) The balance of the patron deposits on hand in the cage at the beginning of each shift;

(ii) for patron deposits received and refunded, the date of the patron deposit or refund, the patron deposit number, the name of the patron, and the amount of the patron deposit or refund; and

(iii) the balance of the patron deposits on hand in the cage at the end of each shift; and

(B) the balance of the patron deposits on hand in the cage at the end of each shift shall be recorded as an outstanding liability and accounted for by the main bank gaming cashier. (Authorized by and implementing K.S.A. 2009 Supp. 74-8772; effective Sept. 26, 2008; amended April 1, 2011.)

**112-104-14. Cage and main bank.** (a) Each facility manager's internal control system shall include internal controls for the cage and the main bank. The internal controls shall be submitted to and approved by the commission according to K.A.R. 112-104-1. Each gaming facility shall have, adjacent to the gaming floor, a physical structure known as a cage. The cage shall house the cashiers and serve as the central location in the gaming facility for functions normally associated with the cage and the main bank, including the following:

(1) The custody of the cage inventory comprised of cash, cash equivalents, gaming chips, and the forms, documents, and records normally associated with the functions of a cage;

(2) the issuance, receipt, and reconciliation of imprest funds used by gaming cashiers, parimutuel tellers, and change persons in the acceptance of currency and coupons from patrons in exchange for currency;

(3) the exchange of currency, coin, gaming chips, and coupons for supporting documentation;

(4) the responsibility for the overall reconciliation of all documentation generated by gaming cashiers, parimutuel tellers, and change persons; and

(5) the receipt of currency, coupons, and tickets from the count room.

(b) The cage and the main bank shall provide maximum security for the materials housed, the employees located, and the activities performed in the cage and the main bank. The cage and the main bank shall meet all of the following requirements, at a minimum:

(1) The cage and the main bank shall be fully enclosed except for openings through which materials, including cash, records, and documents, can be passed to patrons, gaming cashiers, parimutuel tellers, and change persons.

(2) The cage and the main bank shall have manually triggered silent alarm systems located at the cashiers' window, vault, and in adjacent office space. The systems shall be connected directly to the monitoring room of the surveillance department and to the security department.

(3) The cage shall have a double-door entry and exit system that does not permit a person to pass through the second door until the first door is securely locked. In addition, all of the following requirements shall apply:

(A) The first door leading from the gaming floor of the double-door entry and exit system shall be

controlled by the surveillance department through a commission-approved electronic access system designed and administered to provide a record of each entry authorization, including the authorizing employee's name and license number and the date and time of the authorization.

(B) The second door of the double-door entry and exit system shall be controlled by the cage through a commission-approved electronic access system designed and administered to provide a record of each entry authorization, including the authorizing employee's name and license number and the date and time of authorization.

(C) The double-door entry and exit system shall have surveillance coverage, which shall be monitored by the surveillance department.

(D) An entrance to the cage that is not a double-door entry and exit system shall be an alarmed emergency exit door only.

(4) Each door of the double-door entry and exit system shall have two separate commission-approved locking mechanisms.

(c) Any gaming facility may have one or more satellite cages separate and apart from the cage, established to maximize security, efficient operations, or patron convenience. The employees in a satellite cage may perform all of the functions of the employees in the cage. Each satellite cage shall be equipped with an alarm system in compliance with paragraph (b)(2). The functions that are conducted in a satellite cage shall be subject to the accounting controls applicable to a cage specified in K.A.R. 112-104-16.

(d) Each facility manager shall maintain and make available to the commission, upon request, a detailed and current list of the name of each employee meeting either of the following conditions:

(1) Possessing the combination to the locks securing the double-door entry and exit system restricting access to the cage and the main bank, any satellite cage, and the vault; or

(2) possessing the ability to activate or deactivate alarm systems for the cage, the main bank, any satellite cage, and the vault. (Authorized by and implementing K.S.A. 2009 Supp. 74-8772; effective Sept. 26, 2008; amended April 1, 2011.)

**112-104-15. Count room and main bank requirements.** (a) Each facility manager shall have a count room and a main bank. The count room and the main bank shall be adjacent to the cage.

(b) Each count room and main bank shall meet both of the following requirements:

(1) Both rooms shall have a metal door for each entrance and exit. Each of these doors shall be equipped with an alarm device that audibly signals the surveillance department monitoring room and the security department whenever the door is opened at times other than those times for which the facility manager has provided prior notice according to K.A.R. 112-104-20.

(2) Each entrance and exit door shall be equipped with two separate commission-approved locking mechanisms. The combinations shall be maintained and controlled as follows:

(A) One of the commission-approved locking mechanisms shall be controlled by the surveillance department.

(B) Each entry shall be maintained in a log indicating the name and license number of each employee who entered the count room or the main bank and the date and time of the entry.

(c) The following shall be located within the count room:

(1) A table constructed of clear glass or similar material for the emptying, counting, and recording of the contents of bill validator canisters; and

(2) surveillance cameras capable of video monitoring the following:

(A) The entire count process; and

(B) the interior of the count room, including any storage cabinets or trolleys used to store bill validator canisters, and any commission-approved trolley storage area located adjacent to the count room.

(d) The following shall be located within the main bank:

(1) A vault or locking cabinets, or both, for the storage of currency and gaming chips; and

(2) surveillance cameras capable of video monitoring the following:

(A) Interior of the vault room, including unobstructed views of counting surfaces;

(B) the exchange of currency, gaming chips, and documentation through any openings; and

(3) a secure opening through which only currency, gaming chips, and documentation can be passed to gaming cashiers, parimutuel tellers, and change persons. (Authorized by and implementing K.S.A. 2009 Supp. 74-8772; effective Sept. 26, 2008; amended April 1, 2011.)

**112-104-16. Accounting controls for the cage and main bank.** (a) Each facility man-

ager's internal control system shall include internal controls for cage and main bank accounting. The internal controls shall be submitted to and approved by the commission according to K.A.R. 112-104-1. If the facility manager elects to use a satellite cage, the same requirements shall apply.

(b) The facility manager shall provide the commission with the start and end times of each cage and main bank shift.

(c) The assets for which gaming cashiers are responsible shall be maintained on an imprest basis and protected from unauthorized access. Gaming cashiers shall lock and secure any assets that are outside of their direct physical control.

(1) Before redeemed tickets are transferred from a cage window to the main bank, the gaming cashier shall prepare an automated system report of the total number and value of the tickets redeemed at that window and compare that report to physical tickets being transferred to ensure that they match. Before reimbursing the cashier, the main bank cashier shall total the tickets received to verify that the dollar amount matches the amount on the gaming cashier's report or shall compare the tickets to the report to ensure that all tickets are present.

(2) Only tickets redeemed in the system shall be forwarded to accounting. If the online validation system ceases to function through the end of the gaming day and the cage is unable to redeem in the system any tickets received in the cage that day, these unredeemed tickets shall have the bar code manually canceled by completely filling in one space of the bar code with a black permanent marker before being forwarded to accounting to prevent subsequent automated redemption.

(3) At the end of each shift, the outgoing gaming cashier shall count all assigned assets and prepare and sign a bank count sheet listing the inventory. A reconciliation of the opening imprest amount to the closing inventory total shall be performed. Any variance shall be documented on the count sheet.

(4) The incoming gaming cashier shall verify by blind count the closing inventory and sign the count sheet in the presence of the outgoing gaming cashier, attesting to accuracy of the information recorded on the sheet. If there is no incoming gaming cashier, a gaming cashier supervisor or the most senior supervisor in the department shall verify by blind count the closing inventory and sign the count sheet in the presence of the outgoing gaming cashier, attesting to accuracy of the information recorded on the sheet. At the completion of each shift, the cashier count sheets shall be forwarded to the main bank cashier.

(d) If an imprest bank has not been opened for use, a main bank cashier or supervisor shall count and verify the imprest bank and complete a count sheet at least once every seven days.

(e) At the opening of every shift, in addition to the imprest funds normally maintained by gaming cashiers, each facility manager shall have in the cage a reserve cash bankroll sufficient to pay winning patrons.

(f) The cage, any satellite cage, and the main bank shall be physically segregated by personnel and function as follows:

(1) Gaming cashiers shall operate with individual imprest inventories of cash, and their functions shall include the following:

(A) The receipt of cash and cash equivalents from patrons in exchange for cash according to K.A.R. 112-104-12;

(B) the receipt of personal checks for gaming and non-gaming purposes from patrons in exchange for cash, subject to any limitations on amount required by the commission according to K.A.R. 112-104-10;

(C) the receipt of cash, cash equivalents, checks issued by the facility manager, annuity jackpot checks, wire transfers, and cashless fund transfers from patrons to establish a patron deposit according to K.A.R. 112-104-13;

(D) the receipt of patron deposit forms from patrons in exchange for cash according to K.A.R. 112-104-13;

(E) the preparation of jackpot payout slips in accordance with this regulation and K.A.R. 112-104-21;

(F) the receipt of gaming tickets from patrons or from authorized employees who received gaming tickets as gratuities, in exchange for cash; and

(G) the issuance of cash to automated bill breaker, gaming ticket, coupon redemption, and jackpot payout machines in exchange for proper documentation.

(2) The main bank cashier functions shall include the following:

(A) The receipt of cash, cash equivalents, gaming tickets, jackpot payout slips, and personal checks received for gaming and non-gaming purposes from gaming cashiers in exchange for cash;

(B) the receipt of cash from the count rooms;

(C) the receipt of personal checks accepted for

gaming and non-gaming purposes from gaming cashiers for deposit;

(D) the preparation of the overall cage reconciliation and accounting records. All transactions that are processed through the main bank shall be summarized on a vault accountability form and be supported by documentation according to the following:

(i) At the end of each shift, the outgoing main bank cashier shall count the inventory and record the inventory detail and the total inventory on a vault accountability form. The main bank cashier shall also record the amount of each type of accountability transaction, the opening balance, the closing balance, and any variance between the counted inventory and the closing balance. If there is more than one main bank cashier working during a shift, each cashier shall participate in the incoming count and the outgoing count for that shift; and

(ii) a blind count of the inventory shall be performed by the incoming main bank cashier. The incoming main bank cashier shall sign the completed vault accountability form attesting to the accuracy of the information in the presence of the outgoing main bank cashier. If there is no incoming main bank cashier, a cage supervisor shall conduct the blind count and verification and sign the completed vault accountability form in the presence of the outgoing main bank cashier;

(E) the preparation of the daily bank deposit for cash, cash equivalents, and personal checks;

(F) the issuance, receipt, and reconciliation of imprest funds used by gaming cashiers, parimutuel tellers, and change persons;

(G) the collection of documentation that is required by these regulations to establish the segregation of functions in the cage;

(H) the responsibility for the reserve cash bankroll;

(I) the receipt of unsecured currency and unsecured gaming tickets and preparation of related reports; and

(J) the issuance, receipt, and reconciliation of imprest funds used by any redemption kiosk, which shall be done according to the following requirements:

(i) Redemption kiosks shall be maintained on an imprest basis on the main bank accountability form and shall be counted down and reconciled within 24 hours of adding funds to or removing funds from the redemption kiosk. In order to reconcile the redemption kiosk, all currency, tickets, and coupons remaining in the redemption kiosk shall be removed, counted, and compared to the redemption kiosk report that lists the amount of each item that should have been in the redemption kiosk. Each redemption kiosk shall be reconciled at least once every three days regardless of activity at that kiosk. If redemption kiosks are used for any other type of transaction, including providing automated teller machine functions, corresponding reports shall be printed and reconciled during the kiosk reconciliation. The internal controls shall include a record of the name of each person who performs the count and reconciliation. All kiosk counts shall be performed under dedicated surveillance coverage in the count room or main bank and shall be documented. The reconciliation of the redemption kiosk shall be documented and signed by the employee performing the reconciliation;

(ii) the main bank shall have a designated area for the preparation of currency cassettes and a designated storage area for cassettes that contain cash. Both locations shall be described in the internal controls. The designated preparation area shall have overhead, dedicated surveillance coverage. The storage area of the cassettes shall have dedicated surveillance coverage to record the storage and retrieval of currency cassettes. The storage area shall be locked when cassettes are not being removed or added to the area. Empty currency cassettes shall not be stored with the currency cassettes containing cash;

(iii) all currency cassettes used in kiosks shall be filled with currency by a main bank cashier. The amount of currency to be placed in the cassettes shall be counted by the main bank cashier and placed in the cassette. A prenumbered tamper-resistant seal that secures the cash in each cassette shall be immediately placed on the cassette. The type of seal shall be submitted to the commission director of security for prior approval. All cassettes that contain currency and are not immediately placed in a kiosk shall be stored in the designated storage area;

(iv) a currency cassette log shall be maintained and updated each time currency cassettes are sealed. The log shall contain the following information: date, time, seal number, cassette number, amount of currency in the cassette, denomination of currency in the cassette, and signature of the main bank cashier who prepared the cassette;

(v) each cassette shall be labeled with the required dollar denomination for that cassette and

a unique cassette number. The label shall be clearly visible to surveillance during the fill process;

(vi) each individual transporting currency cassettes outside of the cage shall be escorted by security;

(vii) only cassettes properly prepared and sealed in the main bank shall be used to place currency in the redemption kiosk. A seal may be broken before the count and reconciliation only if there is a machine malfunction. If a seal must be broken before the redemption kiosk is reconciled due to a malfunction, the cassette shall be brought to the main bank with security escort before the seal is broken. The seal shall be broken under surveillance coverage. Once the cassette is repaired, the funds shall be recounted and resealed by the main bank cashier;

(viii) the individual who removed the seal on the cassette in order to perform the count of the cassettes shall record the seal number of all cassettes used in the kiosk since the last reconciliation on the count and reconciliation documentation;

(ix) the individual who reconciles the redemption kiosk shall not be one of the individuals who initially prepared the currency in any of the cassettes used in the kiosk since the last reconciliation; and

(x) if cassettes need to be replaced during the gaming day before the redemption kiosk is dropped and reconciled, the individual cassettes that are replaced and that still contain currency shall be locked in a storage area designated in the internal controls. This storage area shall be separate from the storage area of filled cassettes.

(g)(1) Whenever a gaming cashier, parimutuel teller, or change person exchanges funds with the main bank cashier, the cashier shall prepare a two-part even exchange form. The form shall include the following, at a minimum:

(A) The date of preparation;

(B) the window location;

(C) a designation of which items are being sent to or received from the main bank;

(D) the type of items exchanged;

(E) the total of the items being exchanged;

(F) the signature of the cashier preparing the form requesting the exchange; and

(G) the signature of the cashier completing the exchange.

(2) If the exchange is not physically between a gaming cashier, parimutuel teller, or change person and the main bank, the exchange shall be transported by a representative of the security department, who shall sign the form upon receipt of the items to be transported.

(h) Overages and shortages per employee shall be documented on a cage or bank variance slip, which shall be signed by the responsible cashier and that person's supervisor. Each variance in excess of $50 shall be investigated and the result of the investigation shall be documented. If there is a variance of $500 or more, the commission agent on duty shall be informed within 24 hours. Repeated shortages by an employee totaling $500 or more over any seven-day period shall be reported to the commission agent on duty within 24 hours.

(i) All cashier's paperwork shall include the date, shift of preparation, and location for which the paperwork was prepared.

(j) At the end of each gaming day, the cashiers' original bank count sheet, vault accountability form, and related documentation shall be forwarded to the accounting department for verification of agreement of the opening and closing inventories, agreement of amounts on the sheets with other forms, records, and documents required by this article, and recording transactions.

(k) Each facility manager shall establish a training program for gaming cashiers and main bank cashiers, which shall include written standard operating procedures. No cashier shall be allowed to individually perform gaming cashier duties until the cashier has completed at least 40 hours of training. No cashier shall be allowed to individually perform main bank cashier duties until the cashier has completed at least 80 hours of training.

(l) Each gaming facility employee shall clear that individual's hands in view of all persons in the immediate area and surveillance immediately after the handling of any currency or gaming chips within the cage, main bank, or count room.

(m) No employee shall be permitted to carry a pocketbook or other personal container into any cashiering area unless the container is transparent. All trash shall be placed in a transparent container or bag and inspected by security when removed from the cashiering area. (Authorized by and implementing K.S.A. 2009 Supp. 74-8772; effective Sept. 26, 2008; amended April 1, 2011.)

**112-104-32. Unclaimed winnings.** (a) Each facility manager's internal control system shall include internal controls for unclaimed winnings. The internal controls shall be submitted to

and approved by the commission according to K.A.R. 112-104-1.

(b) All winnings, whether property or cash, that are due and payable to a known patron and remain unclaimed shall be held in safekeeping for the benefit of the known patron.

(c)(1) If winnings have not been provided to a known patron, the facility manager shall prepare a winner receipt form. The form shall be a two-part, serially prenumbered form and shall contain the following:

(A) The name and address of the patron;

(B) a unique identifying number obtained from a United States government-issued photo identification card or a government-issued passport;

(C) the date and time the winning occurred; and

(D) the LFG upon which the win occurred, including the following:

(i) The LFG asset number;

(ii) the location; and

(iii) the winning combination.

(2) The two-part receipt form shall be distributed as follows:

(A) The preparer of the original shall send the original to the gaming cashier responsible for maintaining safekeeping balances.

(B) The duplicate shall be presented to the winning patron, who shall be required to present the duplicate receipt before being paid the winning amount due.

(d) Each facility manager shall be required to use its best efforts to deliver the winnings to the patron. The facility manager shall maintain documentation of all efforts to provide the patron with the unclaimed winnings. Documentation shall consist of letters of correspondence or notation of telephone calls or other means of communication used in the attempt to provide the winnings to the patron.

(e) Each winning patron shall collect that patron's winnings by presenting to a gaming cashier the duplicate copy of the winner receipt form signed in the presence of the gaming cashier. The gaming cashier shall obtain the original winner receipt form from safekeeping and compare the signature on the original to the signature on the duplicate receipt form. The gaming cashier shall sign the original winner receipt form, attesting that the signatures on the original and duplicate receipt forms agree, and then distribute the winnings to the patron.

(f) The gaming cashier shall retain the original receipt form as evidence of the disbursement from the gaming cashier's funds. The duplicate receipt form shall be placed in a box for distribution to accounting by security or someone who did not participate in the transaction.

(g) Undistributed winnings of any known patron held in safekeeping for 12 months or longer shall revert to the Kansas state treasurer's office in accordance with unclaimed property laws after reasonable efforts to distribute the winnings to the known patron, as determined from review of the documentation maintained.

(h)(1) If the identity of any patron who wins more than $1,200 is not known, the facility manager shall be required to make a good faith effort to learn the identity of the patron. If the identity of the patron is determined, the facility manager shall comply with subsections (b) through (g).

(2) If a patron's identity cannot be determined after 180 days from the time the patron's winnings were payable, the winnings shall be distributed according to the formula contained in the gaming facility's management contract. (Authorized by and implementing K.S.A. 2009 Supp. 74-8772; effective Sept. 26, 2008; amended April 1, 2011.)

**112-104-34. Physical key controls; automated key controls.** (a) "Sensitive keys" shall mean those unlocking devices designated by the Kansas lottery, a facility manager, or the commission as important to preserving the security of the facility manager's business. Each facility manager shall control the storage, duplication, custody, issuance, and return of sensitive keys. The sensitive key box may be stored in each facility manager's accounting department. At a minimum, the following keys shall be deemed sensitive keys:

(1) The EGM belly glass key;

(2) the tip box key, sometimes called a "toke box" key; and

(3) the accounting or audit box key.

(b) Sensitive keys may be further designated as "critical." Critical keys shall mean those unlocking devices that shall be maintained in a dual-lock box. If a critical key is lost or becomes missing, all locks that the key fits shall be changed within 24 hours. At a minimum, the following keys shall be deemed critical keys:

(1) The EGM central processing unit key;

(2) the EGM main door key;

(3) the EGM drop door key;

(4) the bill validator door and box release key;

(5) the bill validator contents key;

(6) the jackpot or EGM reimpressment kiosk keys;

(7) the self-redemption or bill breaker kiosk keys;

(8) the change cart key;

(9) the key for each table game's drop box;

(10) the key for the table game drop box release;

(11) the keys for the bill validator and table drop storage cart;

(12) the key for each table game's chip bank cover;

(13) the key for each table game's chip tray;

(14) the key for each progressive game's controller;

(15) the key for each progressive game's reset switch;

(16) the keys for the reserve chip storage;

(17) the keys for the card and dice storage area;

(18) the keys for the secondary chip storage area;

(19) the access door key to any cage, EGM bank, or redemption booth;

(20) the window key to any cage, EGM bank, or redemption booth;

(21) the keys to the vault;

(22) the keys to the soft count room; and

(23) any key not listed in this subsection that controls access to any cash or chip storage area.

(c) If a facility manager chooses to use rings to maintain its keys, each key on the ring shall be individually identified on a key access list.

(d) Each facility manager's internal control system shall include the following information:

(1) The location of each sensitive key and critical key box;

(2) each employee or contract job title that is authorized to access the sensitive key or critical key boxes;

(3) the procedure for issuing and controlling the keys for the sensitive key or critical key boxes;

(4) the sensitive key or critical key names, location, and persons authorized to sign out each sensitive key or critical key;

(5) the location and custodian of each duplicate sensitive key; and

(6) continuous surveillance coverage of each key box.

(e) If a facility manager chooses to use an automated key control system, the facility manager's internal control system shall include the following information:

(1) A description of the automated system and its configuration, including how access is controlled;

(2) the system's ability to provide scheduled and on-demand reports for a complete audit trail of all access, including the following:

(A) The identity of the key box;

(B) the identity of the employee;

(C) the identity of the keys;

(D) the date and time a key was removed;

(E) the date and time a key was returned;

(F) any unauthorized attempts to access the key box; and

(G) all entries, changes, or deletions in the system and the name of the employee performing the entry, change, or deletion;

(3) the employee position that is in charge of any automated key control system;

(4) each employee position that is authorized to enter, modify, and delete any keys;

(5) each employee position that is authorized to access the system;

(6) details about the alarms being used to signal for the following events:

(A) Overdue keys;

(B) open key box doors;

(C) unauthorized attempts to access; and

(D) any other unusual activities;

(7) any system override procedures; and

(8) a procedure for the notification of a commission security agent on duty if a partial or complete system failure occurs.

(f) Each individual authorized to access keys in the automated system shall have the authorization noted in the employee's personnel file.

(g) Each change to the list of authorized employees that have access to the automated keys shall be updated within 72 hours of the change. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Oct. 16, 2009.)

**112-104-35. Key control procedures.** (a) Each facility manager's internal controls for keys shall include a key box custodian. Each custodian of a sensitive key box or critical key box shall be issued a sensitive key or critical key access list that notes the authorized employee positions that may access each sensitive key or critical key.

(b) If two keys are required to access a controlled area, then the keys shall be issued to different employees and each key shall be individually signed out of the key access list.

(c) Each key that requires issuance under security or management escort shall be identified as

such in the sensitive key or critical key access list. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Oct. 16, 2009.)

**112-104-36. Key access list.** (a) Each facility manager shall maintain a current and accurate key access list for each sensitive key or critical key. Each facility manager shall provide a copy of the key access list to the commission's director of security. The key access list shall include the following details:

(1) The name of the key;

(2) the storage location of the key;

(3) the name of the custodian of the key;

(4) the quantity of the keys;

(5) the title of each employee authorized to remove the key; and

(6) any escort requirements and specific limitations to key access.

(b) The custodian of duplicate keys shall maintain a key access list documenting the following information:

(1) The name of the keys;

(2) the identification number assigned to the key;

(3) the employee positions that are authorized to remove a key; and

(4) any escort requirements for each key's use.

(c) The internal control system for keys shall indicate which employees have the authority to make changes, deletions, or additions to the sensitive key and critical key access lists. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Oct. 16, 2009.)

**112-104-37. Key log.** (a) Any sensitive key or critical key may be issued only after completion of a sensitive key or critical key log. The key log shall include the following information:

(1) The date the key was issued or returned;

(2) the key number;

(3) the individual or automated key box issuing the key;

(4) the individual receiving the key;

(5) the time the key was signed out or removed;

(6) the time the key was signed in;

(7) the individual returning the key; and

(8) the individual or automated key box receiving the returned key.

(b) Each individual who signs out a sensitive key or a critical key shall maintain custody of the key until the key is returned to the sensitive key or the critical key box. Keys may be passed only to count team leads and distributed to other count team members during bill validator drops and EGM drops. In the event of an emergency, illness, or injury rendering the individual incapable of returning the key, a supervisor may return the key with a notation on the sensitive key log.

(c) Upon completion, sensitive key or critical key logs shall be forwarded at intervals specified by the facility manager to the accounting or internal audit department, where the logs shall be reviewed and retained. If any discrepancies are found in the key logs, the security or internal auditing department shall begin an investigation and document the discrepancy.

(d) Each facility manager shall maintain a duplicate key inventory log documenting the current issuance, receipt, and inventory of all duplicate sensitive keys. The duplicate key inventory log shall include the following information:

(1) The date and time of the key issuance, receipt, or inventory;

(2) each key name;

(3) each key number;

(4) the number of keys in beginning inventory;

(5) the number of keys added or removed;

(6) the number of keys in ending inventory;

(7) the reason for adding or removing keys; and

(8) the signatures of the two individuals accessing the box. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Oct. 16, 2009.)

**112-104-38. Broken, lost, or missing keys.** (a) The internal control system shall include procedures for the following if a critical key or sensitive key is broken:

(1) The name of the employee required to receive and replace the broken key;

(2) disposition of the broken key; and

(3) notification to a commission agent on duty.

(b) An inventory of duplicate keys shall be maintained in such quantity that there is always at least one duplicate key in inventory for each critical key or sensitive key.

(c) The internal control system shall include procedures to be followed when a sensitive key or critical key is lost, missing, or taken from the premises.

(d) The internal control system shall include procedures for investigating and reporting missing critical keys or sensitive keys. The commission agent on duty shall be notified upon discovery that any sensitive keys or critical keys are missing. (Au-

thorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Oct. 16, 2009.)

**112-104-39. Corrections to forms.** (a) Monetary corrections to a figure originally recorded on a form may be made only in ink by performing the following:

(1) Crossing out the error;

(2) entering the correct figure; and

(3) obtaining the initials of the employee making the change and the initials of the employee's supervisor.

(b) Each nonmonetary correction to a form shall be initialed by the employee making the correction.

(c) Each form that is not prenumbered shall be maintained and controlled by the applicable department manager. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Oct. 16, 2009.)

**112-104-40. Manual form dispensers.** (a) Each facility manager's accounting or security department shall be responsible for loading and unloading any locked manual form dispenser. Each form unloaded from the dispenser shall be delivered directly to the accounting department.

(b) If the manual form dispenser jams, an employee from the accounting department or security department shall clear the jam and relock the manual form dispenser.

(c) If a facility manager uses a manual form dispenser, then the dispenser shall be configured to dispense a single form at a time, with undispensed forms kept in continuous order.

(d) Manual form dispensers shall be used to control the following manual forms:

(1) Table fill slips;

(2) table credit slips; and

(3) EGM hand-paid jackpot payout forms. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Oct. 16, 2009.)

**112-104-41. Forms; description.** (a) Each facility manager shall maintain a supply of all forms listed in subsection (b) and any additional forms that the manager deems necessary to manage the facility. Each facility manager's internal control submission shall include an index of all forms that the manager may use.

(b) The following forms shall be a part of each facility manager's minimum internal controls:

(1) Inventory ledgers for the following:

(A) Date of receipt, count, or issuance of cards or dice;

(B) quantity of cards and dice received or issued; and

(C) balance of cards or dice inventory on hand;

(2) a log for card or dice pickup and either cancellation or destruction, including the following details:

(A) The date of the form's preparation;

(B) the date and time of cancellation or destruction of the cards or dice;

(C) the quantity of cards and dice picked up, canceled, or destroyed; and

(D) all required signatures;

(3) a card or dice storage log for the pit area, including the following details:

(A) The date of each entry on the log;

(B) the quantity and description of all cards and dice placed in the compartment;

(C) the quantity and description of all cards and dice removed from the compartment;

(D) the current number of each design and color combination of cards and dice; and

(E) each daily verification of the current inventory;

(4) a cashier's cage or vault count sheet, including the following details:

(A) The date and time of completion of the count sheet;

(B) the location of the cashier's cage;

(C) the amount of each type and denomination of funds;

(D) the actual count total or closing inventory;

(E) the accountability total;

(F) the amount of overages or shortages; and

(G) each signature required by these regulations for the count sheet;

(5) a cashier's cage multiple-transaction log, including the following details:

(A) The location of the cashier's cage or bank where the cash transactions occurred;

(B) the date of the multiple-transaction log;

(C) the full name of any patron making multiple transactions, if provided by the patron, or a description to help identify the patron if the patron refuses to provide a name. Each description shall include weight, height, hair color, and any other observed distinguishing features;

(D) the total cash transaction amount; and

(E) the transaction type. The transaction types shall be the following:

(i) Cash-outs, including cashing personal checks and travelers checks;

(ii) chip redemptions. The gaming location shall be included in the comments column;

(iii) deposits for safekeeping;

(iv) deposits out when withdrawing a safekeeping deposit; and

(v) any other transactions not listed in paragraphs (b)(5)(E)(i) through (iv), including each cash transaction payment of EGM jackpots and each exchange of currency for currency;

(F) the time of the transaction;

(G) the signature and commission license number of the employee logging the transaction;

(H) any observed information that would be useful in identifying the patron or explaining the transaction;

(I) the supervisor's signature. The supervisor's signature shall acknowledge the following items:

(i) That the supervisor has reviewed the log and, to the best of the supervisor's knowledge, all cash transactions of $500 or more have been properly recorded; and

(ii) that all currency transaction reports have been properly completed for all single cash transactions and series of multiple cash transactions in excess of $10,000; and

(J) the page number and total pages of the log for the gaming day;

(6) a chip inventory ledger, including the following details:

(A) The date of receipt, issuance, and destruction;

(B) the number of each denomination of chips received, issued, or destroyed;

(C) the dollar amount of each denomination of value chips, as defined in K.A.R. 112-108-1, received, issued, or destroyed;

(D) the number and description of non-value chips received, issued, or destroyed;

(E) any required signatures; and

(F) the identification of any primary chips held in reserve with the word "reserve";

(7) a safekeeping deposit or withdrawal form, including the following details:

(A) Preprinted numbering on all copies;

(B) the name and signature of the patron making the deposit;

(C) the date of each deposit or withdrawal;

(D) the amount of each deposit or withdrawal;

(E) the type of deposit or withdrawal;

(F) the reason for the deposit or withdrawal; and

(G) any required signatures;

(8) a duplicate key inventory log, including the following details:

(A) The date and time of the log's completion;

(B) the key name;

(C) the key number;

(D) the number of keys in beginning inventory;

(E) the number of keys added or removed;

(F) the number of keys in ending inventory;

(G) the reason for adding or removing keys; and

(H) the required signatures of the two individuals accessing the box;

(9) a tips and gratuity deposit form, including the following details:

(A) The date of completion of the form;

(B) the number of chips listed by denomination;

(C) the total number of all denominations; and

(D) all required signatures;

(10) a temporary bank voucher, including the following details:

(A) The date and time of the voucher's completion;

(B) the location of the temporary bank;

(C) the amount of funds issued;

(D) the signature from the main bank cashier who is issuing the funds;

(E) the signature of the individual receiving funds;

(F) the signature of the individual returning funds; and

(G) the signature of the main bank cashier receiving returned funds;

(11) a duplication of any critical program storage media log. "Critical program storage media" and "CPSM" shall mean any media storage device containing data, files, or programs, as determined by the commission, that are capable of affecting the integrity of gaming. The duplicate CPSM log shall include the following details:

(A) The date of completion of the form;

(B) the manufacturer of the chip;

(C) the program number;

(D) any personnel involved; and

(E) the disposition of any permanently removed CPSM;

(12) an EGM drop compartment sweeps log, including the following details:

(A) Each EGM number and location;

(B) the date and time of the drop;

(C) the signature of each employee performing the sweep; and

(D) the signature of the supervisor overseeing the drop;

(13) an EGM drop or win report, including the following details:

(A) The gaming date;

(B) the amount wrapped by denomination and totaled;

(C) the dollar value difference by denomination;

(D) the percentage variance difference by denomination;

(E) the total jackpot payouts;

(F) the total drop by denomination;

(G) the total drop of all denominations;

(H) the net win or loss by denomination and total; and

(I) all required signatures;

(14) an EGM entry access log, including the following details:

(A) The EGM number and location;

(B) the date and time of the EGM access;

(C) the reason for entry; and

(D) all required signatures;

(15) an EGM hand-paid jackpot form, including the following details:

(A) The date and time of completion of the form;

(B) an EGM number that required hand payment and the location and denomination of the payment;

(C) the amount of jackpot;

(D) the reel symbols on each EGM jackpot requiring hand payment; and

(E) all required signatures;

(16) an EGM sweeps log, including the following details:

(A) Each EGM number and location;

(B) the date and time of the EGM sweep;

(C) the signature of each employee performing the sweep; and

(D) the signature of the supervisor overseeing the sweep;

(17) an even exchange slip, including the following details:

(A) The date, time, and location of the exchange;

(B) the amounts to be exchanged by type;

(C) the amounts to be changed for;

(D) all required signatures; and

(E) the total amount exchanged;

(18) each cage or bank variance slip, including the following details:

(A) The date and time of completion of the slip;

(B) the location of the bank;

(C) the amount of overage or shortage; and

(D) all required signatures;

(19) ingress or egress logs for the count rooms, surveillance rooms, and cages, including the following details:

(A) The date and time of each ingress or egress;

(B) the printed name of each person entering or leaving;

(C) the room entered or left;

(D) the reason for entry; and

(E) all required signatures;

(20) a main bank or vault accountability log, including the following details:

(A) The date and shift that the accounting was made;

(B) the opening balance;

(C) the amount of each type of accountability transaction;

(D) detail of the total main bank or vault inventory, including the inventory of the following:

(i) Currency;

(ii) coin;

(iii) chips;

(iv) safekeeping deposits; and

(v) any unclaimed property account;

(E) the total main bank or vault inventory;

(F) all overages and shortages;

(G) the closing balance; and

(H) all required signatures;

(21) a master gaming report, including the following details:

(A) The gaming date;

(B) the game and table number;

(C) the opening table inventory slip;

(D) the total fill slips;

(E) the total credit slips;

(F) the closing table inventory slip;

(G) the total drop per table;

(H) the overall totals by game;

(I) the total win or loss; and

(J) all required signatures;

(22) a RAM clearing slip, including the following details:

(A) The date and time that the RAM was cleared;

(B) an EGM number, the location, and the number of credits played before the RAM clearing occurred;

(C) the current reel positions or video displays;

(D) the previous two reel positions or video displays;

(E) the actual meter readings of the internal hard and soft meters;

(F) the progressive jackpot display, if linked;

(G) the reason for RAM clear; and

(H) all required signatures;

(23) the returned check log, including the following details:

(A) The name and address of each person who presented the check that was subsequently returned;

(B) the date of the check;

(C) the amount of the check;

(D) the check number;

(E) the date the facility manager received notification from a financial institution that the check was not accepted; and

(F) the dates and amounts of any payments received on the check after being returned by a financial institution;

(24) a sensitive key log, including the following:

(A) The date the key activity occurred;

(B) the key number;

(C) the individual or automated key box issuing the key;

(D) the name of the individual receiving the key;

(E) the time the key was signed out;

(F) the time the key was signed in;

(G) the individual returning the key; and

(H) the individual or automated key box receiving the returned key;

(25) a signature authorization list, including the following details for each employee listed:

(A) The employee's hire date;

(B) the employee's name;

(C) the department;

(D) the position;

(E) the license number;

(F) the employee's initials as on a signature card; and

(G) the employee's signature, with at least the first initial and last name;

(26) a surveillance incident report, including the following details:

(A) The date and incident report number;

(B) the time and location of the incident;

(C) the name and address of each witness and subject involved in the incident, if known;

(D) a detailed narrative of the incident;

(E) an identification of any videotape covering the incident;

(F) the final disposition of the incident; and

(G) all required signatures;

(27) a surveillance shift log, including the following details:

(A) The date that the entry is being made;

(B) the time of and duration, description, and location of all unusual occurrences observed;

(C) a listing of any surveillance issues, including the following:

(i) Equipment malfunctions related to other logged events or activities;

(ii) completed tapes;

(iii) still photograph requests; and

(D) required signatures;

(28) a surveillance tape release log, including the following details:

(A) The tape number;

(B) the date and time of release;

(C) the printed name, department, or agency;

(D) a notation indicating whether the tape is a duplicate or original;

(E) an authorization notation;

(F) an "issued by and to" notation; and

(G) all required signatures;

(29) a surveillance tape retention log, including the following details:

(A) The date and time of the tape retention activity;

(B) the tape number being retained;

(C) a description of the activity recorded and the recording mode; and

(D) all required signatures;

(30) a table credit slip, if applicable, including the following details:

(A) The date, pit, game or table number, and time of the table credit activity;

(B) the amount of each denomination of chips to be credited;

(C) the total amount of all denominations to be credited; and

(D) all required signatures;

(31) a table fill slip, including the following details:

(A) The date, pit, game or table number, and time of the table fill activity;

(B) the amount of each denomination of chips to be distributed;

(C) the total amount of all denominations to be distributed; and

(D) all required signatures;

(32) a table inventory slip, including the following details:

(A) The date and shift;

(B) the game and table number;
(C) the total value of each denomination of chips remaining at the table;
(D) the total value of all denominations; and
(E) all required signatures;
(33) a table soft count slip or currency counter machine tape, including the following details:
(A) The date of the soft count or printing of the machine tape;
(B) the table game and number;
(C) the box contents by denomination;
(D) the total of all denominations; and
(E) all required signatures;
(34) a wide-area progressive secondary jackpot slip, including the following details:
(A) The date and time of the wide-area progressive secondary jackpot;
(B) an EGM number, location, and denomination;
(C) the amount of the jackpot in alpha and numeric description;
(D) the reel symbols and number of credits played;
(E) all required signatures; and
(F) the game type;
(35) a security incident report, including the following details:
(A) The incident report number;
(B) the date and time of the incident;
(C) the location of the incident;
(D) the type of incident;
(E) the names and addresses of any witnesses and subjects involved in the incident, if known;
(F) a detailed narrative of the incident;
(G) the identification of videotape covering the incident, if applicable; and
(H) all required signatures;
(36) a security incident log, including the following details:
(A) The date of the daily log;
(B) the time of the incident;
(C) the incident report number;
(D) the name of the reporting security department employee and the employee's commission license number; and
(E) the summary of the incident;
(37) a visitor or vendor log, including the following details:
(A) The date of the visitor's or vendor's visit;
(B) the printed name;
(C) the company;
(D) the time in and time out;
(E) the type of badge and the badge number;
(F) the reason for entry; and
(G) all required signatures;
(38) a key access list, including the following details:
(A) The name of the key;
(B) the location of the key;
(C) the custodian of the key;
(D) the quantity of the keys; and
(E) the job titles authorized to sign out the key and, if applicable, any escort requirements and specific limitations;
(39) a table games variance slip, including the following details:
(A) The gaming date;
(B) the game or table number;
(C) the shift;
(D) a description of the discrepancy found; and
(E) all required signatures;
(40) an inventory log of prenumbered forms, including the following details:
(A) The name of the prenumbered form;
(B) the date received or issued;
(C) the quantity received or issued;
(D) the number sequence of forms received or issued;
(E) the name of each department to which forms were issued; and
(F) all required signatures and commission license numbers;
(41) a gift log, including the following details:
(A) The name of the gift recipient;
(B) the gift donor;
(C) a description and value of the gift; and
(D) the date the gift was received;
(42) a safekeeping log, including the following details:
(A) The date of deposit or withdrawal;
(B) the name of the patron;
(C) the dollar amount of deposit or withdrawal;
(D) the type of deposit or withdrawal; and
(E) the total balance of all deposits;
(43) a card or dice discrepancy report, including the following details:
(A) The date and time of the noted discrepancy;
(B) the location;
(C) a description of the discrepancy found; and
(D) all required signatures;
(44) a remote access log, including the following details:
(A) The access start date and time;
(B) the access end date and time;
(C) the reason for the remote access; and

(D) the person making access;

(45) a personnel access list, including the following details:

(A) The employee name;

(B) the license number; and

(C) all authorized functions the employee may perform;

(46) a redemption log, including the following details:

(A) The date the claim is being made;

(B) the dollar value of each item received by mail;

(C) the check number;

(D) the patron's name and address; and

(E) the signature of the employee performing the transaction;

(47) a currency cassette log, including the following details:

(A) The date of the currency cassette log;

(B) the time of the currency cassette log;

(C) the tamper-resistant seal number;

(D) the unique cassette number;

(E) the amount of cash in the cassette;

(F) the denomination of currency in the cassette; and

(G) the signature of the main bank cashier who prepared the cassette; and

(48) a table games jackpot slip, including the following details:

(A) The date of the table game jackpot;

(B) the time of the table game jackpot;

(C) the amount of winnings in alpha and numeric description;

(D) the table game number;

(E) the type of jackpot;

(F) the player's name;

(G) the signature of the cashier;

(H) the signature of the dealer;

(I) the signature of the table games supervisor; and

(J) the signature of the security officer escorting the funds; and

(49) a meter-reading comparison report, including the following details:

(A) The date of the meter-reading comparison report;

(B) the asset number;

(C) the beginning and ending credits played;

(D) the beginning and ending credits paid;

(E) the beginning and ending amount-to-drop, if applicable;

(F) the beginning and ending jackpots paid;

(G) the difference between the beginning and ending amount for all meters;

(H) the variance between the meters, if any; and

(I) the signature of an accounting department employee. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Oct. 16, 2009.)

**112-104-42. Purchasing.** (a) Each facility manager's internal control system shall include internal controls for purchasing.

(b) The internal controls shall indicate the amount of a single transaction or series of related transactions that an individual or a group of employees, owners, or directors may approve.

(c) The internal controls shall include the following information for both manual and computerized systems:

(1) Steps for initiating purchasing procedures;

(2) detailed procedures for the preparation and distribution of purchase orders, including the following:

(A) The amounts that can be authorized by various positions or levels of personnel;

(B) the sequence of required signatures and distribution of each part of the purchase order;

(C) a statement that purchase orders shall be issued only for a specific dollar amount. Each change to an issued purchase order shall be returned to the purchasing department to initiate an amended purchase order and obtain additional approvals, if necessary; and

(D) the maintenance of a purchase order log;

(3) detailed procedures for issuing and approving blanket purchase orders for purchases of goods or services, including the following:

(A) The competitive bid requirements for blanket purchase orders;

(B) a statement that each blanket purchase order shall include a maximum amount, the effective date, and the expiration date; and

(C) controlling, documenting, and monitoring blanket purchase orders;

(4) requirements for competitive bidding process, including the following:

(A) The number of bids required. A minimum of two bids shall be required;

(B) a statement that the purchasing department shall have the final responsibility for obtaining competitive bids. The originating departments may provide the amount budgeted for the purchase, cost limitations, and vendor recommendations;

(C) the steps for documenting bids and the minimum amount required for written bids;

(D) a statement that all competitive bids received shall be confidential and shall not be disclosed to any other vendors; and

(E) criteria for qualifying approved vendors of goods or services based on "fair market value," considering factors including quality, service, and price;

(5) detailed procedures and approval process for emergency purchases, including the following:

(A) A statement that emergency purchases shall occur after normal business hours, on weekends or holidays or, in case of immediate need of goods or services, in response to unusual occurrences during normal business hours;

(B) a statement that approvals may be verbal until purchasing documentation is prepared. Purchasing documentation shall be finalized within five days;

(C) a statement on the purchase order documenting the reason for the emergency purchase; and

(D) the maintenance of an emergency purchase order log;

(6) detailed procedures to ensure that vendor files contain all company-required forms, documentation, and approvals;

(7) a prohibition against the purchase or lease of gaming equipment or supplies from other than a licensed supplier;

(8) detailed procedures for contracts, including the following:

(A) The management levels and the contract amounts that managers may negotiate and execute;

(B) a statement that all contracts shall be subject to the competitive bid process;

(C) the terms of all contracts;

(D) the approval process for payments made against an executed contract; and

(E) the distribution and filing of executed contracts;

(9) if applicable, detailed procedures for the use of purchasing cards, including the following:

(A) Authorized position titles to be purchasing card holders and their spending limits, both single-transaction and monthly;

(B) items that may be purchased with the purchasing card;

(C) use of the purchasing card with approved vendors only, if applicable;

(D) responsibilities of the holder of the purchasing card, including maintaining receipts and verifying monthly statements;

(E) responsibilities of the manager of the purchasing card holder, including approving monthly statements;

(F) disputing fraudulent or incorrect charges;

(G) payment to vendors for purchasing card charges; and

(H) the name of the department or position, as stated in the facility manager's internal controls, that is responsible for overseeing the purchasing card process;

(10) detailed procedures for the receipt of all goods received by an employee independent of the purchasing department as specified in the facility manager's internal controls, including the following:

(A) The verification process for the receipt of goods, including damaged goods, partial shipments, and overshipments;

(B) the distribution of all receiving documentation; and

(C) the maintenance of receiving documentation; and

(11) payment of vendor invoices, including procedures for the following:

(A) Each time the invoice amount disagrees with the purchase documentation;

(B) processing non-invoice payments; and

(C) the approval process for the utilization of a check request form, if applicable.

(d) Related party transactions, either oral or written, shall meet the minimum internal control standards in this regulation. In addition, the internal controls shall require the following:

(1) Each related party transaction or series of related party transactions reasonably anticipated to exceed $50,000 annually shall be subject to approval of the board of directors or owners of the company.

(2) An annual report of related party contracts or transactions shall be prepared and submitted to the board of directors or owners and the executive director, listing all related party transactions or group of like transactions occurring during the year. This report shall be due at the end of the third month following each calendar year, be formatted to group related party transactions by key person or entity, and contain the following information:

(A) Name of the related party;

(B) amount of the transaction or payments under the contract;

(C) term of contract;

(D) nature of transaction; and

(E) determination of how the fair market value of the contract, goods, or services was ascertained.

(3) A quarterly report updating new or renewed related party transactions entered into during the quarter shall be prepared and submitted to the board of directors or owners and to the executive director. This report shall also indicate any terminations of related party transactions and shall be due at the end of the second month following the end of the quarter. The annual report shall meet the requirement for the fourth quarterly report. (Authorized by and implementing K.S.A. 2010 Supp. 74-8772; effective Dec. 9, 2011.)

## Article 105.—SECURITY

**112-105-1. Security department.** (a) Each facility manager shall have a security department that is responsible for the security of the gaming facility. The facility manager, through its security department, shall do the following:

(1) Protect the people in the gaming facility;

(2) safeguard the assets within the gaming facility;

(3) protect the patrons, employees, and property from illegal activity;

(4) assist with the enforcement of all applicable laws and regulations;

(5) prevent persons who are under 21 years old from gambling or entering gaming areas;

(6) detain any individual if a commission enforcement agent so requests or if there is reason to believe that the individual is in violation of the law or gaming regulations;

(7) record any unusual occurrences, including suspected illegal activity;

(8) identify and remove any person who is required to be excluded pursuant to article 111 or 112;

(9) report security violations or suspected illegal activity to the commission security staff within 24 hours;

(10) report to the commission's security staff, within 24 hours, any facts that the facility manager has reasonable grounds to believe indicate a violation of law, violation of the facility manager's minimum internal control standards, or violation of regulations committed by any facility manager, including the performance of activities different from those permitted under that person's license or certificate;

(11) notify commission security staff, within 24 hours, of all inquiries made by law enforcement officials and any inquiries made concerning the conduct of a person with a license or certificate; and

(12) establish and maintain procedures for handling the following:

(A) Identification badges;

(B) incident reports;

(C) asset protection and movement on the property;

(D) power or camera failure;

(E) enforcement of the minimum gambling age;

(F) firearms prohibition;

(G) alcoholic beverage control;

(H) disorderly or disruptive patrons;

(I) trespassing;

(J) eviction;

(K) detention; and

(L) lost or found property.

(b) No firearms shall be permitted within a gaming facility except for the following:

(1) Kansas racing and gaming commission enforcement agents;

(2) law enforcement officers who are on duty and within their jurisdiction; or

(3) trained and certified guards employed by an armored car service while on duty and working for a licensed non-gaming supplier company. (Authorized by and implementing K.S.A. 2009 Supp. 74-8772; effective Sept. 26, 2008; amended April 1, 2011.)

**112-105-2. Security plan.** (a) Each applicant for a facility manager certification shall submit a security plan to the commission at least 120 days before the proposed opening of a racetrack gaming facility or lottery gaming facility. The plan shall be consistent with the applicant's contractual obligations with the Kansas lottery.

(b) A facility manager shall not commence gaming operations until its security plan has been approved by the commission.

(c) To be approved, the security plan shall include the following:

(1) An organizational chart showing all positions in the security department;

(2) a description of the duties and responsibilities of each position shown on the organizational chart;

(3) the administrative and operational policies and procedures used in the security department;

(4) a description of the training required for security personnel;

(5) a description of the location of each permanent security station;

(6) the location of each security detention area;

(7) provisions for security staffing; and

(8) the emergency operations plan required by K.A.R. 112-105-3.

(d) All amendments to the security plan shall be submitted to the commission for approval at least 30 days before the date of desired implementation. (Authorized by and implementing K.S.A. 2009 Supp. 74-8772; effective Sept. 26, 2008; amended April 1, 2011.)

**112-105-3. Emergency operations plan.** (a) The director of security in the security department shall maintain an emergency operations plan, including evacuation procedures, to deal with the following:

(1) The discovery or threat of an explosive device on the property;

(2) a fire or fire alarm;

(3) a terrorist threat directed at the property;

(4) severe storms;

(5) the threat or use of an unauthorized firearm or any other weapon, as described in K.S.A. 21-4201 and amendments thereto; and

(6) any other event for which the applicant determines that prior planning is reasonable.

(b) When the applicant establishes the emergency operations plan, the safety of patrons and personnel shall be the first priority.

(c) The director of security shall ensure that the commission's security staff at the facility are notified of any emergency situation at that time.

(d) All amendments to the emergency operations plan shall be submitted to the commission for approval at least 30 days before the desired date of implementation. (Authorized by and implementing K.S.A. 2010 Supp. 74-8772; effective Sept. 26, 2008; amended April 1, 2011.)

## Article 106.—SURVEILLANCE

**112-106-1. Surveillance system.** (a) A facility manager or applicant for a facility manager certification shall have a surveillance system before beginning gaming operations. The surveillance system shall include a digital video system capable of the following:

(1) Instant replay;

(2) recording by any camera in the system; and

(3) allowing simultaneous and uninterrupted recording and playback.

(b) The surveillance system shall include a communication system capable of monitoring the gaming facility, including the security department.

(c) The surveillance system shall be connected to all facility alarm systems.

(d) The surveillance system shall be capable of monitoring the entire property, except private offices and restrooms.

(e) The surveillance system shall include the following features:

(1) Redundant system drives;

(2) a backup power supply capable of operating all surveillance equipment during a power outage. The backup power supply shall be tested on a monthly basis;

(3) backup storage components that will automatically continue or resume recording in the event of failure of any single component of the system, so that the failure of any single component will not result in the loss of any data from the system; and

(4) automatic restart if a power failure occurs.

(f) The digital video system shall meet the following requirements:

(1) Function as a closed network;

(2) have its access limited to the personnel identified in the surveillance system plan;

(3) be equipped to ensure that any transmissions are encrypted, have a firewall at both ends, and are password-protected;

(4) be equipped with a failure notification system that provides an audible and visual notification of any failure in the surveillance system or the digital video recording storage system;

(5) record all images and audit records on a hard drive;

(6) be locked by the manufacturer to do the following:

(A) Disable the erase and reformat functions; and

(B) prevent access to the system data files; and

(7) be equipped with data encryption or watermarking so that surveillance personnel will be capable of demonstrating in a court of law that the video was not altered or manipulated in any way.

(g) The surveillance system shall include cameras dedicated to monitoring the following with sufficient clarity to identify any person:

(1) The entrances to and exits from the gaming facility;

(2) the count rooms;

(3) the vaults;
(4) the surveillance room;
(5) the security rooms;
(6) all cage areas; and
(7) all exterior entrances to and exits from the property.

(h) The surveillance system required by this regulation shall be equipped with light-sensitive cameras with lenses of sufficient magnification to allow the operator to read information on an electronic gaming machine reel strip and credit meter and be capable of clandestine monitoring in detail and from various vantage points, including the following:

(1) The conduct and operation of electronic gaming machines, lottery facility games, and parimutuel wagering;
(2) the conduct and operation of the cashier's cage, satellite cashier's cages, mutuel lines, count rooms, and vault;
(3) the collection and count of the electronic gaming bill validator canisters; and
(4) the movement of cash and any other gaming facility assets.

(i) All cameras shall be equipped with lenses of sufficient magnification capabilities to allow the operator to clearly distinguish the value of the following:

(1) Chips;
(2) dice;
(3) tokens;
(4) playing cards;
(5) positions on the roulette wheel; and
(6) cash and cash equivalents.

(j) The surveillance system shall provide a view of the pit areas and gaming tables capable of clearly identifying the following:

(1) The dealers;
(2) the patrons;
(3) the hands of all participants in a game;
(4) facial views of all participants in a game;
(5) all pit personnel;
(6) the activities of all pit personnel;
(7) the chip trays;
(8) the token holders;
(9) the cash receptacles;
(10) the tip boxes;
(11) the dice;
(12) the shuffle machines;
(13) the card shoes, which are also called dealing boxes;
(14) the playing surface of all gaming tables with sufficient clarity to determine the following:
(A) All wagers;
(B) card values; and
(C) game results; and
(15) roulette tables, which shall be viewed by the surveillance system with color cameras.

(k) The surveillance of the electronic gaming devices shall be capable of providing the following:

(1) A view of all patrons;
(2) a facial view of all patrons with sufficient clarity to allow identification of each patron;
(3) a view of the electronic gaming device with sufficient clarity to observe the result of the game;
(4) an overall view of the areas around the electronic gaming device;
(5) a view of each bill validator with sufficient clarity to determine bill value and the amount of credit obtained; and
(6) a view of the progressive games, including the incrementation of the progressive jackpot.

(l) All surveillance system display screens shall meet all of the following requirements:

(1) Be equipped with a date and time generator synchronized to a central clock that meets the following requirements:
(A) Is displayed on any of the surveillance system display screens; and
(B) is recorded on all video pictures or digital images;
(2) be capable of recording what is viewed by any camera in the system; and
(3) be of a sufficient number to allow the following:
(A) Simultaneous recording and coverage as required by this article;
(B) off-line playback;
(C) duplication capabilities;
(D) single-channel monitors in the following areas:
(i) Each entry and each exit;
(ii) the main bank and cages;
(iii) table games; and
(iv) count rooms; and
(E) no more than four channels per monitor in all other areas where surveillance is required.

(m) The surveillance system shall be connected to at least one video printer. Each video printer shall be capable of generating clear color copies of the images depicted on the surveillance system display screen or video recording.

(n) The surveillance system shall allow audio recording in any room where the contents of bill validator canisters are counted.

(o) All wiring within the surveillance system shall be tamper-resistant.

(p) The surveillance system shall be linked to the commission's security office with equipment capable of monitoring or directing the view of any system camera.

(q) The commission's director of security shall be notified at least 48 hours in advance of the relocation of any camera on the surveillance system's floor plan. (Authorized by and implementing K.S.A. 2009 Supp. 74-8772; effective Sept. 26, 2008; amended April 1, 2011.)

**112-106-2. Surveillance system plan.** (a) Each applicant for a facility manager certification shall submit a surveillance system plan to the commission at least 120 days before the proposed opening of a racetrack gaming facility or lottery gaming facility.

(b) A facility manager shall not commence gaming activities until its surveillance system plan is approved by the commission.

(c) To be approved, the surveillance system plan shall include the following:

(1) A schematic showing the placement of all surveillance equipment;

(2) a detailed description of the surveillance system and its equipment;

(3) the policies and procedures for the surveillance department;

(4) the plans for staffing as required in K.A.R. 112-106-4;

(5) the monitoring activities for both the gaming area and adjacent areas;

(6) the monitoring activities for a detention room; and

(7) a list of the facility manager's personnel that may have access to the surveillance system.

(d) All proposed changes to the surveillance system plan shall be submitted by the director of surveillance to the commission for approval at least 30 days before the director of surveillance desires to implement the changes. (Authorized by and implementing K.S.A. 2009 Supp. 74-8772; effective Sept. 26, 2008; amended April 1, 2011.)

**112-106-5. Surveillance room.** (a) Each facility manager shall have a secure surveillance room with reasonable space, as determined by the executive director, to accommodate the required equipment and operator stations.

(b) Each surveillance room shall be located out of the view of the gaming area. The entrances to the surveillance room shall be locked at all times and shall not be accessible to members of the public or non-surveillance employees of the gaming facility.

(c) Commission agents shall have unrestricted access to the surveillance room and all information received or stored by the surveillance system.

(d) Access to the surveillance room shall be limited to surveillance employees of the gaming facility and commission security employees, except that persons with a legitimate need to enter the surveillance room may do so upon receiving approval from a commission enforcement agent.

(1) Each person, other than surveillance personnel and commission enforcement agents, entering the surveillance room shall sign a surveillance room entry log.

(2) The surveillance room entry log shall meet the following requirements:

(A) Be maintained in the surveillance room by surveillance room personnel;

(B) be maintained in a book with bound numbered pages that cannot readily be removed;

(C) be signed by each person entering the surveillance room, with each entry containing the following:

(i) The date and time of entering the surveillance room;

(ii) the entering person's name and that person's affiliation or department within the gaming facility;

(iii) the reason for entering the surveillance room; and

(iv) the date and time of exiting the surveillance room; and

(D) be retained for at least one year after the date of the last entry. The destruction of the surveillance room entry log shall be approved by the commission's director of security.

(3) The surveillance room entry log shall be made available for inspection by the commission security employees upon demand.

(e) The surveillance room shall be subject to periodic inspection by commission employees to ensure that all of the following conditions are met:

(1) All equipment is working properly.

(2) No camera views are blocked or distorted by improper lighting or obstructions.

(3) All required surveillance capabilities are in place.

(4) All required logs are current and accurate.

(5) There is sufficient staff to protect the integrity of gaming at the facility.

(6) The surveillance room employees are not

performing tasks beyond the surveillance operation. (Authorized by and implementing K.S.A. 2009 Supp. 74-8772; effective Sept. 26, 2008; amended April 1, 2011.)

**112-106-6. Monitoring.** (a) The surveillance department employees shall continuously record the transmissions from the cameras used to observe the following locations, persons, activities, and transactions:

(1) The entrances to and exits from the following:

(A) The gaming facility;

(B) the count rooms;

(C) the vaults;

(D) the surveillance room;

(E) the security rooms;

(F) the cage areas; and

(G) the site of all ancillary operations;

(2) each transaction conducted at a cashiering location, whether or not that cashiering location services patrons;

(3) the main bank, vault, and satellite cages;

(4) the collection of cash storage boxes from electronic gaming machines;

(5) the count procedures conducted in the count room;

(6) any armored car collection or delivery;

(7) automated bill breaker, gaming voucher redemption, coupon redemption, and jackpot payout machines whenever the machines are opened for replenishment or other servicing; and

(8) any other areas specified in writing by the commission.

(b) The surveillance department employees shall maintain a surveillance log of all surveillance activities in the surveillance room. The log shall be maintained in a book with bound, numbered pages that cannot be readily removed or in an electronic format with an audit function that prevents modification of information after the information has been entered into the system. The log shall contain the following, at a minimum:

(1) The date and time of each entry;

(2) the identity of the employee making the entry;

(3) a summary of the activity recorded;

(4) the location of the activity;

(5) the location of the recorded information; and

(6) the surveillance department's disposition of the activity.

(c) The surveillance department employees shall record by camera and log the following events when they are known to occur on the property:

(1) Any activity by players and employees, alone or in concert, that could constitute cheating or stealing;

(2) any activity that could otherwise be criminal;

(3) any procedural violation by an employee;

(4) the detention of persons;

(5) the treatment of disorderly individuals;

(6) emergency activities capable of being observed by the surveillance system;

(7) the presence of persons on the involuntary exclusion list;

(8) the presence of persons on the self-exclusion list;

(9) arrests and evictions;

(10) the treatment of ill or injured patrons;

(11) the on-site maintenance and repair of any gaming or money handling equipment; and

(12) any jackpot winning of $1,200 or more.

(d) Surveillance department employees shall record by camera the movement of the following on the gaming facility floor:

(1) Cash;

(2) cash equivalents;

(3) tokens;

(4) cards;

(5) chips; or

(6) dice.

(e) The surveillance department employees shall continuously monitor and record by camera the following:

(1) Soft count procedures;

(2) hard count procedures;

(3) currency collection;

(4) drop bucket collection; and

(5) the removal of the daily bank deposit from the gaming facility by armored car officers. (Authorized by and implementing K.S.A. 2009 Supp. 74-8772; effective Sept. 26, 2008; amended April 1, 2011.)

## Article 107.—ELECTRONIC GAMING MACHINES

**112-107-1. Electronic gaming machine requirements.** (a) Each electronic gaming machine (EGM) approved for use in a gaming facility shall meet the requirements of article 110.

(b) Unless a facility manager's electronic gaming monitoring system is configured to automatically record all of the information required by this

article, the facility manager shall be required to house the following entry authorization logs in each EGM:

(1) A machine entry authorization log that documents each time an EGM or any device connected to the EGM that could affect the operation of the EGM is opened. The log shall contain, at a minimum, the following:

(A) The date and time of opening;

(B) the purpose for opening the EGM or device;

(C) the signature and the license or permit number of the person opening and entering the EGM or device; and

(D) if a device, the asset number corresponding to the EGM in which the device is housed; and

(2) a progressive entry authorization log that documents each time a progressive controller not housed within the cabinet of the EGM is opened. The log shall contain, at a minimum, the following:

(A) The date and time of opening;

(B) the purpose for accessing the progressive controller; and

(C) the signature and the license or permit number of the person accessing the progressive controller. Each log shall be maintained in the progressive controller unit and have recorded on the log a sequence number and the gaming supplier's serial number of the progressive controller.

(c) Each EGM shall be equipped with a lock controlling access to the card cage door securing the microprocessor, and the lock's key shall be different from any other key securing access to the EGM's components, including its belly door or main door, bill validator, and electronic gaming cash storage box. Access to the key securing the microprocessor shall be limited to a supervisor in the security department. The department's director of security shall establish a sign-out and sign-in procedure for the key, which shall include notification to commission staff before release of the key. (Authorized by K.S.A. 2007 Supp. 74-8772; implementing K.S.A. 2007 Supp. 74-8750 and 74-8772; effective April 24, 2009.)

**112-107-2. Testing and approval.** (a) Each EGM prototype and the associated equipment operated in this state shall be approved in accordance with the act, this article, and article 110.

(b) One of the following EGM testing procedures may be required by the executive director:

(1) An abbreviated testing and approval process in accordance with K.A.R. 112-107-3(g); or

(2) testing and approval in accordance with K.A.R. 112-107-3(i). (Authorized by K.S.A. 2007 Supp. 74-8772; implementing K.S.A. 2007 Supp. 74-8750 and 74-8772; effective April 24, 2009.)

**112-107-3. Submission for testing and approval.** (a) Each LFG prototype and the associated equipment subject to testing and approval under this regulation shall be evaluated by the commission for the following:

(1) Overall operational integrity and compliance with the act, this article, and the technical standards adopted by the commission under article 110;

(2) compatibility and compliance with the central computer system; and

(3) compatibility with any protocol specifications approved by the Kansas lottery, including the ability to communicate with the central computer system for the purpose of transmitting auditing program information, real-time information retrieval, and activation and disabling of LFGs.

(b) LFGs and associated equipment that shall be submitted for testing and commission approval include the following:

(1) Bill validators and printers;

(2) electronic gaming monitoring systems, to the extent that the systems interface with LFGs and related systems;

(3) LFG management systems that interface with LFGs and related systems;

(4) player tracking systems that interface with LFGs and related systems;

(5) progressive systems, including wide-area progressive systems;

(6) gaming ticket systems;

(7) external bonusing systems;

(8) cashless funds transfer systems;

(9) machines performing gaming ticket, coupon, or jackpot payout transactions;

(10) coupon systems, to the extent the systems interface with LFGs and related systems; and

(11) other LFG-related systems as determined by the executive director.

(c) A product submission checklist to be completed by an applicant for or holder of a gaming supplier certificate may be prescribed by the executive director.

(d) The chief engineer of the applicant for or holder of a gaming supplier certificate or the engineer in charge of the division of the gaming sup-

plier responsible for producing the product submitted may be required by the executive director to attest that the LFGs and associated equipment were properly and completely tested by the gaming supplier before submission to the commission.

(e) An abbreviated testing and approval process may be utilized by the commission in accordance with the act.

(f) If a facility manager develops software or a system that is functionally equivalent to any of the electronic gaming systems specified in subsection (b), that software or system shall be subject to the testing and approval process of this article to the same extent as if the software or system were developed by a gaming supplier certificate holder. Each reference in this article to the responsibilities of a gaming supplier certificate holder shall apply to a facility manager developing software or systems subject to testing and approval under this article.

(g) When an applicant or gaming supplier certificate holder seeks to utilize the abbreviated testing and approval process for an LFG prototype, associated device or software, or any modification to an LFG prototype, associated device or software, the applicant or supplier shall submit the following to the independent testing laboratory:

(1) A prototype of the equipment, device, or software accompanied by a written request for abbreviated testing and approval that identifies the jurisdiction within the United States upon which the applicant or supplier proposes that the commission rely. The applicant or supplier shall transport the equipment, device, or software at its own expense and deliver it to the offices of the independent testing laboratory;

(2) a certification executed by the chief engineer or engineer in charge of the applicant or supplier verifying that all of the following conditions are met:

(A) The prototype or modification is identical in all mechanical, electrical, and other respects to one that has been tested and approved by the testing facility operated by the jurisdiction or private testing facility on behalf of the jurisdiction;

(B) the applicant or supplier is currently certified and in good standing in the named jurisdiction, and the prototype has obtained all regulatory approvals necessary to sale or distribution in the named jurisdiction;

(C) in the engineer's opinion, the testing standards of the named jurisdiction are comprehensive and thorough and provide adequate safeguards that are similar to those required by this article; and

(D) in the engineer's opinion, the equipment, device, or software meets the requirements of the act, this article, and the technical standards adopted by the commission under article 110, including requirements related to the central computer system;

(3) an executed copy of a product submission applicable to the submitted equipment, device, or software unless a substantially similar checklist was filed with the named jurisdiction and is included in the submission package required by paragraph (g)(4);

(4) copies of the submission package and any amendments filed with the named jurisdiction, copies of any correspondence, review letters, or approvals issued by the testing facility operated by the named jurisdiction or a private testing facility on behalf of the named jurisdiction and, if applicable, a copy of the final regulatory approval issued by the named jurisdiction;

(5) a disclosure that details any conditions or limitations placed by the named jurisdiction on the operation or placement of the equipment, device, or software at the time of approval or following approval;

(6) a complete and accurate description of the manner in which the equipment, device, or software was tested for compatibility and compliance with the central computer system and protocol specifications approved by the Kansas lottery, including the ability to communicate with the central computer system for the purpose of transmitting auditing program information, real-time information retrieval, and activation and disabling of LFGs;

(7) any hardware, software, and other equipment, including applicable technical support and maintenance, required by the independent testing laboratory to conduct the abbreviated testing and approval process required by the act, this article, and the technical standards adopted by the commission under article 110. The testing equipment and services required by this subsection shall be provided at no cost to the commission; and

(8) any additional documentation requested by the commission that is necessary to evaluate the LFG, associated equipment, or any modification.

(h) When an applicant or a gaming supplier seeks commission approval of an LFG, equipment, device, or software, or any modification to which the abbreviated testing process in subsec-

tion (f) is not applicable, the applicant or supplier shall submit the following to the independent testing laboratory:

(1) A prototype of the equipment, device, or software accompanied by a written request for testing and approval. The gaming supplier shall transport the equipment, device, or software at its own expense and deliver the equipment, device, or software to the offices of the commission's independent testing laboratory in accordance with instructions provided;

(2) any certifications required under this regulation;

(3) an executed copy of a current product submission checklist;

(4) a complete and accurate description of the equipment, device, or software, accompanied by related diagrams, schematics, and specifications, together with documentation with regard to the manner in which the product was tested before its submission to the commission;

(5) any hardware, software, and other equipment, including applicable technical support and maintenance, required by the independent testing laboratory to conduct the testing and approval process required by the act, this article, and the technical standards adopted by the commission under article 110. All testing equipment and services required by this subsection shall be provided at no cost to the commission;

(6) for an LFG prototype, the following additional information, which shall be provided to the commission:

(A) A copy of all operating software needed to run the LFG, including data and graphics information, on electronically readable and unalterable media;

(B) a copy of all source code for programs that cannot be reasonably demonstrated to have any use other than in an LFG, on electronically readable and unalterable media;

(C) a copy of all graphical images displayed on the LFG, including reel strips, rules, instructions, and pay tables;

(D) an explanation of the theoretical return to the player, listing all mathematical assumptions, all steps in the formula from the first principles through the final results of all calculations including bonus payouts, and, when a game requires or permits player skill in the theoretical derivations of the payout return, the source of strategy;

(E) hardware block diagrams of the major subsystems;

(F) a complete set of schematics for all subsystems;

(G) a diagram of the wiring harness connection;

(H) a technical or operator manual;

(I) a description of the security methodologies incorporated into the design of the LFG including, when applicable, encryption methodology for all alterable media, auto-authentication of software, and recovery capability of the LFG for power interruption;

(J) a cross reference of product meters to the required meters specified in article 110;

(K) a description of tower light functions indicating the corresponding condition;

(L) a description of each error condition and the corresponding action required to resolve the error;

(M) a description of the use and function of available electronic switch settings or configurable options;

(N) a description of the pseudo random number generator or generators used to determine the results of a wager, including a detailed explanation of operational methodology, and a description of the manner by which the pseudo random number generator and random number selection processes are impervious to outside influences, interference from electromagnetic, electrostatic, and radio frequencies, and influence from ancillary equipment by means of data communications. Test results in support of representations shall be submitted;

(O) specialized hardware, software, or testing equipment, including technical support and maintenance, needed to complete the evaluation, which may include an emulator for a specified microprocessor, personal computers, extender cables for the central processing unit, target reel strips, and door defeats. The testing equipment and services required by this subsection shall be provided at no cost to the commission;

(P) a compiler, or reasonable access to a compiler, for the purpose of building applicable code modules;

(Q) program storage media including erasable programmable read-only memory (EPROM), electronically erasable programmable read-only memory (EEPROM), and any type of alterable media for LFG software;

(R) technical specifications for any microprocessor or microcontroller;

(S) a complete and accurate description of the manner in which the LFG was tested for com-

patibility and compliance with the central computer system and protocol specifications approved by the Kansas lottery, including the ability to communicate with the central computer system for the purpose of transmitting auditing program information, real-time information retrieval, and activation and disabling of LFGs; and

(T) any additional documentation requested by the commission relating to the LFG;

(7) if an LFG prototype is modified, including a change in theme, the following additional information, which shall be provided to the commission:

(A) A complete and accurate description of the proposed modification to the LFG prototype, accompanied by applicable diagrams, schematics, and specifications;

(B) when a change in theme is involved, a copy of the graphical images displayed on the LFG, including reel strips, rules, instructions, and pay tables;

(C) when a change in the computation of the theoretical payout percentage is involved, a mathematical explanation of the theoretical return to the player, listing all assumptions, all steps in the formula from the first principles through the final results of all calculations including bonus payouts, and, when a game requires or permits player skill in the theoretical derivations of the payout return, the source of strategy;

(D) a complete and accurate description of the manner in which the LFG was tested for compatibility and compliance with the central computer system and protocol specifications approved by the Kansas lottery, including the ability to communicate with the central computer system for the purpose of transmitting auditing program information, real-time information retrieval and activation, and the disabling of LFGs; and

(E) any additional documentation requested by the commission relating to the modification of the LFG;

(8) for an electronic gaming monitoring system, casino management system, player tracking system, wide-area progressive system, gaming ticket system, external bonusing system, cashless funds transfer system, automated gaming ticket, coupon redemption or jackpot payout machine, coupon system, or any other equipment or system required to be tested and approved under subsection (b), the following:

(A) A technical manual;

(B) a description of security methodologies incorporated into the design of the system, which shall include the following, when applicable:

(i) Password protection;

(ii) encryption methodology and its application;

(iii) automatic authentication; and

(iv) network redundancy, backup, and recovery procedures;

(C) a complete schematic or network diagram of the system's major components accompanied by a description of each component's functionality and a software object report;

(D) a description of the data flow, in narrative and in schematic form, including specifics with regard to data cabling and, when appropriate, communications methodology for multisite applications;

(E) a list of computer operating systems and third-party software incorporated into the system, together with a description of their interoperability;

(F) system software and hardware installation procedures;

(G) a list of available system reports;

(H) when applicable, features for each system, which may include patron and employee card functions, promotions, reconciliation procedures, and patron services;

(I) a description of the interoperability testing, including test results for each submitted system's connection to LFGs, to ticket, coupon redemption, and jackpot payout machines, and to computerized systems for counting money, tickets, and coupons. This list shall identify the tested products by gaming supplier, model, and software identification and version number;

(J) a narrative describing the method used to authenticate software;

(K) all source codes;

(L) a complete and accurate description, accompanied by applicable diagrams, schematics, and specifications, of the creation of a ticket and the redemption options available;

(M) a complete and technically accurate description, accompanied by applicable diagrams, schematics, and specifications, of the creation of a coupon and the redemption options available;

(N) any specialized hardware, software, or other equipment, including applicable technical support and maintenance required by the independent testing laboratory to conduct the testing and approval process required by the act, this article, and the technical standards adopted by the commission under article 110. The testing equip-

ment and services required by this subsection shall be provided at no cost to the commission; and

(O) any additional documentation requested by the executive director related to the equipment or system being tested; and

(9) for a modification to any of the systems identified in paragraph (h)(8), the following additional information:

(A) A complete and accurate description of the proposed modification to the system, accompanied by applicable diagrams, schematics, and specifications;

(B) a narrative disclosing the purpose for the modification; and

(C) any additional documentation requested by the executive director relating to the modification.

(i) A trial period may be required by the commission to assess the functionality of the prototype or modification in a live gaming environment. The conduct of the trial period shall be subject to compliance by the gaming supplier and the facility manager with any conditions that may be required by the commission. These conditions may include development and implementation of product-specific accounting and internal controls, periodic data reporting to the commission, and compliance with the technical standards adopted under article 110 on trial periods or the prototype or modification adopted by the commission. Termination of the trial period may be ordered by the executive director if the executive director determines that the gaming supplier or the facility manager conducting the trial period has not complied with the conditions required by the commission or that the product is not performing as expected.

(j) At the conclusion of the testing of a prototype or modification, the independent testing laboratory shall report the results of its testing to the commission. Upon receipt of the independent testing laboratory's report, any one of the following shall be done by the commission:

(1) Approve;

(2) approve with conditions;

(3) reject the submitted prototype or modification; or

(4) require additional testing or a trial period under subsection (i).

(k) A facility manager shall not install an LFG or associated equipment, or any modification, required to be tested and approved under subsection (b) unless the equipment, device, or software has been approved by the commission and issued a certificate authorizing its use at the gaming facility. The certificate shall be prominently displayed on the approved device. A facility manager shall not modify, alter, or tamper with an approved LFG, the associated equipment, or a commission-issued certificate. Before the removal of the LFG or associated equipment from the gaming facility, the certificate shall be removed by a commission agent. An LFG or the associated equipment installed in a gaming facility in contravention of this requirement shall be subject to seizure by any Kansas law enforcement officer.

(l) The installation of a modification to an LFG prototype or the associated equipment prototype may be authorized by the executive director on an emergency basis to prevent cheating or malfunction, upon the written request of a gaming supplier. The request shall specify the name and employer of any persons to be involved in the installation of the modification and the manner in which the installation is to be effected. Within 15 days of receipt of any authorization to install an emergency modification, the gaming supplier shall submit the modification for full testing and approval in accordance with this article.

(m) Each facility manager shall, no later than four hours after detection, notify the commission's security staff of any known or suspected defect or malfunction in any LFG or associated equipment installed in the gaming facility. The facility manager shall comply with any instructions from the commission staff for use of the LFG or associated equipment.

(n) Each facility manager shall file a master list of approved gaming machines as required by K.A.R. 112-107-10.

(o) Each gaming supplier shall, no later than 48 hours after detection, notify the commission of any known or suspected defect or malfunction in any LFG or associated equipment approved for use in a lottery gaming facility. (Authorized by K.S.A. 2009 Supp. 74-8772; implementing K.S.A. 2009 Supp. 74-8749, 74-8750, and 74-8772; effective April 24, 2009; amended April 1, 2011.)

**112-107-4. Reserved.**

**112-107-5. Transportation of LFGs.** (a) The transportation of any LFG into or out of this state shall be approved in advance by the executive director. The person causing the LFG to be transported or moved shall notify the executive director of the proposed importation or exportation at least 15 days before the LFG is moved,

unless otherwise approved by the executive director. The notice shall include the following information:

(1) The name and address of the person shipping or moving the LFG;

(2) the name and address of the person who manufactured, assembled, distributed, or resold the LFG, if different from the person shipping or moving the game;

(3) the name and address of a new owner if ownership is being changed in conjunction with the shipment or movement;

(4) the method of shipment or movement and the name and address of the common carrier or carriers, if applicable;

(5) the name and address of the person to whom the LFG is being sent and the destination of the LFG, if different from that address;

(6) the quantity of LFG being shipped or moved and the manufacturer's make, model, and serial number of each game;

(7) the expected date and time of delivery to, or removal from, any authorized location within this state;

(8) the port of entry or exit, if any, of the LFG if the origin or destination of the LFG is outside the continental United States; and

(9) the reason for transporting or moving the LFG.

(b) Each shipment of LFGs shall be sealed before being transported. On arrival at the gaming facility, the shipment shall not be opened or inventoried until the seal is witnessed and broken by an agent of the commission. An agent of the commission shall verify that the LFGs are unloaded, inventoried, and compared to the notice required in subsection (a). (Authorized by and implementing K.S.A. 2009 Supp. 74-8772; effective April 24, 2009; amended April 1, 2011.)

**112-107-6. Off-premises storage of EGMs.** (a) A facility manager shall not store EGMs off the premises of the gaming facility without prior approval from the commission.

(b) Each facility manager seeking to store EGMs off the premises of the gaming facility shall file a written request for off-premises storage with the executive director. The request shall include all of the following:

(1) The location and a physical description of the proposed storage facility;

(2) a description of the type of surveillance system that has been or will be installed at the storage facility;

(3) the facility manager's plan to provide continuous security at the storage facility;

(4) the number and the name of the manufacturer of the EGMs that will be stored at the facility;

(5) the date that the EGMs are expected to arrive at the storage facility; and

(6) the date that the EGMs are expected to be moved to the gaming facility.

(c) Before acting on a request for off-premises storage of EGMs, agents of the commission shall inspect the proposed storage facility.

(d) Each request shall be responded to by the executive director within 30 days. Any request approved by the executive director may be subject to specific terms and conditions imposed by the executive director. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective April 24, 2009.)

**112-107-7. Gaming floor plan.** (a) Each applicant or gaming facility manager shall submit to the commission a floor plan of its gaming floor and the restricted areas servicing the electronic gaming operation. The floor plan shall include depictions drawn to a scale of 1/8 inch per foot, unless another scale is approved by the executive director, of the following:

(1) Each EGM area on the gaming floor and each EGM location within each EGM area. EGM locations shall be identified by number;

(2) the cage and any satellite cage, including each cage window and window number;

(3) each count room and any trolley storage area;

(4) each automated bill validator, gaming ticket redemption machine, coupon redemption machine, and jackpot payout machine;

(5) each automated teller machine;

(6) each area designated for the storage or repair of EGMs;

(7) the location of each vault and armored car bay; and

(8) any additional documentation requested by the executive director relating to the floor plan for the gaming floor.

(b) A gaming facility manager shall not commence electronic gaming operations until the floor plan depicting the facility manager's gaming floor and all restricted areas servicing the elec-

tronic gaming operation has been approved in writing by the executive director.

(c) A gaming facility manager shall not change the number, configuration, or location of EGMs on the floor plan approved under subsection (b) without the prior written approval of the executive director. (Authorized by K.S.A. 2008 Supp. 74-8772; implementing K.S.A. 2008 Supp. 74-8752 and 74-8772; effective April 24, 2009.)

**112-107-8. Reserved.**

**112-107-9. Testing and software installation on the live gaming floor.** (a) Each facility manager shall notify the executive director in writing at least 72 hours before testing any EGMs, associated equipment, and displays on a gaming floor during the facility manager's gaming hours. The notification shall include the following:

(1) A detailed narrative description of the type of testing to be conducted, including the reason for the testing, a list of individuals conducting the testing, and the facility manager's procedures for conducting the testing;

(2) the date, time, and approximate duration of the testing;

(3) the model, EGM location number, and asset number of the EGM or machines to be tested; and

(4) the location within the gaming facility where the testing shall occur.

(b) Each facility manager shall notify the executive director at least 72 hours before installing any new software or installing any change in previously approved software for the following:

(1) Automated gaming ticket and coupon redemption machines;

(2) wide-area progressive systems;

(3) electronic gaming monitoring systems;

(4) casino management systems;

(5) player tracking systems;

(6) external bonusing systems, as specified in K.A.R. 112-107-26;

(7) cashless funds transfer systems;

(8) server-supported electronic gaming systems;

(9) server-based electronic gaming systems; and

(10) automated jackpot payout machines.

(c) The notification required by subsection (b) shall include the following:

(1) A description of the reasons for the new installation or change in previously approved software;

(2) a list of the computer components and the programs or versions to be modified or replaced;

(3) a description of any screens, menus, reports, operating processes, configurable options, or settings that will be affected;

(4) the method to be used to complete the proposed installation;

(5) the date that the proposed modification will be installed and the estimated time for completion;

(6) the name, title, and employer of the persons performing the installation;

(7) a diagrammatic representation of the proposed hardware design change;

(8) restrictions on access to the production code by the person implementing the installation; and

(9) procedures to ensure that user and operator manuals are updated to reflect changes in policies and procedures resulting from the proposed installation. (Authorized by K.S.A. 2008 Supp. 74-8772; implementing K.S.A. 2008 Supp. 74-8750 and 74-8772; effective April 24, 2009.)

**112-107-10. Master list of approved gaming machines.** (a) At least 20 days before commencing gaming, each facility manager shall file with the commission, in writing, a complete list of the LFGs and gaming equipment possessed by the facility manager on its gaming floor, in restricted areas off the gaming floor but within the gaming facility as approved by the commission under K.A.R. 112-104-26, and in storage locations in this state off the premises of the gaming facility as approved by the commission under K.A.R. 112-107-6. The list shall be titled as a master list of approved gaming machines.

(b) The master list of approved LFGs and gaming equipment shall contain the following information that, for those LFGs and the gaming equipment located on the gaming floor, shall be presented for each LFG and gaming equipment in consecutive order by the LFG or gaming equipment location number:

(1) The date the list was prepared;

(2) a description of each LFG and all gaming equipment, using the following:

(A) Asset number and model and manufacturer's serial number;

(B) computer program number and version;

(C) denomination, if configured for multiple denominations, and a list of the denominations;

(D) manufacturer and machine type, noting cabinet type;

(E) if an LFG, specification of whether the LFG is a progressive or a wide-area progressive LFG;

(F) an indication as to whether the LFG or gaming equipment is configured to communicate with a cashless funds transfer system;

(G) an indication as to whether the LFG or gaming equipment is configured to communicate with a gaming ticket system;

(H) designation of which specific surveillance video system cameras will be able to view that LFG or gaming equipment; and

(I) commission certificate number;

(3) for those LFGs or gaming equipment located off the gaming floor, an indication as to whether the LFG or gaming equipment is in a restricted area off the gaming floor but within the gaming facility under K.A.R. 112-104-26 or is in a commission-approved storage location in this state off the premises of the gaming facility under K.A.R. 112-107-6; and

(4) any additional relevant information requested by the commission.

(c) If an LFG or gaming equipment has been placed in an authorized location on the gaming floor or is stored in a restricted area off the gaming floor but within the gaming facility as approved by the commission under K.A.R. 112-104-26, then all subsequent movements of that LFG or gaming equipment within the gaming facility shall be recorded by an LFG department member in a gaming equipment movement log, which shall include the following:

(1) The asset number and model and the manufacturer's serial number of the moved LFG or gaming equipment;

(2) the date and time of movement;

(3) the location from which the LFG or gaming equipment was moved;

(4) the location to which the LFG or gaming equipment was moved;

(5) the date and time of any required notice to the Kansas lottery in connection with the activation or disabling of the LFG in the central computer system;

(6) the signature of the LFG shift manager and the commission's electronic gaming inspector verifying the movement of the LFG or gaming equipment in compliance with this regulation; and

(7) any other relevant information the commission may require.

(d) Before moving an LFG or any gaming equipment that has been placed in an authorized location on the gaming floor, the facility manager shall remove the bill validator canister drop box and transport the drop box to the count room in accordance with the procedures in K.A.R. 112-104-18.

(e) The facility manager shall daily submit documentation summarizing the movement of LFGs and gaming equipment within a gaming facility to the commission, in writing or in an electronic format approved by the commission.

(f) On the first Tuesday of each month following the initial filing of a master list of approved LFGs or gaming equipment, a facility manager shall file with the commission, in writing or in an electronic format approved by the commission, an updated master list of approved LFGs or gaming equipment containing the information required in subsection (b).

(g) Each gaming supplier and each regulatory or law enforcement agency that possesses LFGs shall file with the commission, in writing or in an electronic format approved by the commission, a complete list of the LFGs possessed by the entity. The list shall be titled as a master list of approved gaming machines and shall be filed within three business days of the initial receipt of the LFGs. Each list shall contain the following information:

(1) The date on which the list was prepared; and

(2) a description of each LFG by the following:

(A) Model and manufacturer's serial number;

(B) manufacturer and machine type, noting cabinet type; and

(C) specification of whether the LFG is a progressive or a wide-area progressive LFG.

(h) On the first Tuesday of each month following the initial filing of a master list of approved LFGs or gaming equipment, those persons specified in subsection (f) shall file with the commission, in writing or in an electronic format approved by the commission, an updated master list of approved LFGs or gaming equipment containing the information required in subsection (g).

(i) A computer system designed to meet the requirements of this regulation may be approved by the executive director. (Authorized by K.S.A. 2010 Supp. 74-8772; implementing K.S.A. 2010 Supp. 74-8750 and 74-8772; effective April 24, 2009; amended April 1, 2011.)

**112-107-11. Notice to Kansas lottery of EGM movement.** Each facility manager shall obtain authorization from the executive director and

the Kansas lottery's executive director before doing any of the following:

(a) Placing an EGM on the gaming floor;

(b) moving an EGM to a different location on the gaming floor; or

(c) removing an EGM from the gaming floor. (Authorized by K.S.A. 2008 Supp. 74-8772; implementing K.S.A. 2008 Supp. 74-8749, 74-8750, and 74-8772; effective April 24, 2009.)

**112-107-12. Reserved.**

**112-107-13. Commencement of electronic gaming operations.** (a) Each facility manager shall demonstrate that the facility manager has met all of the following conditions before commencing electronic gaming at a gaming facility:

(1) The gaming facility, including the gaming floor and restricted areas servicing the electronic gaming operation, meets all the applicable requirements of the act, this article, and article 110.

(2) Each EGM and the associated equipment installed in the gaming facility and utilized in the conduct of EGM operations have been tested and approved by the commission in compliance with the act, this article, and article 110.

(3) The gaming floor plan required under K.A.R. 112-107-7(a) has been approved by the executive director in compliance with the act, this article, and article 110.

(4) The facility manager's internal control system has been approved by the commission in compliance with the act, this article, K.A.R 112-104-1, and article 110.

(5) The facility manager is prepared to implement necessary management controls, surveillance, and security precautions to ensure the efficient conduct of electronic gaming operations.

(6) The facility manager's employees are licensed or permitted by the commission and are trained in the performance of their responsibilities.

(7) The gaming facility is prepared in all respects to receive the public.

(8) The facility manager has successfully completed a test period.

(9) For racetrack gaming facility managers, the facility manager has met the live racing requirements under the act.

(b) When a facility manager meets the requirements in subsection (a), the date and time at which the facility manager may begin gaming operations at the gaming facility shall be authorized by the commission. (Authorized by K.S.A. 2007 Supp. 74-8772; implementing K.S.A. 2007 Supp. 74-8749, 74-8750, and 74-8772; effective April 24, 2009.)

**112-107-14. EGM conversions.** Each facility manager shall meet the following requirements:

(a) Maintain complete and accurate records of all EGM conversions;

(b) give prior written notice of each EGM conversion to the commission; and

(c) notify the Kansas lottery in accordance with K.A.R. 112-107-11. (Authorized by K.S.A. 2008 Supp. 74-8772; implementing K.S.A. 2008 Supp. 74-8750, 74-8752, and 74-8772; effective April 24, 2009.)

**112-107-15. Revocations and additional conditions.** The approval of or imposition of additional conditions on an EGM prototype, associated equipment prototype, or modification may be revoked by the commission if the equipment, device, or software meets either of the following conditions:

(a) The equipment, device, or software does not meet the requirements of the act, this article, or article 110.

(b) The EGM, or modification to the EGM, is not compatible or compliant with the central computer system and protocol specifications approved by the Kansas lottery commission or is unable to communicate with the central computer system for the purpose of transmitting auditing program information, real-time information retrieval, and the activation and disabling of EGMs. (Authorized by K.S.A. 2007 Supp. 74-8772; implementing K.S.A. 2007 Supp. 74-8749, 74-8750, and 74-8772; effective April 24, 2009.)

**112-107-16. Kiosks as automated gaming ticket and coupon redemption machines.** (a) Any facility manager may utilize a kiosk as an automated gaming ticket and coupon redemption machine if that machine has been tested and approved by the commission under K.A.R. 112-107-3.

(b) Automated gaming ticket and coupon redemption machines may be located on or proximate to the gaming floor of a gaming facility and shall be subject to surveillance coverage under article 106. Each kiosk shall have imprinted, affixed,

or impressed on the outside of the machine a unique asset identification number.

(c) Each kiosk shall meet the requirements of article 110.

(d) Before using a kiosk, a facility manager shall establish a comprehensive system of internal controls addressing the distribution of currency or coin, or both, to the machines, the removal of gaming tickets, coupons or currency accepted by the machines, and the associated reconciliations. The internal controls shall be submitted to and approved by the commission under K.A.R. 112-104-1.

(e) Each kiosk or the ancillary systems, applications, and equipment associated with reconciliation shall be capable of producing the following reports upon request:

(1) A gaming ticket transaction report. The report shall include the disposition of gaming tickets, including whether the ticket has been paid, partially paid, unpaid, or accepted by a kiosk, which shall include the validation number, the date and time of redemption, amount requested, and the amount dispensed. This information shall be available by reconciliation period, which may be by day, shift, or drop cycle;

(2) a coupon transaction report. This report shall include the payment disposition of coupons accepted by a kiosk, which shall include the unique serial number, the date and time of redemption, the amount requested, and the amount dispensed. The information shall be available by reconciliation period, which may be by day, shift, or drop cycle;

(3) a reconciliation report. The report shall include all of the following:

(A) Report date and time;

(B) unique asset identification number of the machine;

(C) total cash balance of the currency cassettes;

(D) total count of currency accepted by denomination;

(E) total dollar amount of tickets accepted;

(F) total count of gaming tickets accepted;

(G) total dollar amount of coupons accepted; and

(H) total count of coupons accepted;

(4) gaming ticket, coupon, and currency storage box report. The report shall be generated, at a minimum, whenever a gaming ticket, coupon, or currency storage box is removed from a kiosk. The report shall include all of the following:

(A) Report date and time;

(B) unique asset identification number of the machine;

(C) unique identification number for each storage box in the machine;

(D) total value of currency dispensed;

(E) total number of bills dispensed by denomination;

(F) total dollar value of gaming tickets accepted;

(G) total count of gaming tickets accepted;

(H) total dollar value of coupons accepted;

(I) total count of coupons accepted; and

(J) the details required to be included in the gaming ticket transaction report required by paragraph (e)(1) and the coupon transaction report required in paragraph (e)(2); and

(5) a transaction report. The report shall include all critical patron transaction history, including the date, time, amount, and disposition of each complete and incomplete transaction. If a kiosk is capable of redeeming multiple tickets or coupons in a single transaction, the transaction history shall include a breakdown of the transaction with regard to the individual gaming tickets and coupons accepted. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective April 24, 2009.)

**112-107-17. Automated jackpot payout machines.** (a) Any facility manager may utilize an automated jackpot payout machine that has been tested and approved by the commission under K.A.R. 112-107-3.

(b) Each automated jackpot payout machine shall meet the requirements of the act, this article, and article 110.

(c) Before using an automated jackpot payout machine, each facility manager shall establish a comprehensive system of internal controls for the payment of jackpot payouts utilizing an automated jackpot payout machine and the distribution of currency or coin, or both, to the machines. The internal controls shall be submitted to and approved by the commission under K.A.R. 112-104-1. (Authorized by K.S.A. 2008 Supp. 74-8772; implementing K.S.A. 2008 Supp. 74-8750 and 74-8772; effective April 24, 2009.)

**112-107-18. Gaming tickets.** (a) A facility manager may utilize gaming tickets and a gaming ticket system that has been tested and approved by the commission under K.A.R. 112-107-3.

(b) Each facility manager shall establish a sys-

tem of internal controls for the issuance and redemption of gaming tickets. The internal controls shall be submitted and approved by the commission under K.A.R. 112-104-1 and shall address the following:

(1) The procedures for assigning an EGM's asset number, identifying other redemption locations in the system, and enabling and disabling ticket capabilities for EGMs and redemption locations;

(2) the procedures for issuance, modification, and termination of a unique system account for each user in accordance with article 110;

(3) the procedures used to configure and maintain user passwords in accordance with article 110;

(4) the procedures for restricting special rights and privileges, including administrator and override capabilities, in accordance with article 110;

(5) the duties and responsibilities of the information technology, internal audit, electronic gaming operations, cage, and accounting departments and the level of access for each position with regard to the gaming ticket system;

(6) a description of physical controls on all critical hardware, including locks and surveillance. This description shall include the location and security protocols applicable to each piece of equipment;

(7) the procedures for the backup and timely recovery of critical data in accordance with article 110; and

(8) the use of logs to document and maintain the details of commission-approved hardware and software modifications upon implementation.

(c) The system of internal controls required in subsection (b) shall also include controls over the issuance and redemption of gaming tickets and shall include all of the following requirements:

(1) Upon presentation of a gaming ticket for redemption, the electronic gaming cashier or EGM shall use the gaming ticket system to verify the validity of the serial number and value of the ticket, and if valid, the system shall immediately cancel the ticket electronically and permit the redemption of the ticket for the value printed thereon. Before redeeming a gaming ticket, the complete serial number of the unredeemed gaming ticket shall be available only to the system.

(2) The facility manager shall maintain a record of all transactions in the gaming ticket system for at least 210 days from the date of the transaction.

(3) Each gaming ticket shall expire in not less than 180 days from the date of issuance if not redeemed.

(4) A gaming ticket system shall not be configured to issue a gaming ticket exceeding $10,000.

(5) The facility manager shall maintain a record of unredeemed gaming tickets for all gaming tickets that were issued but not redeemed. The record shall be stored in the system for a period of time approved by the executive director, which shall be at least one year from the date of issuance of the gaming ticket. The following requirements shall apply:

(A) Each unredeemed gaming ticket record removed from the system after one year shall be stored and controlled in a manner approved by the commission.

(B) Each unredeemed gaming ticket record removed from the system shall be subject to the standard record retention requirements of this article.

(d) The system of internal controls required to be submitted and approved by the commission under subsection (b) shall also include procedures to be used in the following instances:

(1) If the facility manager chooses to pay a patron the represented value of a gaming ticket notwithstanding the fact that the gaming ticket system is inoperable, rendering the manager unable to determine the validity of the gaming ticket at the time of payment. The system of internal controls shall include procedures to verify the ticket once the gaming ticket system becomes operable in accordance with article 110; and

(2) if the facility manager chooses to pay a patron the value of a gaming ticket notwithstanding the fact that the gaming ticket system failed to verify and electronically cancel the gaming ticket when it was scanned. Each payment by the facility manager shall be treated as a complimentary. These payments shall not result in a deduction from EGM income.

(e) At the end of each gaming day, the gaming ticket system shall be caused by the facility manager to generate reports, and the reports shall be provided to the manager's accounting department, either directly by the system or through the management information systems department. The report, at a minimum, shall contain the following information:

(1) A list of all gaming tickets that have been issued, including the asset number and the serial number of the EGM, and the value, date, and time of issuance of each gaming ticket;

(2) a list of all gaming tickets that have been redeemed and cancelled, including the redemption location, the asset number of the EGM or location if other than an EGM, the serial number, the value, date, and time of redemption for each ticket, the total value of all gaming tickets redeemed at EGMs, and the total value of all gaming tickets redeemed at locations other than EGMs;

(3) the liability for unredeemed gaming tickets;

(4) the readings on gaming ticket-related EGM meters and a comparison of the readings to the number and value of issued and redeemed gaming tickets, as applicable;

(5) the exception reports and audit logs; and

(6) any other relevant reports as required by the executive director.

(f) Each facility manager shall, at the time of discovery, report to the commission audit staff any evidence that a gaming ticket has been counterfeited, tampered with, or altered in any way that would affect the integrity, accuracy, reliability, or suitability of the gaming ticket.

(g) Upon any attempt to redeem a gaming ticket when the total value of which gaming ticket cannot be completely converted into an equivalent value of credits, the EGM shall perform one of the following procedures:

(1) Automatically issue a new gaming ticket containing the value that cannot be completely converted;

(2) not redeem the gaming ticket and return the gaming ticket to the patron; or

(3) allow for the additional accumulation of credits on a meter that displays the value in dollars and cents.

(h) Each facility manager that utilizes a system or an EGM that does not print a test gaming ticket that is visually distinguishable from a redeemable gaming ticket shall adopt internal controls for all of the following:

(1) The issuance of test currency from the cage; and

(2) the return and reconciliation of the test currency and any gaming tickets printed during the testing process.

(i) Except as provided in subsection (m), each gaming ticket shall be redeemed by a patron for cash, EGM credits, or a check issued by the facility manager in the amount of the gaming ticket redeemed. A facility manager shall not permit redemption of a gaming ticket if the facility manager knows or has reason to know that the ticket meets any of the following conditions:

(1) Is different from the sample of the gaming ticket approved by the commission;

(2) was previously redeemed; or

(3) was printed as a test gaming ticket.

(j) Any facility manager may effectuate redemption requests submitted by mail. Gaming tickets redeemed by mail may only be redeemed by a cage supervisor in accordance with internal controls approved by the commission under K.A.R. 112-104-1 that include the following:

(1) Procedures for using the gaming ticket system to verify the validity of the serial number and value of the ticket that, if valid, shall be immediately cancelled electronically by the system; and

(2) procedures for the issuance of a check equal to the value of the ticket.

(k) Gaming tickets redeemed at cashier locations shall be transferred to the facility manager's accounting department on a daily basis. The gaming tickets redeemed by EGMs shall be counted in the count room and forwarded to the manager's accounting department upon the conclusion of the count process. The gaming tickets redeemed at automated gaming ticket redemption machines shall be forwarded to the manager's accounting department upon the conclusion of the cage reconciliation process. The manager's accounting department employees shall perform the following, at a minimum:

(1) On a daily basis, the following:

(A) Compare gaming ticket system report data to any count room system report data available for that gaming day to ensure proper electronic cancellation of the gaming ticket; and

(B) calculate the unredeemed liability for gaming tickets, either manually or by means of the gaming ticket system; and

(2) on a weekly basis, compare appropriate EGM meter readings to the number and value of issued and redeemed gaming tickets per the gaming ticket system. Meter readings obtained through an electronic gaming monitoring system may be utilized to complete this comparison.

(l) Each facility manager shall provide written notice to the commission audit staff of any adjustment to the value of any gaming ticket. The notice shall be made before or concurrent with the adjustment.

(m) Employees of a facility manager who are authorized to receive gratuities under K.A.R. 112-104-27 may redeem gaming tickets given as gra-

tuities only at a cage. Gaming tickets valued at more than $100 shall be redeemed at the cage only with the approval of the supervisor of the cashier conducting the redemption transaction.

(n) Each gaming ticket system shall be configured to alert each facility manager to any malfunction in accordance with article 110. Following a malfunction of a system, the facility manager shall notify the commission within 24 hours of the malfunction and shall not utilize the system until the malfunction has been eliminated. A facility manager may be permitted by the executive director to utilize the system before the system is restored, for a period not to exceed 72 hours, if all of the following conditions are met:

(1) The malfunction is limited to a single storage media device, including a hard disk drive.

(2) The system contains a backup storage media device not utilized in the normal operation of the system. The backup device shall automatically replace the malfunctioning device and permit a complete recovery of all information in the event of an additional malfunction.

(3) Continued use of the malfunctioning system would not inhibit the ability to perform a complete recovery of all information and would not otherwise harm or affect the normal operation of the system.

(o) Other than a modification to a gaming ticket system that is required on an emergency basis to prevent cheating or malfunction and is approved by the executive director under K.A.R. 112-107-3(m), a modification to a gaming ticket system shall not be installed without being tested and approved under K.A.R. 112-107-3. (Authorized by and implementing K.S.A. 2007 Supp. 74-8772; effective April 24, 2009.)

**112-107-19. Coupons.** (a) Any facility manager may utilize coupons and a coupon system that has been tested and approved by the commission under K.A.R. 112-107-3.

(b) The design specifications for the coupon shall meet the requirements of article 110.

(c) The design specifications for the coupon system shall meet the requirements of article 110.

(d) Each facility manager shall establish a system of internal controls for the issuance and redemption of coupons before issuing any coupon. The internal controls shall be submitted to and approved by the commission under K.A.R. 112-104-1. The system of internal controls shall include the following requirements:

(1) The package containing the coupons shall be opened and examined by at least two members of the accounting department. Each deviation between the invoice and control listing accompanying the coupons, the purchase or requisition order, and the actual coupons received shall be reported to the controller or to a higher authority in a direct reporting line and to the director of internal audit.

(2) Upon examination of the coupons, the facility manager shall cause to be recorded in a coupon control ledger the type and quantity of coupons received, the date of the receipt, the beginning serial number, the ending serial number, the new quantity of unissued coupons on hand, the purchase order or requisition number, any deviations between the number of coupons ordered and the number received, and the signature of any individual who examined the coupons.

(3) All unissued coupons shall be stored in the cage, controlled by a cage department supervisor.

(4) A representative from the internal audit department shall prepare a monthly inventory of unissued coupons. Any deviations between the coupon inventory and the coupon control ledger shall be reported to the controller and the director of internal audit.

(5) A representative of the facility manager shall estimate the number of coupons needed by shift each day. An accounting department employee shall obtain the quantity of coupons to be issued. If a date indicating when the coupon becomes invalid is not preprinted on the coupon, the accounting department employee shall affix a stamp indicating the date the coupon becomes invalid. The following, at a minimum, shall be recorded in the coupon control ledger:

(A) The date the coupons were issued;

(B) the type of coupons issued;

(C) the beginning serial number of the coupons issued;

(D) the ending serial number of the coupons issued;

(E) the quantity issued and the quantity remaining; and

(F) the signatures of the accounting department employee issuing the coupons and any other department's employee receiving the coupons.

(6) The facility manager shall require unused coupons obtained from the accounting department employee to be stored in a locked cabinet until the coupons are distributed to patrons. All

coupons remaining unused at the end of a shift shall be either returned to the cage department for receipt and redistribution or kept for use by the following shift if accountability between shifts is maintained. All expired coupons shall be returned to the cage department on a daily basis. Any coupons that are not used by the expiration date indicated on the coupons shall be voided when returned to the cage department.

(7) Documentation shall be prepared by a representative of the facility manager for the distribution of coupons to patrons. The documentation shall include the following information, at a minimum:

(A) The date and time or the shift of preparation;

(B) the type of coupons used;

(C) the beginning serial number of the coupons used;

(D) the ending serial number of the coupons used;

(E) the total number of coupons used;

(F) the total number of coupons remaining for use by the next shift or returned to the accounting department; and

(G) the signatures of the facility manager's representatives who distributed the coupons.

(8) The coupons shall be redeemed in the following manner:

(A) Coupons redeemable for cash or tokens shall be redeemed only by change persons or at cashiers' booths, the cage, or at any other location within the gaming facility approved by the commission. A change person, booth cashier, or general cage cashier shall accept the coupons in exchange for the stated amount of cash or tokens. Coupons accepted for redemption shall be cancelled by those authorized to accept coupons. Cancellation of coupons shall be done in a manner that cancels the coupon number and shall permit subsequent identification of the individual who accepted and cancelled the coupon. Redeemed coupons shall be maintained and shall be submitted to the main bank not less frequently than at the conclusion of each day.

(B) Coupons redeemable for wagers shall be accepted only in exchange for the wagers stated on the coupons. Cancellation of coupons shall be done in a manner that permits subsequent identification of the individual who accepted and cancelled the coupon. Redeemed coupons shall be maintained and shall be submitted to the main bank not less frequently than at the conclusion of each gaming day.

(C) A coupon redeemable for gaming chips shall be redeemed only by one of the following ways:

(i) At a gaming table and only by a dealer or first-level supervisor who supervises the game, who shall accept the coupon in exchange for the stated amount of gaming chips and shall deposit the coupon into the drop box upon acceptance; or

(ii) by a chip person, who shall accept the coupon only from a patron seated at a poker table at which a game is in progress in exchange for the stated amount of gaming chips and shall cancel the coupon upon acceptance. The coupon shall be cancelled in a manner that permits subsequent identification of the individual who accepted and cancelled the coupon. The cancelled coupons shall be exchanged with the main bank at the conclusion of the chip person's shift, at a minimum.

(D) A match play coupon shall be redeemed only at a gaming table that offers an authorized game in which patrons wager only against the house. The coupon shall be redeemed only by a dealer and only if accompanied by the proper amount of gaming chips required by the coupon. The dealer shall accept the coupon as part of the patron's wager and deposit the coupon into the drop box after the wager is won or lost.

(9) Documentation on unused coupons, voided coupons, and redeemed coupons maintained shall be forwarded on a daily basis to the accounting department, which shall perform the following regarding the coupons:

(A) Review for the propriety of signatures on documentation and for proper cancellation of coupons;

(B) examine for proper calculation, summarization, and recording on documentation, including the master game report;

(C) reconcile by the total number of coupons given to representatives of the department making distribution to patrons, returned for reissuance, distributed to patrons, voided, and redeemed;

(D) record; and

(E) maintain and control until destruction of the coupons is approved by the commission. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective April 24, 2009.)

**112-107-20. EGM computer systems.** (a) All components of a facility manager's produc-

tion EGM computer system shall be located within the gaming facility. As used in this regulation, "production EGM computer system" shall mean the facility manager's primary EGM computer system comprised of a collection of hardware and software used to process or monitor EGM activity in real time. A production EGM computer system shall include any segregated testing component.

(b) With the written approval of the executive director, a facility manager's back-up EGM computer system, or any part of it, may be located in a secure and remote computer that is under the custody and control of an affiliate, intermediary, subsidiary, or holding company approved by the commission, referred to as a "host entity." A backup EGM computer system may consist of either of the following:

(1) A mirrored backup system that duplicates the production system by recording all slot-related operations on a real-time basis and is designed to become the production system whenever needed; or

(2) a periodic backup system that consists of regularly scheduled recording of selected data, which may include a complete image of the production system or any portion of the system.

(c) At a minimum, each facility manager requesting authorization to allow a backup EGM computer system to reside outside the gaming facility shall certify that both of the following conditions are met:

(1) Communications between the remote computer and the facility manager's EGM computer system occur using a dedicated and secure communication medium, which may include a leased line.

(2) The remote computer automatically performs the following functions:

(A) Generates daily monitoring logs and real-time alert messages to inform the facility manager and host entity of any system performance problems and hardware problems;

(B) generates daily monitoring logs and real-time alert messages to inform the facility manager of any software errors;

(C) generates daily monitoring logs to inform the facility manager of any unsuccessful attempts by a device, person, or process to obtain computer access;

(D) authenticates the identity of every device, person, and process from which communications are received before granting computer access to the device, person, or process;

(E) ensures that data sent through a transmission is completely and accurately received; and

(F) detects the presence of corrupt or lost data and, as necessary, rejects the transmission.

(d) Unless a remote computer is used exclusively to maintain the EGM computer system of the facility manager, the system shall be partitioned in a manner approved by the executive director and shall include the following:

(1) A partition manager that meets the following requirements:

(A) The partition manager shall be comprised of hardware or software, or both, and perform all partition management tasks for a remote computer, including creating the partitions and allocating system resources to each partition;

(B) the facility manager and host entity shall jointly designate and identify the security officer who will be responsible for administering the partition manager and maintaining access codes to the partition manager. The security officer shall be an employee of the facility manager or host entity and shall be licensed as a level I employee;

(C) special rights and privileges in the partition manager, including the administrator, shall be restricted to the management information systems director or security officer of the facility manager or host entity, who shall be licensed as level I employees;

(D) access to the partition manager shall be limited to employees of the management information systems departments of the facility manager and host entity; and

(E) software-based partition managers contained in a remote computer shall be functionally limited to performing partition management tasks for the remote computer, while partition managers using hardware and software that are not part of a remote computer may be utilized to perform other functions for a remote computer that are approved by the executive director;

(2) a separate partition established for the facility manager's EGM computer system that meets the following requirements:

(A) The partition shall be limited to maintaining the software and data of the facility manager for which the partition has been established;

(B) the security officer of the facility manager for which the partition has been established shall be licensed as a level I employee and shall be re-

sponsible for maintenance of access codes to the partition; and

(C) special rights and privileges in the partition, including the administrator, shall be restricted to the security officer and the management information systems director of the facility manager for which the partition has been established; and

(3) separate and distinct operating system software, application software, and computer access controls for the partition manager and each separate partition.

(e) Any facility manager may be permitted by the executive director to establish a partition within a computer that contains its EGM computer system for its affiliate, intermediary, subsidiary, or holding company if all of the following requirements are met:

(1) A partition manager comprised of hardware or software, or both, shall be utilized to perform all partition management tasks, including creating the partitions and allocating system resources to each partition.

(2) A security officer shall be designated within the management information systems department of the facility manager to be responsible for administering the partition manager and maintaining access codes to the partition manager. Special rights and privileges in the partition manager, including the administrator, shall be restricted to the security officer and the management information systems director of the facility manager.

(3) Special rights and privileges in any partition that has been established for the benefit of an affiliate, intermediary, subsidiary, or holding company shall be restricted to the security officer and information technology director of the affiliate, intermediary, subsidiary, or holding company.

(f) Any facility manager may be permitted by the executive director to maintain backup or duplicate copies of the software and data of its EGM computer system, or any portion of the software and data, in removable storage media devices, including magnetic tapes or disks, in a secure location within a gaming facility or other secure location outside the gaming facility as approved by the executive director for the purposes of disaster recovery.

(g) Notwithstanding the provisions of subsection (a), upon the declaration of a disaster affecting the EGM computer system by the chief executive officer of the facility manager and with the prior written approval of the executive director, a facility manager may maintain the software and data of its EGM computer system, or any portion of the software and data, in a computer located in a secure location outside the gaming facility.

(h) Any facility manager may locate software or data not related to an EGM computer system, including software or data related to the sale of food and beverages, in a computer located outside the gaming facility. With the written approval of the executive director, a facility manager may connect the computer to an EGM computer system if all of the following conditions are met:

(1) Logical access to computer software and data of the EGM computer system is appropriately limited.

(2) Communications with all portions of the EGM computer system occur using a dedicated and secure communications medium, which may consist of a leased line.

(3) The facility manager complies with other connection-specific requirements of the commission. (Authorized by and implementing K.S.A. 2007 Supp. 74-8772; effective April 24, 2009.)

**112-107-21. Progressive LFGs.** (a) Each progressive LFG shall meet the requirements of article 110.

(b) Each facility manager seeking to utilize a linked LFG shall submit the location and manner of installing any progressive meter display mechanism to the executive director for approval.

(c) An LFG that offers a progressive jackpot shall not be placed on the gaming floor until the executive director has approved the following:

(1) The initial and reset amounts at which the progressive meter or meters will be set;

(2) the proposed system for controlling the keys and applicable logical access controls to the LFGs;

(3) the proposed rate of progression for each progressive jackpot;

(4) the proposed limit for the progressive jackpot, if any; and

(5) the calculated probability of winning each progressive jackpot. The probability shall not exceed 50 million to one.

(d) Progressive meters shall not be turned back to a lesser amount unless one of the following occurs:

(1) The amount indicated has been actually paid to a winning patron.

(2) The progressive jackpot amount won by the patron has been recorded in accordance with a system of internal controls approved under K.A.R. 112-104-1.

(3) The progressive jackpot has, upon executive director approval, been transferred to another progressive LFG or wide-area progressive system in accordance with this article.

(4) The change is necessitated by an LFG or meter malfunction. For progressive jackpots governed by subsection (a), an explanation for the malfunction shall be entered on the progressive electronic gaming summary required by this article, and the commission shall be notified of the resetting in writing.

(e) Once an amount appears on a progressive meter, the probability of hitting the combination that will award the progressive jackpot shall not be decreased unless the progressive jackpot has been won by a patron or the progressive jackpot has been transferred to another progressive LFG or wide-area progressive system or removed in accordance with subsection (g).

(f) If an LFG has a progressive meter with digital limitations on the meter, the facility manager shall set a limit on the progressive jackpot, which shall not exceed the display capability of the progressive meter.

(g) Any facility manager may limit, transfer, or terminate a progressive jackpot offered on a gaming floor only under any of the following:

(1) A facility manager may establish a payout limit for a progressive jackpot if the payout limit is greater than the payout amount that is displayed to the patron on the progressive jackpot meter. The facility manager shall provide notice to the commission of the imposition or modification of a payout limit on a progressive meter concurrent with the setting of the payout limit.

(2) A facility manager may terminate a progressive jackpot concurrent with the winning of the progressive jackpot if its LFG program or progressive controller was configured before the winning of the progressive jackpot to establish a fixed reset amount with no progressive increment.

(3) A facility manager may permanently remove one or more linked LFGs from a gaming floor if both of the following conditions are met:

(A) If the LFG is part of a wide-area progressive system offered at multiple facilities, the facility manager retains at least one linked LFG offering the same progressive jackpot on its gaming floor.

(B) If the progressive jackpot is only offered in a single gaming facility, at least two linked LFGs offering the same progressive jackpot remain on the gaming floor.

(4) Any facility manager may transfer a progressive jackpot amount on a stand-alone LFG or the common progressive jackpot on an entire link of LFGs with a common progressive meter, including a wide-area progressive system, from a gaming floor. The facility manager shall give notice of its intent to transfer the progressive jackpot to the commission at least 30 days before the anticipated transfer and shall conspicuously display the facility manager's intent to transfer the progressive jackpot on the front of each LFG for at least 30 days. To be eligible for transfer, the progressive jackpot shall meet the following conditions:

(A) Be transferred in its entirety; and

(B) be transferred to one of the following:

(i) The progressive meter for an LFG or wide-area progressive system with the same or greater probability of winning the progressive jackpot, the same or lower wager requirement to be eligible to win the progressive jackpot, and the same type of progressive jackpot. However, if no other LFG or wide-area progressive system meets all of these qualifications, a transfer of the jackpot to the progressive meter of the most similar LFG or wide-area progressive system available may be authorized by the executive director; or

(ii) the progressive meters of two separate LFGs or wide-area progressive systems if each LFG or wide-area progressive system to which the jackpot is transferred individually satisfies the requirements of paragraph (g)(4)(B)(i).

(5) Any facility manager may immediately and permanently remove a progressive jackpot on a stand-alone progressive LFG, the common progressive jackpot on an entire link of LFGs with a common progressive meter, or an entire wide-area progressive system from a gaming floor if notice of intent to remove the progressive jackpot meets the following requirements:

(A) Is conspicuously displayed on the front of each LFG for at least 30 days; and

(B) is provided in writing to the commission at least 30 days before the removal of the progressive jackpot.

(h) The amount indicated on the progressive meter or meters and coin-in meter on each LFG governed by subsection (a) shall be recorded by the facility manager's accounting department or LFG department on a progressive electronic gaming summary report at least once every seven calendar days. Each report shall be signed by the preparer. If not prepared by the accounting department, the progressive electronic gaming sum-

mary report shall be forwarded to the accounting department by the end of the gaming day on which it is prepared. An employee of the accounting department shall be responsible for calculating the correct amount that should appear on a progressive meter. If an adjustment to the progressive meters is necessary, the adjustment shall be made by a member of the LFG department authorized by the progressive gaming supplier to make progressive meter adjustments as follows:

(1) Supporting documentation shall be maintained to explain any addition or reduction in the registered amount on the progressive meter. The documentation shall include the date, the asset number of the LFG, the amount of the adjustment, and the signatures of the accounting department member requesting the adjustment and the LFG department member making the adjustment; and

(2) the adjustment shall be effectuated within 48 hours of the meter reading.

(i) Except as otherwise authorized by this regulation, each LFG offering a progressive jackpot that is removed from the gaming floor shall be returned to or replaced on the gaming floor within five gaming days. The amount on the progressive meter or meters on the returned or replacement LFG shall not be less than the amount on the progressive meter or meters at the time of removal. If an LFG offering a progressive jackpot is not returned or replaced, any progressive meter amount at the time of removal shall, within five days of the LFG's removal, be added to an LFG offering a progressive jackpot approved by the executive director. The LFG shall offer the same or greater probability of winning the progressive jackpot and shall require the same or lower denomination of currency to play that was in use on the LFG that was removed. This subsection shall not apply to the temporary removal by a facility manager, for a period not to exceed 30 days, of all linked LFGs that are part of a particular wide-area progressive system if the progressive jackpot offered by the temporarily removed LFGs remains available on LFGs that are part of the same wide-area progressive system in another gaming facility.

(j) If an LFG is located adjacent to an LFG offering a progressive jackpot, the facility manager shall conspicuously display on the LFG a notice advising patrons that the LFG is not participating in the progressive jackpot of the adjacent LFG. (Authorized by K.S.A. 2009 Supp. 74-8772; implementing K.S.A. 2009 Supp. 74-8750 and 74-8772; effective April 24, 2009; amended April 1, 2011.)

**112-107-22. Wide-area progressive systems.** (a) Two or more facility managers may operate linked progressive LFGs that are interconnected between two or more participating gaming facilities, with the prior written approval of the commission and the Kansas lottery as required under subsection (c). The LFGs participating in the link shall be collectively referred to as a wide-area progressive system.

(b) Each wide-area progressive system shall at all times be installed and operated in accordance with relevant requirements of the act, this article, and article 110.

(c) Each wide-area progressive system shall be operated and administered by participating facility managers in accordance with the terms and conditions of a written agreement executed by the participating facility managers. The agreement shall be referred to as an electronic gaming system agreement. Each electronic gaming system agreement shall be submitted in writing and approved by the commission and the Kansas lottery before implementation and shall meet the requirements of the act, this article, and article 110.

(d) Any facility manager participating in an electronic gaming system agreement may delegate, in whole or in part, the management and administration of a wide-area progressive system to a gaming supplier if the electronic gaming system agreement is executed by the gaming supplier and the terms of the agreement are approved by the commission and the Kansas lottery. The persons designated in an electronic gaming system agreement as being responsible for the management and administration of a wide-area progressive system shall be referred to as the wide-area progressive system operator.

(e) An agreement between a gaming supplier and a facility manager under which a gaming supplier sells, leases, or services a wide-area progressive system shall not constitute an electronic gaming service agreement, unless the agreement also covers the management and administration of the wide-area progressive system.

(f) Each electronic gaming system agreement providing for the management and administration of a wide-area progressive system shall identify and describe with specificity the duties, responsibilities, and authority of each participating facil-

ity manager and each electronic gaming system operator, including the following:

(1) Details with regard to the terms of compensation for the electronic gaming system operator. The agreement shall address to what extent, if any, the electronic gaming system operator is receiving compensation based, directly or indirectly, on an interest, percentage, or share of a facility manager's revenue, profits, or earnings from the management of the wide-area progressive system;

(2) responsibility for the funding and payment of all jackpots and fees associated with the management of the wide-area progressive system;

(3) control and operation of the computer monitoring room required under subsection (l);

(4) a description of the process by which significant decisions with regard to the management of the wide-area progressive system are approved and implemented by the participating facility managers and electronic gaming system operator;

(5) when applicable, terms satisfactory to the commission with regard to apportionment of responsibility for establishing and servicing any trust agreement associated with any annuity jackpot offered by the wide-area progressive system;

(6) responsibility for generating, filing, and maintaining the records and reports required under the act, this part, and article 110; and

(7) any other relevant requirements of the commission, including those required to comply with the technical standards on wide-area progressive systems adopted by the commission under article 110.

(g) An electronic gaming system agreement submitted to the commission for approval shall be accompanied by a proposed system of internal controls addressing the following:

(1) Transactions directly or indirectly relating to the payment of progressive jackpots, including the establishment, adjustment, transfer, or removal of a progressive jackpot amount and the payment of any associated fees; and

(2) the name, employer, position, and gaming license status of any person involved in the operation and control of the wide-area progressive system.

(h) The information identified in paragraph (g)(2) shall be reviewed by the executive director to determine, based on an analysis of specific duties and responsibilities, which persons shall be licensed. The electronic gaming system manager shall be advised of the executive director's findings. Each participating facility manager and any participating gaming supplier shall comply with the commission's licensing instructions.

(i) An electronic gaming system manager shall not commence operation and administration of a wide-area progressive system pursuant to the terms of an electronic gaming system agreement until the agreement and the internal controls required under subsection (g) have been approved in writing by the commission and any licensing requirements under subsection (h) have been met.

(j) If an electronic gaming system agreement involves payment to a gaming supplier functioning as an electronic gaming system operator, of an interest, percentage, or share of a facility manager's revenue, profits, or earnings from the operation of a wide-area progressive system, the electronic gaming system agreement may be approved by the commission only if it determines that the total amounts paid to the gaming supplier under the terms of the agreement are commercially reasonable for the managerial and administrative services provided. Nothing in this regulation shall limit the commission's consideration of the electronic gaming system agreement to its revenue-sharing provisions.

(k) Each wide-area progressive system shall be controlled from a computer monitoring room. The computer monitoring room shall meet the following requirements:

(1) Be under the sole possession and control of employees of the wide-area progressive system manager designated in the electronic gaming system agreement for that system. The employees of the wide-area progressive system manager may be required to obtain a license or permit if the executive director determines, after a review of the work being performed, that the employees require a license or permit for the protection of the integrity of gaming;

(2) have its monitoring equipment subjected to surveillance coverage either by the surveillance system of a facility manager participating in the electronic gaming system agreement or by a dedicated surveillance system maintained by the wide-area progressive system manager. The surveillance plan shall be approved by the executive director;

(3) be accessible only through a locked door. The door shall be alarmed in a manner that audibly signals the surveillance monitoring room for the surveillance system elected under paragraph (l)(2); and

(4) have a computer monitoring room entry log. The log shall meet the following requirements:

(A) Be kept in the computer monitoring room;

(B) be maintained in a book with bound, numbered pages that cannot be readily removed or an electronic log approved by the executive director; and

(C) be signed by each person entering the computer monitoring room who is not an employee of the wide-area progressive system manager employed in the computer monitoring room on that person's assigned shift. Each entry shall contain the following information:

(i) The date and time of entering and exiting the room;

(ii) the name, department, or license number of the person entering and exiting the room and of the person authorizing the entry; and

(iii) the reason for entering the computer monitoring room.

(l) In evaluating a proposed location for a computer monitoring room, the following factors may be considered by the executive director:

(1) The level of physical and system security offered by the proposed location; and

(2) the accessibility of the location to the commission's audit, law enforcement, and technical staff. (Authorized by K.S.A. 2009 Supp. 74-8772; implementing K.S.A. 2009 Supp. 74-8750 and 74-8772; effective April 24, 2009; amended April 1, 2011.)

**112-107-23. Electronic gaming monitoring systems.** (a) Any facility manager may utilize an electronic gaming monitoring system that has an interface between it, EGMs, and related systems if the electronic gaming monitoring system has been tested and approved by the commission under K.A.R. 112-107-3.

(b) Each electronic gaming monitoring system shall meet the requirements of the act, this article, and article 110. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective April 24, 2009.)

**112-107-24. Casino management systems.** (a) Any facility manager may utilize a casino management system that has an interface between it, EGMs, and related systems if the casino management system has been tested and approved by the commission under K.A.R. 112-107-3.

(b) Each casino management system shall meet the requirements of the act, this article, and article 110. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective April 24, 2009.)

**112-107-25. Player tracking systems.** (a) Any facility manager may utilize a player tracking system that has an interface between it, EGMs, and related systems if the player tracking system has been tested and approved by the commission under K.A.R. 112-107-3.

(b) Each player tracking system shall meet the requirements of the act, this article, and article 110. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective April 24, 2009.)

**112-107-26. External bonusing systems.** (a) Any facility manager may utilize an external bonusing system that has been tested and approved by the commission under K.A.R. 112-107-3.

(b) The combination of the EGM theoretical payout percentage plus the bonus awards generated by an external bonusing system shall not equal or exceed 100% of the theoretical payout for an EGM on which the external bonus award is available.

(c) Each EGM shall meet the minimum theoretical payout percentage required under this article without the contribution of any external bonus award available on the EGM.

(d) Each external bonusing system shall meet the requirements of the act, this article, and article 110. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective April 24, 2009.)

**112-107-27. Cashless funds transfer systems.** (a) Any facility manager may utilize a cashless funds transfer system that has been tested and approved by the commission under K.A.R. 112-107-3.

(b) Each cashless funds transfer system shall meet the requirements of the act, this article, and article 110.

(c) Before utilizing a cashless funds transfer system, each facility manager shall establish a system of internal controls for the cashless funds transfer system. The internal controls shall be submitted to and approved by the commission under K.A.R. 112-104-1. The internal control procedures submitted by the facility manager shall address the integrity, security, and control of the facility manager's cashless funds transfer system shall include the following:

(1) An overview of the system design;

(2) system access controls and restrictions;

(3) override policies and restrictions;

(4) backup and recovery procedures;

(5) logical and physical access controls and restrictions;

(6) network security; and

(7) procedures for handling customer disputes.

(d) The transfer of electronic credits to an EGM under this regulation shall be initiated only by a patron using an access control. Access controls shall require the use of a unique access code for each patron. The access code shall be selected by and available to only the patron.

(e) Each facility manager shall maintain a record of every transfer of electronic credits to an EGM under this regulation. Each transfer shall be identified by, at a minimum, the date, the time, and the asset number of the EGM to which the transfer occurred and an identification number assigned to the patron who initiated the transaction. The identification number assigned to a patron for the purposes of this regulation shall be different from the unique access code selected by the patron as part of an access control.

(f) On at least a monthly basis, each facility manager using a cashless funds transfer system shall provide a statement to each patron who has participated in the system that month. The statement shall include, at a minimum, the patron's beginning monthly balance, credits earned, credits transferred to an EGM pursuant to this regulation, and the patron's monthly ending balance. With the written authorization of the patron, the mailing of a monthly statement may be issued electronically to the patron. However, a monthly statement shall not be required for transfers of temporary electronic credits or transfers of electronic credits from a temporary anonymous account.

(g) Each facility manager shall provide notice to the commission in writing of any adjustment to the amount of a credit transferred to an EGM by means of a cashless funds transfer system. The notice shall be submitted on or before the date of the adjustment. (Authorized by and implementing K.S.A. 2007 Supp. 74-8772; effective April 24, 2009.)

**112-107-28. Server-supported electronic gaming systems.** (a) Any facility manager may utilize a server-supported electronic gaming system if that system has been tested and approved by the commission under K.A.R. 112-107-3.

(b) Each server-supported electronic gaming system shall meet the requirements of the act, this article, and article 110.

(c) Before utilizing a server-supported electronic gaming system, each facility manager shall establish a system of internal controls for the server-supported electronic gaming system. The internal controls shall be submitted to and approved by the commission under K.A.R. 112-104-1. The internal controls submitted by the facility manager shall address the integrity, security, and control of the server-supported electronic gaming system. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective April 24, 2009.)

**112-107-29. Server-based electronic gaming systems.** (a) Any facility manager may utilize a server-based electronic gaming system if that system has been tested and approved by the commission under K.A.R. 112-107-3.

(b) Each server-based electronic gaming system shall meet the requirements of the act, this article, and article 110.

(c) Before utilizing a server-based electronic gaming system, each facility manager shall establish a system of internal controls for the server-based electronic gaming system. The internal controls shall be submitted to and approved by the commission under K.A.R. 112-104-1. The internal controls submitted by the facility manager shall address the integrity, security, and control of its server-based electronic gaming system. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective April 24, 2009.)

**112-107-30. EGMs and associated equipment utilizing alterable storage media.** The use of alterable storage media in an EGM or associated equipment shall meet the requirements of the act, this article, and the technical standards on alterable storage media adopted by the commission under article 110. (Authorized by and implementing K.S.A. 2007 Supp. 74-8772; effective April 24, 2009.)

**112-107-31. Remote system access.** (a) In emergency situations or as an element of technical support, an employee of a gaming supplier may perform analysis of, or render technical support with regard to, a facility manager's electronic gaming monitoring system, casino management system, player tracking system, external bonusing system, cashless funds transfer system, wide-area progressive system, gaming ticket system, or other

approved system from a remote location. All remote access to these systems shall be performed in accordance with the following procedures:

(1) Only an employee of a gaming supplier who separately holds an occupation license under article 103 may remotely access a system sold, leased, or otherwise distributed by that gaming supplier for use at a gaming facility.

(2) The gaming supplier shall establish a unique system account for each employee of a gaming supplier identified by that supplier as potentially required to perform technical support from a remote location. All system access afforded pursuant to this regulation shall meet the following requirements:

(A) Be restricted in a manner that requires the facility manager's management information systems department to receive prior notice from the gaming supplier of its intent to remotely access a designated system;

(B) require the facility manager to take affirmative steps, for each instance of access, to activate the gaming supplier's access privileges; and

(C) be designed to appropriately limit the ability of any person authorized under this regulation to deliberately or inadvertently interfere with the normal operation of the system or its data.

(3) A separate log shall be maintained by both the gaming supplier and the facility manager's management information systems department. Each log shall contain, at a minimum, the following information:

(A) The system accessed, including manufacturer, and version number;

(B) the type of connection;

(C) the name and license number of the employee remotely accessing the system;

(D) the name and license number of the employee in the management information systems department activating the gaming supplier's access to the system;

(E) the date, time, and duration of the connection;

(F) the reason for the remote access, including a description of the symptoms or malfunction prompting the need for remote access to the system; and

(G) any action taken or further action required.

(4) All communications between the gaming supplier and any of the systems identified in subsection (a) shall occur using a dedicated and secure communication facility which may consist of a leased line approved in writing by the executive director.

(b) Each modification of, or remedial action taken with respect to, an approved system shall be processed and approved by the commission either in accordance with the emergency modification provisions of K.A.R. 112-107-3(l) or as a standard modification submitted under K.A.R. 112-107-3(h).

(c) If an employee of a gaming supplier is no longer employed by, or authorized by, that manufacturer to remotely access a system pursuant to this regulation, the gaming supplier shall notify, by the end of that business day, the commission and each facility manager that has established a unique system account for that employee of the change in authorization and shall verify with each facility manager that any access privileges previously granted have been revoked.

(d) All remote system access shall be performed in accordance with article 110.

(e) Each facility manager authorizing access to a system by a gaming supplier under this regulation shall be responsible for implementing a system of access protocols and other controls over the physical integrity of that system and the remote access process sufficient to ensure appropriately limited access to software and the system-wide reliability of data. (Authorized by and implementing K.S.A. 2007 Supp. 74-8772; effective April 24, 2009.)

**112-107-32. EGM destruction procedures.** (a) Each facility manager shall establish a comprehensive system of internal controls for the EGM destruction procedures required by this regulation. The internal controls shall be submitted to and approved by the commission under K.A.R. 112-104-1.

(b) The facility manager shall submit a request in writing with an attached approval letter from the Kansas lottery requesting the destruction of an EGM. The notice shall contain the asset number of each EGM that is requested to be destroyed and shall be submitted at least 14 days in advance of the requested destruction date.

(c) When destroying an EGM, the critical program storage media (CPSM) and component parts shall be removed from the EGM before destruction of the cabinet. For the purposes of this regulation, a component part shall mean any subassembly or essential part as described in K.S.A. 21-4302(d)(1)(C), and amendments thereto, and

shall include any equipment necessary for any of the following operations by the EGM:

(1) The acceptance of currency, tickets, coupons, or tokens;

(2) the discharge of currency, tickets, coupons, or tokens;

(3) the determination or display of the outcome of the game;

(4) recordkeeping; and

(5) security.

(d) The CPSM and component parts may be destroyed or placed into the controlled inventory of the EGM department. All destroyed CPSM and component parts shall be destroyed separately from the EGM cabinets.

(e) The destruction of any EGMs, CPSM, and component parts shall be witnessed by an agent of the commission. (Authorized by K.S.A. 2008 Supp. 74-8772; implementing K.S.A. 2008 Supp. 74-8750 and 74-8772; effective April 24, 2009.)

**112-107-33. Reserved.**

**112-107-34. Waivers.** (a) The requirements in this article or article 110 for an EGM may be waived by the commission upon the commission's determination that the EGM, associated equipment, or modification as submitted by the facility manager meets the operational integrity requirements of the act, this article, and article 110.

(b) Any gaming supplier may submit a written request to the commission for a waiver for one or more of the requirements in this article or article 110. The request shall include supporting documentation demonstrating how the EGM, associated equipment, or modification for which the waiver has been requested meets the operational integrity requirements of the act, this article, and article 110. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective April 24, 2009.)

## Article 108.—TABLE GAMES

**112-108-1. Definitions.** The following words and terms, when used in this article, shall have the following meanings unless the context clearly indicates otherwise:

(a) "Bad beat" means a jackpot prize that is paid in poker when a sufficiently strong hand is shown face down and loses to an even stronger hand held by another player.

(b) "Boxperson" means an individual who supervises dice games, including craps, guards the money and chips at a long table, issues chips, and settles conflicts about the plays.

(c) "Burning cards" means a process, performed by the dealer, in which one or more cards are removed from the top of the deck of cards and placed in the discard pile, after the cards have been cut.

(d) "Coloring up" means exchanging lower denomination chips for higher denomination chips.

(e) "Counterfeit chip" means any chip or chip-like objects that have not been approved pursuant to this article, including objects referred to as "slugs," but not coins of the United States or other nations.

(f) "Day" means calendar day regardless of whether the day falls on a weekend or holiday.

(g) "Non-value chips" means chips without a value impressed, engraved, or imprinted on them.

(h) "Pai gow" means a double-hand poker variation based on the Chinese dominos game of Pai Gow.

(i) "Patron" means any person present at a gaming facility who is not employed by the facility manager, the Kansas lottery, or the commission and is not on the premises as a vendor of the facility manager.

(j) "Pit area" means the immediate areas within a gaming facility where one or more table games are open for play.

(k) "Promotional coupon" means any instrument offering any person something of value issued by a facility manager to promote the lottery gaming facility or ancillary facility or for use in or related to certified gambling games at a facility manager's gaming establishment.

(l) "Promotional game" means a drawing, event, contest, or game in which patrons can, without giving consideration, participate or compete for the chance to win a prize or prizes of different values.

(m) "Promotional giveaway" means a promotional gift or item given by a facility manager to any person meeting the facility manager's promotional criteria, for which the person provides no consideration. No chance or skill is involved in the awarding of the promotional gift or item, and all persons meeting the facility manager's promotional criteria receive the same promotional gift or item.

(n) "Rake" means a commission charged by the house for maintaining or dealing a game, including poker.

(o) "Special hand" means a secondary jackpot paid on a poker hand that does not qualify for the bad beat.

(p) "Table game" means any lottery facility game other than a game played on an electronic gaming machine.

(q) "Table game mechanism" means a component that is critical to the operation of a table game, including a roulette wheel and an electronic add-on for the placement of wagers.

(r) "Value chips" means chips with a value impressed, engraved, or imprinted on the chips. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-2. Consistency with the Kansas lottery's rules.** Each facility manager shall conduct each lottery facility game in a manner consistent with the rules of the game approved by the Kansas lottery. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-3. Participation in table games by a certificate holder or a licensee.** (a) Except as provided in K.A.R. 112-108-37, no facility manager or any director, officer, key person, or any other agent of any facility manager shall play or be permitted to play any table game in the gaming facility where the person is licensed or employed.

(b) No holder of a gaming supplier certificate or any director, officer, key person, or any other agent of a gaming supplier shall play or be permitted to play at a table game in a gaming facility to which the gaming supplier provides its goods or services. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-4. Testing and approval of table games.** (a) Each table game, the rules of the game, and the associated equipment to be used in a gaming facility shall be submitted for approval in accordance with the act and these regulations.

(b) Each table game, the rules of the game, and associated equipment shall be evaluated by the commission for the following:

(1) Overall operational integrity and compliance with the act and these regulations;

(2) mathematical accuracy of the payout tables; and

(3) compatibility with any specifications approved by the Kansas lottery.

(c) A product submission checklist may be prescribed by the executive director.

(d) An independent testing laboratory may be used by the commission to evaluate the table game and associated equipment.

(e) A trial period may be required by the commission to assess the functionality of the table game, rules of the game, and associated equipment in a live gaming environment. The conduct of the trial period shall be subject to compliance by the facility manager with any conditions that may be required by the commission.

(f) A facility manager shall not install a table game or associated equipment unless the table game, rules of the game, and associated equipment have been approved by the commission and issued a certificate authorizing the use of the game, rules, or associated equipment at the gaming facility. The certificate shall be prominently displayed on the approved device. A facility manager shall not modify, alter, or tamper with an approved table game, rules of the game, or associated equipment or with a commission-issued certificate.

(g) The facility manager shall notify the executive director in writing and receive written approval at least five days before moving or disposing of a table game or associated equipment that has been issued a certificate. Before the removal of the table game or associated equipment from the gaming facility, the certificate shall be removed by a commission agent. A table game or the associated equipment installed in a gaming facility in contravention of this requirement shall be subject to seizure by any Kansas law enforcement officer.

(h) Any modification to a table game or the associated equipment may be authorized by the executive director on an emergency basis to prevent cheating or malfunction. The emergency request shall be documented by the facility manager. The request shall specify the name and employer of any persons to be involved in the installation of the modification and the manner in which the installation is to be effected. Within 15 days of receipt of any authorization to install an emergency modification, the facility manager shall submit the modification for full evaluation and approval in accordance with this article.

(i) Each facility manager shall notify the commission's security staff of any known or suspected defect or malfunction in any table game or associated equipment installed in the gaming facility

no later than four hours after detection. The facility manager shall comply with any instructions from the commission staff for the use of the table game or associated equipment.

(j) Each facility manager shall include table games and associated equipment on the facility manager's master list of approved gaming machines as required by K.A.R. 112-107-10.

(k) All table games and associated equipment shall be noted on the gaming floor plan under K.A.R. 112-107-7. (Authorized by K.S.A. 2008 Supp. 74-8772; implementing K.S.A. 2008 Supp. 74-8750 and 74-8772; effective Jan. 8, 2010.)

**112-108-5. Compliance with law; prohibited activities.** (a) Each facility manager shall comply with all federal and state regulations and requirements for the withholding of taxes from winnings and the filing of currency transaction reports (CTR).

(b) Each facility manager shall be prohibited from the following activities:

(1) Permitting persons who are visibly intoxicated to participate in table games;

(2) permitting any table game or associated table game equipment that could have been marked, tampered with, or otherwise placed in a condition or operated in a manner that might affect the normal game play and its payouts;

(3) permitting cheating, if the facility manager was aware of the cheating;

(4) permitting any cheating device to remain in or upon any gaming facility, or conducting, carrying on, operating, or dealing any cheating or thieving game or device on the premises; and

(5) permitting any gambling device that tends to alter the normal random selection of criteria that determines the results of the game or deceives the public in any way to remain in or upon any gaming facility, if the facility manager was aware of the device.

(c) Each violation of this regulation shall be reported within one hour to a commission agent.

(d) A facility manager shall not allow a patron to possess any calculator, computer, or other electronic, electrical, or mechanical device at any table game that meets any of the following conditions:

(1) Assists in projecting the outcome of a game;

(2) keeps track of cards that have been dealt;

(3) keeps track of changing probabilities; or

(4) keeps track of playing strategies being utilized, except as permitted by the commission.

(e) A person who, without the assistance of another person or without the use of a physical aid or device of any kind, uses the person's own ability to keep track of the value of cards played and uses predictions formed as a result of the tracking information in their playing and betting strategy shall not be considered to be in violation of these regulations. Any facility manager may make its own determination of whether the behavior is disruptive to gaming. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-6. Table game internal controls.** (a) Each facility manager shall establish a system of internal controls for the security and operation of table games as provided under this article. The internal controls for table games shall be submitted to the commission for approval under K.A.R. 112-104-1 and shall address the following:

(1) Object of the game and method of play, including what constitutes win, loss, or tie bets;

(2) physical characteristics of the game, gaming equipment, and gaming table;

(3) procedures for opening and closing of the gaming table;

(4) wagers and payout odds for each type of available wager, including the following:

(A) A description of the permissible wagers and payout odds;

(B) any minimum or maximum wagers, which shall be posted on a sign at each table; and

(C) any maximum table payouts, if any, which shall be posted at each table and shall not be less than the maximum bet times the maximum odds;

(5) for each game that uses any of the following, the applicable inspection procedures:

(A) Cards;

(B) dice;

(C) wheels and balls; or

(D) manual and electronic devices used to operate, display the outcome, or monitor live games;

(6) for each game that uses cards, a description of the following:

(A) Shuffling procedures;

(B) card cutting procedures;

(C) procedures for dealing and taking cards; and

(D) burning cards;

(7) procedures for the collection of bets and payouts including requirements for internal revenue service purposes;

(8) procedures for handling suspected cheating

or irregularities and immediate notification of commission agent on duty;

(9) procedures for dealers being relieved;

(10) procedures for immediate notification to the commission agent on duty when equipment is defective or malfunctioning; and

(11) procedures to describe irregularities of the game, including dice off the table and soiled cards.

(b) Each facility manager that provides table games shall include a table game department in the internal controls. That department shall be supervised by a person located at the gaming facility who functions as the table game director. The department shall be mandatory and shall cooperate with yet perform independently of other mandatory departments listed under K.A.R. 112-104-2. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-7. Publication of rules and payoff schedules for all permitted games.** Each facility manager shall provide, free of charge and within one hour, a copy of the rules and accurate payoff schedules for any table game if requested by a patron. Each payoff schedule shall accurately state actual payoffs applicable to a particular game or device. No payoff schedule shall be worded in a manner that misleads the public. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-8. Payout for progressive table games.** (a) Each table game that includes progressive jackpots shall have a progressive meter visible to patrons. If any part of the distribution to the progressive jackpots is being used to fund a secondary jackpot, visible signage informing players of this supplemental distribution shall be placed in the immediate area of the table. The existence of progressive jackpots and the distributions to those jackpots shall be set forth in the "rules of the game" within a facility manager's internal controls for each game having a progressive jackpot. Each table game not meeting this distribution requirement shall be deemed an unauthorized gambling game.

(b) At least five days before the cancellation of any table game that includes a progressive jackpot that has not been awarded, the facility manager shall submit a plan for disbursement of that jackpot for approval by the executive director. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-9. Authorized table gaming suppliers.** Chips, dice, and playing cards for use in table games may be purchased only from a permitted or certified gaming supplier. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-10. Chip specifications.** (a) Each value chip issued by a facility manager shall have the following characteristics:

(1) Be round;

(2) have clearly and permanently impressed, engraved, or imprinted on it the name of the facility manager and the specific value of the chip;

(3) have, at least on one side of the chip, the name of the city or other locality and the state in which the gaming facility is located and either the manufacturer's name or a distinctive logo or other mark identifying the manufacturer;

(4) have its center portion impressed, engraved, or imprinted with the value of the chip and the name of the facility manager that is issuing the chip;

(5) utilize a different center shape for each denomination;

(6) be designed so that the specific denomination of a chip can be determined on surveillance camera monitors when placed in a stack of chips of other denominations; and

(7) be designed, manufactured, and constructed so as to prevent the counterfeiting of value chips.

(b) Unless otherwise authorized by the executive director, value chips may be issued by facility managers in denominations of $1, $2.50, $5, $20, $25, $100, $500, $1,000, $5,000, and $10,000. Each facility manager shall have the discretion to determine the denominations to be utilized at its gaming facility and the amount of each denomination necessary for the conduct of gaming operations.

(c) Unless otherwise authorized by the executive director, value chips worth less than $500 shall have a diameter of 39 millimeters, and value chips worth equal to or greater than $500 shall have a diameter of 43 millimeters.

(d) Each denomination of value chip shall have a different primary color from every other denomination of value chip. Unless otherwise approved by the executive director, value chips shall have the colors specified in this subsection when the chips are viewed both in daylight and under incandescent light. In conjunction with these pri-

mary colors, each facility manager shall utilize contrasting secondary colors for the edge spots on each denomination of value chip. Unless otherwise approved by the executive director, no facility manager shall use a secondary color on a specific denomination of chip identical to the secondary color used by another facility manager in Kansas on that same denomination of value chip. The primary color to be utilized by each facility manager for each denomination of value chip shall be as follows:

(1) For $1, white;

(2) for $2.50, pink;

(3) for $5, red;

(4) for $20, yellow;

(5) for $25, green;

(6) for $100, black;

(7) for $500, purple;

(8) for $1,000, fire orange;

(9) for $5,000, grey; and

(10) for $10,000, burgundy.

(e)(1) Each non-value chip utilized by a facility manager shall be issued solely for roulette. Each non-value chip at each roulette table shall meet the following conditions:

(A) Have the name of the facility manager issuing it impressed into its center;

(B) contain a design, insert, or symbol differentiating it from the non-value chips being used at every other roulette table in the gaming facility;

(C) have "Roulette" impressed on it; and

(D) be designed, manufactured, and constructed so as to prevent counterfeiting;

(2) Non-value chips issued at a roulette table shall be used only for gaming at that table and shall not be redeemed or exchanged at any other location in the gaming facility. When so presented, the dealer at the issuing table shall exchange these chips for an equivalent amount of value chips.

(f) No facility manager or its employees shall allow any patron to remove non-value chips from the table from which the chips were issued.

(g) No person at a roulette table shall be issued or permitted to game with non-value chips that are identical in color and design to value chips or to non-value chips being used by another person at the same table. When a patron purchases non-value chips, a non-value chip of the same color shall be placed in a slot or receptacle attached to the outer rim of the roulette wheel. At that time, a marker denoting the value of a stack of 20 chips of that color shall be placed in the slot or receptacle.

(h) Each facility manager shall have the discretion to permit, limit, or prohibit the use of value chips in gaming at roulette. Each facility manager shall be responsible for keeping an accurate account of the wagers being made at roulette with value chips so that the wagers made by one player are not confused with those made by another player at the table. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-11. Submission of chips for review and approval.** (a) Each facility manager shall submit a sample of each denomination of value chips and non-value chips to the executive director for approval. No facility manager shall utilize these chips for gaming purposes until approved in writing by the executive director.

(b) In requesting approval of any chips, a facility manager shall submit to the commission a detailed schematic of its proposed chips and a sample chip. The detailed schematic shall show the front, back, and edge of each denomination of value chip and each non-value chip and the design and wording to be contained on the chip. If the design schematics or chip is approved by the executive director, no value chip or non-value chip shall be issued or utilized unless a sample of each denomination of value chip and each color of non-value chip is also submitted to and approved by the executive director.

(c) The facility manager shall provide the name and address of the chip manufacturer to the commission.

(d) No facility manager or other person licensed by the commission shall manufacture for, sell to, distribute to, or use in any gaming facility outside of Kansas any value chips or non-value chips having the same design as that approved for use in Kansas. (Authorized by K.S.A. 2008 Supp. 74-8772; implementing K.S.A. 2008 Supp. 74-8752 and 74-8772; effective Jan. 8, 2010.)

**112-108-12. Primary, secondary, and reserve sets of gaming chips.** Unless otherwise authorized by the executive director, each facility manager shall have a primary set of value chips, a separate secondary set of value chips, a primary set of non-value chips, and a non-value chip reserve, which shall conform to the color and design specifications set forth in K.A.R. 112-108-10. An approved secondary set of value chips and reserve

non-value chips shall be placed into active play when the primary set of value chips or non-value chips is removed.

(a) The secondary set of value chips shall have different secondary colors than the primary set and shall be required for all denominations.

(b) Each facility manager shall have a non-value chip reserve for each color utilized in the gaming facility with a design insert or symbol different from those non-value chips comprising the primary set.

(c) The facility manager shall remove the primary set of gaming chips from active play if at least one of the following conditions is met:

(1) A determination is made by the facility manager that the gaming facility is receiving a significant number of counterfeit chips.

(2) Any other impropriety or defect in the utilization of the primary set of chips makes removal of the primary set necessary.

(3) The executive director orders the removal because of security or integrity.

(d) If the primary set of chips is removed from active play, the facility manager shall immediately notify a representative of the commission of the reason for this occurrence. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-13. Exchange of value chips or non-value chips.** (a) Chips shall be issued to a person only at the request of that person and shall not be given as change in any other transaction. Chips shall be issued to gaming facility patrons at cashiers' cages or at the live table games. Chips may be redeemed at cashiers' cages.

(b) Chips shall be redeemed only by a facility manager for its patrons and shall not be knowingly redeemed from a source other than a patron. Employees of the facility manager may redeem chips they have received as gratuities as allowed under these regulations.

(c) Each facility manager shall redeem its own chips by cash or by check dated the day of the redemption on an account of the facility manager as requested by the patron, except when the chips were obtained or used unlawfully.

(d) Any facility manager may demand the redemption of its chips from any person in possession of them. That person shall redeem the chips upon presentation of an equivalent amount of cash by the facility manager.

(e) No facility manager shall knowingly accept, exchange, use, or redeem gaming chips issued by another facility manager.

(f) Each facility manager shall cause to be posted and remain posted, in a prominent place on the front of a cashier's cage, a sign that reads as follows: "Gaming chips issued by another facility manager cannot be used, exchanged, or redeemed at this gaming facility." (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-14. Receipt of gaming chips from manufacturer.** (a) When chips are received from the manufacturer, the chips shall be opened and checked by at least two employees, one from the table games department and one from the security department of the facility manager. Any deviation between the invoice accompanying the chips and the actual chips received or any defects found in the chips shall be reported to a security agent of the commission. A security agent of the commission shall be notified by both the gaming supplier and the facility manager of the time of delivery of any chips to the facility manager.

(b) After checking the chips received, the facility manager shall report in a chip inventory ledger each denomination of the chips received, the number of each denomination of chips received, the number and description of all non-value chips received, the date of receipt, and the signature of the individuals who checked the chips. Chips shall be divided into the following categories:

(1) Primary chips for current use;

(2) reserve chips that may be placed into play as the need arises; and

(3) secondary chips, both value chips and non-value chips, that are held to replace the primary set when needed.

(c) If any of the chips received are to be held in reserve and not utilized either at the table games or at a cashier's cage, the chips shall be stored in a separate, locked compartment either in the vault or in a cashier's cage and shall be recorded in the chip inventory ledger as reserve chips.

(d) All chips received that are part of the facility manager's secondary set of chips shall be recorded in the chip inventory ledger as such and shall be stored in a locked compartment in the gaming facility vault separate from the reserve chips. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-15. Inventory of chips.** (a) Chips shall be taken from or returned to either the reserve chip inventory or the secondary set of chips in the presence of at least two individuals, one from the table games department and one from the security department of the facility manager. The denominations, number, and amount of chips taken or returned shall be recorded in the chip inventory ledger, together with the date and signatures of the two individuals carrying out this process.

(b) The facility manager's accounting department shall monthly compute and record the unredeemed liability for each denomination of chips, take an inventory of chips in circulation, and record the result of this inventory in the chip inventory ledger. The accounting department shall take a monthly inventory of reserve chips and secondary chips and record the result of this inventory in the chip inventory ledger. Each individual who inspected and counted the chips shall sign either the inventory ledger or other supporting documentation. The procedures to be utilized to compute the unredeemed liability and to inventory chips in circulation, reserve chips, and secondary chips shall be submitted in the internal controls to the commission for approval. A physical inventory of chips in reserve shall be required annually only if the inventory procedures incorporate a commission-sealed, locked compartment and the seals have not been broken. Seals shall be broken only by a commission agent, with each violation of this requirement reported upon discovery to a commission agent on duty.

(c) During non-gaming hours, all chips in the possession of the facility manager shall be stored in the chip bank, in the vault, or in a locked compartment in a cashier's cage, except that chips may be locked in a transparent compartment on gaming tables if there is adequate security as approved by the commission.

(d) The internal control system shall include procedures for the removal and destruction of damaged chips from the gaming facility inventory. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-16. Destruction of chips.** (a) At least 10 days before the anticipated destruction of chips, a facility manager shall notify the commission in writing of the following:

(1) The date on which and the location at which the destruction will be performed;

(2) the denomination of the chips to be destroyed;

(3) the number and amount of value chips to be destroyed;

(4) the description and number of non-value chips to be destroyed; and

(5) a detailed explanation of the method of destruction.

(b) The facility's surveillance staff and a commission agent shall be notified before the commencement of destruction.

(c) The destruction of chips shall occur in a room monitored by surveillance for the duration of destruction.

(d) Unless otherwise authorized by the executive director, the destruction of chips shall be carried out in the presence of at least two individuals, one from the table games department and the other one from the security department. The following information shall be recorded in the chip inventory ledger:

(1) The denomination, number, and amount of value chips or, in the case of non-value chips, the description and number so destroyed;

(2) the signatures of the individuals carrying out the destruction; and

(3) the date on which destruction took place. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-17. Counterfeit chips.** (a) The facility manager shall notify a commission security agent when a counterfeit chip is discovered and shall deliver the counterfeit chip to the commission security agent to investigate criminal prosecution.

(b) Each facility manager shall record the following information regarding counterfeit chips:

(1) The number and denominations, actual and purported, of the coins and counterfeit chips destroyed or otherwise disposed of pursuant to this regulation;

(2) the month during which they were discovered;

(3) the date, place, and method of destruction or other disposition, including, in the case of foreign coin exchanges, the exchange rate and the identity of the bank, exchange company, or other business or person at which or with whom the coins are exchanged; and

(4) the names of the persons carrying out the destruction or other disposition on behalf of the facility manager.

(c) Unless the executive director orders otherwise, facility managers may dispose of coins of the United States or any other nation discovered to have been unlawfully used at their establishments by either of the following:

(1) Including the coins in the coin inventories or, in the case of foreign coins, exchanging the coins for United States currency or coins and including the coins in the currency or coin inventories; or

(2) disposing of them in any other lawful manner.

(d) The facility manager shall maintain each record required by this regulation for at least seven years, unless the executive director approves or requires otherwise. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-18. Tournament chips and tournaments.** (a) "Tournament chip" shall mean a chip or chiplike object issued by a facility manager for use in tournaments at the facility manager's gaming facility.

(b) Tournament chips shall be designed, manufactured, approved, and used in accordance with the provisions of this article applicable to chips, except as follows:

(1) Tournament chips shall be of a shape and size and have any other specifications necessary to make the chips distinguishable from other chips used at the gaming facility.

(2) Each side of each tournament chip shall conspicuously bear the inscription "No Cash Value."

(3) Tournament chips shall not be used, and facility managers shall not permit their use, in transactions other than the tournaments for which the chips are issued.

(c) As used in this regulation, entry fees shall be defined as the total amount paid by a person or on a person's behalf for participation in a tournament. A tournament shall mean a contest offered and sponsored by a facility manager in which patrons may be assessed an entry fee or be required to meet some other criteria to compete against one another in a gambling game or series of gambling games in which winning patrons receive a portion or all of the entry fees, if any. These entry fees may be increased with cash or noncash prizes from the facility manager. Facility managers may conduct tournaments if all of the following requirements are met:

(1) The facility manager shall notify the executive director of the planned tournament at least 30 calendar days before the first day of the event.

(2) The facility manager shall not conduct the tournament unless approved by the executive director.

(3) The facility manager shall conduct the tournament in compliance with all applicable rules, regulations, and laws.

(4) The facility manager shall maintain written, dated rules governing the event and the rules shall be immediately available to the public and the commission upon request. Tournament rules shall, at a minimum, include the following:

(A) The date, time, and type of tournament to be held;

(B) the amount of the entry fee, if any;

(C) the minimum and maximum number of participants;

(D) a description of the tournament structure, including number of rounds, time period, players per table, and criteria for determining winners;

(E) the prize structure, including amounts or percentages, or both, for prize levels; and

(F) procedures for the timely notification of entrants and the commission and the refunding of entry fees in the event of cancellation.

(5) No false or misleading statements, written or oral, shall be made by a facility manager or its employees or agents regarding any aspect of the tournament, and all prizes offered in the tournament shall be awarded according to the facility manager's rules governing the event.

(6) The facility manager's accounting department shall keep a complete record of the rules of the event and all amendments to the rules, including criteria for entry and winning, names of all entrants, all prizes awarded, and prize winners, for at least two years from the last date of the tournament. This record shall be made readily available to the commission upon request.

(7) Entry fees shall accumulate to adjusted gross gaming receipts.

(8) Cash and noncash winnings paid in a tournament shall be deductible from adjusted gross gaming revenue, but any such deduction shall not exceed the total entry fees received for the tournament and noncash winnings shall be deductible only to the dollar value of the amount actually invoiced to and paid by the facility manager.

(9) Upon the completion of the tournament, documentation of entrants' names, names of prize

winners and amounts won, and tax-reporting information shall be submitted to the commission.

(10) The facility manager shall designate in its internal control system an employee position acceptable to the commission that shall be responsible for ensuring adherence to the requirements in this regulation. (Authorized by and implementing K.S.A. 2009 Supp. 74-8772; effective Jan. 8, 2010; amended April 1, 2011.)

**112-108-19. Promotional activities.** (a) Each facility manager shall establish a system of internal controls for promotional giveaways, conduct of promotional games, and similar activities. The internal controls shall be submitted to the commission under K.A.R. 112-104-1. Each promotion shall meet the following requirements:

(1) No false or misleading statements, written or oral, shall be made by a facility manager or its employees or agents regarding any aspect of any promotional activity.

(2) The promotional activity shall meet the requirements of all applicable laws and regulations and shall not constitute illegal gambling under federal or state law. An affidavit of compliance shall be signed by the legal counsel of the facility manager and be maintained on file for two years from the last day of the event.

(3) The facility manager shall create dated, written rules governing the promotional activity that shall be immediately available to the public and the commission upon request. The facility manager shall maintain the rules of the event and all amendments, including criteria for entry and winning, prizes awarded, and prize winners, for at least two years from the last day of the event.

(4) All prizes offered in the promotional activity shall be awarded according to the facility manager's rules governing the event.

(5) The facility manager's employees shall not be permitted to participate as players in any gambling, including promotional games, at the facility manager's gaming facility, including games for which there is no cost to participate.

(6) The facility manager shall designate in its internal control system an employee position acceptable to the commission that shall be responsible for ensuring adherence to the requirements in this regulation.

(b) Each promotional coupon shall contain the following information preprinted on the coupon:

(1) The name of the gaming facility;

(2) the city or other locality and state where the gaming facility is located;

(3) specific value of any monetary coupon stated in U.S. dollars;

(4) sequential identification numbers, player tracking numbers, or other similar means of unique identification for complete, accurate tracking and accounting purposes;

(5) a specific expiration date or condition;

(6) all conditions required to redeem the coupon; and

(7) a statement that any change or cancellation of the promotion shall be approved by the commission before the change or cancellation.

(c) Documentation of any change or cancellation of a promotional coupon, with the legal counsel's affidavit, shall be maintained on file for two years.

(d) Any facility manager may use mass media to provide promotional coupon offers to prospective patrons; however, these offers shall be redeemed only for a preprinted coupon that contains all of the information required for a promotional coupon in subsection (c).

(e) Each facility manager offering promotional coupons shall track the issuance and redemption of each promotional coupon in accordance with K.A.R. 112-107-19. Documentation of the promotional coupon tracking shall be maintained on file for two years and made available to the commission upon request. The inventory of nonissued promotional coupons shall be maintained in accordance with K.A.R. 112-107-19.

(f) Promotional coupons shall be cancelled when they are redeemed, in a manner that prevents multiple redemptions of the same coupon. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-20. Table game and poker cards; specifications.** (a) Unless otherwise documented in the internal controls and approved by the commission, all cards used for table games shall meet all of the following requirements:

(1) Cards shall be in standard decks of 52 cards, with each card identical in size and shape to every other card in the deck or as otherwise documented in the internal controls and approved by the commission.

(2) Each standard deck shall be composed of four suits: diamonds, spades, clubs, and hearts.

(3) Each suit shall consist of 13 cards: ace, king, queen, jack, 10, 9, 8, 7, 6, 5, 4, 3, and 2. The face

of the ace, king, queen, jack, and 10 value cards may contain an additional marking, as documented in the internal controls and approved by the commission, that will permit a dealer, before exposing the dealer's hole card at the game of blackjack, to determine the value of that hole card.

(4) The backs of all cards in the deck shall be identical and no card shall contain any marking, symbol, or design that will enable a person to know the identity of any element printed on the face of the card or that will in any way differentiate the back of that card from any other card in the deck.

(5) The backs of all cards in the deck shall be designed so as to diminish as far as possible the ability of any person to place concealed markings on the backs.

(6) The design to be placed on the backs of cards used by facility managers shall contain the name or trade name of the facility manager where the cards are to be used and shall be submitted to the executive director for approval before use of the cards in gaming activity.

(7) Each deck of cards for use in table games as defined in K.A.R. 112-108-1 shall be packaged separately with cellophane, shrink wrap, or another similar material as documented in the internal controls and approved by the commission. The packaging shall have a tamper-resistant security seal and a tear band. Each deck of poker cards shall be packaged in sets of two decks through the use of cellophane, shrink wrap, or another similar material as documented in the internal controls and approved by the commission and have a tamper-resistant security seal and a tear band.

(8) Nothing in this regulation shall prohibit decks of cards with one or more jokers. However, jokers may be used by the facility manager only in the play of any games documented in the internal controls and approved by the commission for that manner of play.

(b) The cards used by a facility manager in any poker room game shall meet the following requirements:

(1) Be visually distinguishable from the cards used by that facility manager to play any table games;

(2) be made of plastic; and

(3) have two decks with visually distinguishable card backings for each set of poker cards. These card backings may be distinguished, without limitation, by different logos, different colors, or different design patterns.

(c) For each table game utilizing cards, the cards shall be dealt from a dealing shoe or shuffling device, except the card games specified in K.A.R. 112-108-41. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-21. Table game cards; receipt, storage, inspections, and removal from use.** (a) Each facility manager shall use only plastic cards that have been approved by the commission as specified in K.A.R. 112-108-20.

(b) Each facility manager shall ensure that each card storage area contains an inventory ledger and that the facility manager's employees update the ledger when cards are added or removed from that storage area.

(c) When a deck of table game cards, including poker cards, is received for use in the gaming facility from a licensed gaming supplier, all of the following requirements shall be met:

(1) The decks shall be inspected for proper quantity and any obvious damage by at least two employees, one of whom shall be from the table games department and the other from the security department or accounting department.

(2) The decks shall be recorded in the card inventory ledgers by a member of the security or accounting department and a member of the table games department. If any discrepancies in the invoice or packing list or any defects are found, the discrepancies shall be reported to a commission agent on duty within 24 hours.

(3) The decks shall be placed for storage in a primary or secondary storage area by at least two employees, one of whom shall be from the table games department and the other from the security department or accounting department. The primary card storage area shall be located in a secure place, the location and physical characteristics of which shall be documented in the internal controls and approved by the commission. Secondary storage areas, if needed, shall be used for the storage of surplus decks. Decks maintained in any secondary storage area shall be transferred to the primary card storage area before being distributed to the pit area or poker tables. All secondary storage areas shall be located in secure areas, the location and physical characteristics of which shall be documented in the internal controls and approved by the commission.

(d) Each primary card storage area and each secondary card storage areas shall have two separate locks. The security department shall maintain one key to each storage area, and the table games department shall maintain the other key. No person employed by the table games department other than the pit manager, poker room manager, or the supervisor shall have access to the table games department key for the primary and secondary card storage areas.

(e) Immediately before the commencement of each gaming day and at other times as may be necessary, the pit manager, poker room manager, or the supervisor, in the presence of a security department employee and after notification to surveillance, shall remove the decks of table game cards or poker cards from the primary card storage area needed for that gaming day.

(f) All cards transported to a pit or the poker room shall first be recorded on the card inventory ledger. Both the authorized table games department employee and the security department employee shall sign to verify the information.

(g) Once the cards are removed from the primary card storage area, the pit manager, poker room manager, or the supervisor, in the presence of a security department employee, shall take the decks to the pit area or poker room and distribute the decks to the floor supervisors for distribution to the dealer at each table. The poker room manager, pit manager, or the supervisor shall place extra decks into a single locked compartment of a poker room or pit area stand. All authority shall be limited to the supervisor's or manager's respective area of duty. The poker room supervisor, pit area supervisor, or an employee in a higher position shall have access to the extra decks of cards to be used for that gaming day.

(h) Each movement of decks after delivery to the poker room or pit area shall be by a poker room manager, pit manager, or an employee in a higher position and shall require a security escort after notifying surveillance. The procedures for transporting used decks shall include the following:

(1) A requirement that used decks be transported by security;

(2) a requirement that the surveillance department be notified before movement of the decks;

(3) specifications on the time that the procedures will be performed;

(4) specifications on the location to which the decks will be taken;

(5) specifications on the keys needed;

(6) specifications on the employees who are responsible;

(7) a requirement for updating inventory ledgers; and

(8) any other applicable security measures that the facility manager deems appropriate.

(i) Before being placed into play, each deck shall be inspected by the dealer, with the inspection verified by a floor supervisor or the floor supervisor's supervisor. Card inspection at the gaming table shall require the dealer to sort each deck into sequence and into suit to ensure that all cards are in the deck. The dealer shall also check each card to ensure that there is no indication of tampering, flaws, scratches, marks, or other defects that might affect the integrity of the game.

(1) If, after checking the cards, the dealer finds that a card is unsuitable for use, a floor supervisor or an employee in a higher position shall either bring a replacement card from the replacement deck or replace the entire deck.

(2) A commission security agent on duty shall be notified immediately of the removal, including the card manufacturer's name, and the time of discovery and the location of where the unsuitable card was discovered. Cards may also be removed at the direction of the commission security agent on duty.

(3) Based upon the agent's discretion and circumstances as listed in subsection (t), all decks being removed from play shall be counted at the table to ensure that no cards are missing.

(4) The unsuitable cards shall be placed in a transparent sealed envelope or container, identified by the table number, date, and time, and shall be signed by the dealer and floor supervisor assigned to that table. The floor supervisor or an employee in a higher position shall maintain the envelope or container in a secure place within the enclosed and encircled area until collected by a facility manager's security department employee.

(5) Cards being removed from play shall be inspected by a member of the facility's security department within 48 hours of their removal.

(j) If an automated deck-checking device is used, the facility manager shall include the following procedures:

(1) Before the initial use of the automated deck-checking device, the critical program storage media and the camera software shall be verified and sealed by a commission security agent.

(2) The dealer shall complete the inspection of

the cards. The dealer inspection shall ensure that the back of the cards are the correct color and free of any visible flaws.

(3) The automated deck-checking device shall be maintained in the enclosed and encircled area.

(4) The automated deck-checking device shall not be used in the card storage room.

(5) The automated deck-checking device shall be inspected on a weekly basis with decks that have preidentified missing cards from each suit. The devices shall properly identify each missing card in these decks.

(k) All envelopes and containers used to hold or transport cards collected by security shall be transparent.

(1) The envelopes or containers and the method used to seal them shall be designed or constructed so that any tampering is evident.

(2) The envelopes or containers and seals shall be approved by the executive director.

(l) If any cards have been opened and placed on a gaming table, those cards shall be changed at least once every 24 hours. In addition, the following requirements shall be met:

(1) All cards opened for use on a traditional baccarat table shall be changed upon the completion of each shoe.

(2) All cards opened for use on any table game in which the cards are handled by the players shall be changed at least every six hours.

(3) All cards opened for use on any table game and dealt from the dealer's hand or held by players shall be changed at least every four hours.

(4) If any cards have been opened and placed on a poker table, those cards shall be changed at least once every six hours.

(m) Each card damaged during the course of play shall be replaced by the dealer, who shall request a floor supervisor or an employee in a higher position to bring a replacement card from the enclosed and encircled area.

(1) The damaged cards shall be placed in a sealed envelope, identified by table number, date, and time, and be signed by the dealer and the floor supervisor or the supervisor's supervisor who brought the replacement cards to the table.

(2) The floor supervisor or an employee in a higher position shall maintain the envelope or container in a secure place within the enclosed and encircled area until collected by a security department employee.

(n)(1) The floor supervisor or an employee in a higher position shall collect all used cards either at the end of the gaming day or at least once each gaming day at the same time as designated by the facility manager and documented in the internal controls approved by the commission. A facility manager may choose to collect all used cards at other times as may be necessary.

(2) Used cards shall be counted and placed in a sealed envelope or container. A label shall be attached to each envelope or container that shall identify the table number, date and time and shall be signed by the dealer and floor supervisor assigned to the table. The floor supervisor or an employee in a higher position shall maintain the envelopes or containers in a secure place within the enclosed or encircled area until collected by a facility manager security department employee.

(o) The facility manager shall remove any cards from use whenever there is indication of tampering, flaws, scratches, marks, or other defects that might affect the integrity or fairness of the game, or at the request of the commission security agent on duty.

(p) Each extra deck with a broken seal shall be placed in a sealed envelope or container with a label attached to each envelope or container. The label shall identify the date and time the envelope was sealed and shall be signed by the floor supervisor and the pit manager. If the pit manager is not available to sign the label, then the floor supervisor and the floor supervisor's supervisor shall sign the label.

(q) At least once each gaming day at the time as designated by the facility manager in the internal controls, a facility manager security department employee shall collect, sign, and return to the security department all envelopes or containers containing the following:

(1) Damaged cards;

(2) cards used during the gaming day; and

(3) all other decks with broken seals.

(r) Each poker room supervisor shall maintain in the poker room stand a specified number of replacement decks for replacing unsuitable cards. The poker room supervisor or an employee in a higher position shall have access to the replacement decks that are kept in a single locked compartment. The poker room supervisor or an employee in a higher position shall keep a record of all cards removed from the replacement decks. The record shall include the time, date, color, value, suit, reason for replacement, and name of the individual who replaced the cards. The replacement decks shall be reconciled to the record

at least weekly. Once a replacement deck has been depleted to the point that the deck is no longer useful, the remaining cards in the replacement deck shall be picked up by security and destroyed or cancelled.

(s) At least once each gaming day as designated by the facility manager in the internal controls, a pit manager or the pit manager's supervisor may collect all extra decks of cards. If collected, all sealed decks shall be cancelled, destroyed, or returned to an approved storage area.

(t) When the envelopes or containers of used cards and reserve cards with broken seals are returned to the security department, the used cards and reserve cards shall be inspected within 48 hours by a member of the facility manager's security department who has been trained in proper card inspection procedures. The cards shall be inspected for tampering, marks, alterations, missing or additional cards, or anything that might indicate unfair play.

(1) With the exception of the cards used on a traditional baccarat table, which are changed upon the completion of each shoe, all cards used in table games in which the cards are handled by the player shall be inspected.

(2) In other table games, if fewer than 300 decks are used in the gaming day, at least 10 percent of those decks shall be selected at random to be inspected. If 300 or more decks are used that gaming day, at least five percent of those decks but no fewer than 30 decks shall be selected at random to be inspected.

(3) The facility manager shall also inspect the following:

(A) Any cards removed from play as stated in paragraph (i)(3) based upon the agent's discretion and circumstances as listed in subsection (t);

(B) any cards that the facility manager has removed for indication of tampering; and

(C) all cards used for poker.

(4) The procedures for inspecting all decks required to be inspected under this subsection shall, at a minimum, include the following:

(A) The sorting of cards sequentially by suit;

(B) the inspection of the backs of the cards with an ultraviolet light;

(C) the inspection of the sides of the cards for crimps, bends, cuts, and shaving;

(D) the inspection of the front and back of all poker cards for consistent shading and coloring;

(E) the positions authorized by job description to conduct the inspection;

(F) surveillance notification before inspecting the cards;

(G) time and location the inspection will be conducted;

(H) minimum training requirements of persons assigned to conduct the inspections;

(I) each type of inspection to be conducted and how each inspection will be performed, including the use of any special equipment;

(J) any other applicable security measures;

(K) immediate notification of the commission security agent on duty and the completion of an incident report describing any flawed, marked, suspects, or missing cards that are noted; and

(L) reconciliation by an employee of the facility manager security department of the number of cards received with the number of cards destroyed or cancelled and any cards still pending destruction or cancellation. Each discrepancy shall be reported to the commission security agent on duty immediately.

(5) If, during the inspection procedures required in paragraph (t)(4), one or more poker cards in a deck are determined to be unsuitable for continued use, those cards shall be placed in a sealed envelope or container, and a three-part card discrepancy report shall be completed in accordance with paragraph (t)(10).

(6) Upon completion of the inspection procedures required in paragraph (t)(4), each deck of poker cards that is determined suitable for continued use shall be placed in sequential order, repackaged, and returned to the primary or poker card storage area for subsequent use.

(7) The facility manager shall develop internal control procedures for returning the repackaged cards to the storage area.

(8) The individuals performing the inspection shall complete a work order form that details the procedures performed and list the tables from which the cards were removed and the results of the inspection. Each individual shall sign the form upon completion of the inspection procedures.

(9) The facility manager shall submit the training procedures for those employees performing the inspection, which shall be documented in the internal controls and approved by the commission.

(10) Evidence of tampering, marks, alterations, missing or additional cards, or anything that might indicate unfair play shall be reported upon discovery to the commission staff by the completion and delivery of a card discrepancy report.

(A) The report shall accompany the cards when delivered to the commission.

(B) The cards shall be retained for further inspection by the commission.

(C) The commission agent receiving the report shall sign the card discrepancy report and retain the original at the commission office.

(u) The facility manager shall submit to the commission for approval internal controls procedures for the following:

(1) A card inventory system that shall include, at a minimum, documentation of the following:

(A) The balance of decks on hand;

(B) the decks removed from storage;

(C) the decks returned to storage or received from the manufacturer;

(D) the date of the transaction; and

(E) the signature of each individual involved;

(2) a verification on a daily basis of the number of decks distributed, the decks destroyed or cancelled, and the decks returned to the storage area; and

(3) a physical inventory of the decks at least once every three months, according to the following requirements:

(A) This inventory shall be performed by an employee from the internal audit department, a supervisor from the cage, or a supervisor from the accounting department and shall be verified to the balance of decks on hand required in paragraph (u)(1)(A);

(B) the employees conducting this inventory shall make an entry and sign the card inventory ledger in a manner that clearly distinguishes this count as the quarterly inventory; and

(C) each discrepancy shall be reported upon discovery to the commission security agent on duty.

(v) If cards in an envelope or container are inspected and found to be without any indication of tampering marks, alterations, missing or additional cards, or anything that might indicate unfair play, those cards shall be destroyed or cancelled. Once released by the commission agent on duty, the cards submitted as evidence shall immediately be destroyed or cancelled according to the following:

(1) Destruction shall occur by shredding or other method documented in the internal controls and approved by the commission.

(2) Cancellation shall occur by drilling a circular hole of at least ¼ of an inch in diameter through the center of each card in the deck or by cutting at least ¼ of an inch off one corner from each card in the deck or other method documented in the internal controls and approved by the commission.

(3) The destruction and cancellation of cards shall take place in a secure place, the location and physical characteristics of which shall be documented in the internal controls approved by the commission, and shall be performed by a member of the facility manager security department specifically trained in proper procedures.

(4) Card cancellation and destruction record shall be maintained indicating the date and time of cancellation or destruction, quantity of cards to be cancelled or destroyed, and the name of each individual responsible for cancellation or destruction.

(w) Procedures for canceling or destroying cards shall include the following maintenance:

(1) Notation of the positions authorized by job description to cancel or destroy cards;

(2) notation of surveillance notification before cancellation or destruction of the cards;

(3) notation of time and location the cancellation or destruction will be conducted;

(4) notation of the manner in which cancellation or destruction will be accomplished, including the use of any special equipment;

(5) any other applicable security measures; and

(6) immediate notification of a commission security agent on duty and the completion of a card and dice discrepancy report regarding any flawed, marked, or suspicious cards that are noted during the cancellation or destruction process. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-22. Dice specifications.** (a) Except as provided in subsection (b), each die used in gaming shall meet the following requirements:

(1) Be formed in the shape of a cube with a size no smaller than .750 inch on each side and not any larger than .775 inch on each side;

(2) be transparent and made exclusively of cellulose except for the spots, name, or trade name of the facility manager and serial numbers or letters contained on the die;

(3) have the surface of each of its sides flat and the spots contained in each side flush with the area surrounding them;

(4) have all edges and corners square and forming 90-degree angles;

(5) have the texture and finish of each side ex-

actly identical to the texture and finish of all other sides;

(6) have its weight equally distributed throughout the cube, with no side of the cube heavier or lighter than any other side of the cube;

(7) have its six sides bearing white circular spots from one to six respectively, with the diameter of each spot equal to the diameter of every other spot on the die;

(8) have spots arranged so that the side containing one spot is directly opposite the side containing six spots, the side containing two spots is directly opposite the side containing five spots, and the side containing three spots is directly opposite the side containing four spots. Each spot shall be placed on the die by drilling into the surface of the cube and filling the drilled-out portion with a compound that is equal in weight to the weight of the cellulose drilled out and that forms a permanent bond with the cellulose cube. Each spot shall extend into the cube exactly the same distance as every other spot extends into the cube to an accuracy tolerance of .0004 inch; and

(9) have the name or trade name of the facility manager in which the die is being used imprinted or impressed on the die.

(b) Each die used in gaming at pai gow shall meet the requirements of subsection (a), except as follows:

(1) Each die shall be formed in the shape of a cube not larger than .8 inch on each side.

(2) Instead of the name or trade name of the facility manager, an identifying mark or logo may be approved by the executive director to be imprinted or impressed on each die.

(3) The spots on each die shall not be required to be equal in diameter.

(4) Edges and corners may be beveled if the beveling is similar on each edge and each corner.

(5) Tolerances required by paragraph (a)(8) as applied to pai gow dice shall require accuracy of only .004 inch.

(c) A picture and sample of the die shall be submitted to the executive director for approval before being placed into play. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-23. Dice; receipt, storage, inspections, and removal from use.** (a) Each facility manager shall ensure that all of the following requirements are met each time dice are received for use in the gaming facility:

(1) The packages shall be inspected for proper quantity and any obvious damage by at least two employees, one of whom shall be from the table games department and the other from the security department or accounting department.

(2) The dice shall be recorded in the dice inventory ledgers by a member of the security or accounting department. Any discrepancies in the invoice or packing list or any defects found shall be reported upon discovery to a commission security agent on duty.

(3) The boxes shall be placed for storage in a primary or secondary storage area by at least two employees, one of whom shall be from the table games department and the other from the security department or accounting department. The primary storage area shall be located in a secure place, the location and physical characteristics of which shall be approved by the commission. Secondary storage areas, if needed, shall be used for the storage of surplus dice. Dice maintained in secondary storage areas shall be transferred to the primary storage area before being distributed to the pits or tables. All secondary storage areas shall be located in secure areas, the location and physical characteristics of which shall be approved by the commission.

(b) Each primary storage area and each secondary storage area shall have two separate locks. The security department shall maintain one key, and the table games department shall maintain the other key. No person working in the table games department that is an employee in a lower position than the pit manager or poker room manager may have access to the table games department key for the primary and secondary storage areas.

(c) A facility manager shall ensure that each dice storage area contains an inventory ledger and that its employees update the ledger when dice are added or removed from that storage area.

(d) Before the commencement of each gaming day and at other times as may be necessary, the pit manager, poker room manager, or the supervisor, in the presence of a security department employee and after notification to surveillance, shall remove the appropriate number of dice from the primary storage area for that gaming day.

(e) Before being transported to a pit, all dice shall be recorded on the dice inventory ledger. Both the authorized table games department employee and security department employee shall sign verifying the information.

(f) Once the dice are removed from the primary

storage area, the pit manager, poker room manager, or the supervisor, in the presence of a security department employee, shall take the dice to the pits and distribute the dice to the floor supervisors or directly to the boxperson.

(1) At the time of receipt of any dice, a boxperson at each craps table shall, in the presence of the floor supervisor, inspect each die with a micrometer or any other instrument approved by the commission that performs the same function, a balancing caliper, a steel set square, and a magnet. These instruments shall be kept in a compartment at each craps table or pit stand and shall be at all times readily available for use by the commission upon request. The boxperson shall also check the dice to ensure that there is no indication of tampering, flaws, scratches, marks, or other defects that might affect the play of the game. The inspection shall be performed on a flat surface, which allows the dice inspection to be observed by surveillance and by any person near the pit stand.

(2) Following this inspection, the boxperson shall in the presence of the floor supervisor place the dice in a cup on the table for use in gaming. The dice shall never be left unattended while the dice are at the table.

(3) The pit manager shall place extra dice in a single locked compartment in the pit stand. The floor supervisor or an employee in a higher position shall have access to the extra dice to be used for that gaming day.

(4) Any movement of dice after being delivered to the pit shall be made by a pit manager or an employee in a higher position and require a security escort after notifying surveillance. Procedures for the pickup of used dice, including obtaining keys, assigning individuals responsible, and updating inventory ledgers, shall include the following:

(A) Transportation of used dice by security;

(B) surveillance notification before movement of the dice;

(C) time the procedures will be performed;

(D) location where the dice will be taken; and

(E) any other applicable security measures.

(5) No dice taken from the reserve shall be used for gaming until the dice have been inspected in accordance with this regulation.

(g) The facility manager shall remove any dice from use if there is any indication of tampering, flaws, or other defects that might affect the integrity or fairness of the game, or at the request of the commission agent on duty.

(h) At the end of each gaming day or at any other times as may be necessary, a floor supervisor, other than the person who originally inspected the dice, shall visually inspect each die for evidence of tampering. Any evidence of tampering shall be immediately reported to the commission security agent on duty by the completion and delivery of an approved dice discrepancy report.

(1) Each die showing evidence of tampering shall be placed in a sealed envelope or container.

(A) All envelopes and containers used to hold or transport dice collected by security shall be transparent.

(B) A label shall be attached to each envelope or container that identifies the table number, date, and time and shall be signed by the boxperson and floor supervisor.

(C) The envelopes or containers and the method used to seal the dice shall be designed or constructed so that any tampering is evident.

(D) The security department employee receiving the die shall sign the original, duplicate, and triplicate copy of the dice discrepancy report and retain the original at the security office. The duplicate copy shall be delivered to the commission, and the triplicate copy shall be returned to the pit and maintained in a secure place within the pit until collection by a security department employee.

(2) The procedures for inspecting dice under this subsection shall include the following information:

(A) A listing of the positions authorized by job description to conduct the inspection;

(B) a direction that surveillance personnel shall be notified before inspecting the dice;

(C) detail about the time and location the inspection will be conducted;

(D) a listing of the minimum training requirements of persons assigned to conduct the inspections;

(E) a description of the inspections that will be conducted and how they will be performed, including the use of any special equipment;

(F) any other applicable security measures;

(G) a requirement for immediate notification of the commission security agent on duty and the completion of an incident report describing any flawed, marked, suspect, or missing dice that are noted; and

(H) a requirement for reconciliation by the se-

curity department employee of the number of dice received with the number of dice destroyed or cancelled and any dice still pending destruction or cancellation. Each discrepancy shall be reported to the commission security agent within two hours.

(3) All other dice shall be put into envelopes or containers at the end of each gaming day.

(A) A label shall be attached to each envelope or container that identifies the table number, date, and time and is signed by the boxperson and floor supervisor.

(B) The envelope or container shall be appropriately sealed and maintained in a secure place within the pit until collection by a security department employee.

(i) All extra dice in dice reserve that are to be destroyed or cancelled shall be placed in a sealed envelope or container, with a label attached to each envelope or container that identifies the date and time and is signed by the pit manager.

(j) A security department employee shall collect and sign all envelopes or containers of used dice and any dice in dice reserve that are to be destroyed or cancelled and shall transport the envelopes or containers to the security department for cancellation or destruction. This collection shall occur at the end of each approved gaming day and at any other times as may be necessary. The security department employee shall also collect all triplicate copies of dice discrepancy reports, if any. No dice that have been placed in a cup for use in gaming shall remain on a table for more than 24 hours.

(k) A pit manager or supervisor of the pit manager may collect all extra dice in dice reserve at the end of each gaming day or at least once each gaming day as designated by the facility manager and approved by the commission, and at any other times as may be necessary.

(1) If collected, dice shall be returned to the primary storage area.

(2) If not collected, all dice in dice reserve shall be reinspected before use for gaming.

(l) The facility manager's internal control system shall include approval procedures for the following:

(1) A dice inventory system that shall include, at a minimum, documenting the following:

(A) The balance of dice on hand;

(B) the dice removed from storage;

(C) the dice returned to storage or received from the manufacturer;

(D) the date of the transaction; and

(E) the signature of each individual involved;

(2) a reconciliation on a daily basis of the dice distributed, the dice destroyed and cancelled, the dice returned to the primary storage area and, if any, the dice in dice reserve; and

(3) a physical inventory of the dice performed at least once every three months and meeting the following requirements:

(A) This inventory shall be performed by an employee from the internal audit department or a supervisor from the cashier's cage, or accounting department and shall be verified to the balance of dice on hand required in paragraph (l)(1)(A);

(B) each discrepancy shall immediately be reported to the commission agent on duty; and

(C) the employees conducting this inventory shall make an entry and sign the dice inventory ledger in a manner that clearly distinguishes this count as the quarterly inventory.

(m)(1) Cancellation shall occur by drilling a circular hole of at least 3/16 of an inch in diameter through the center of each die or any other method approved by the commission.

(2) Destruction shall occur by shredding or any other method approved by the commission.

(3) The destruction and cancellation of dice shall take place in a secure place, the location and physical characteristics of which shall be approved by the commission.

(4) Dice cancellation and destruction record shall be maintained indicating the date and time of cancellation or destruction, quantity of dice to be cancelled or destroyed, and the individuals responsible for cancellation or destruction.

(5) Procedures for cancelling or destroying dice shall include the following:

(A) The positions authorized by job description to cancel or destroy dice;

(B) surveillance notification before cancellation or destruction of the dice;

(C) time and location the cancellation or destruction will be conducted;

(D) specifically how cancellation or destruction will be accomplished, including the use of any special equipment; and

(E) other applicable security measures.

(6) Each facility manager shall notify the commission security agent of any flawed, marked, or suspect dice that are discovered during the cancellation or destruction process.

(n) Evidence of tampering, marks, alterations, missing or additional dice or anything that might

indicate unfair play discovered shall be reported to the commission by the completion and delivery of a dice discrepancy report.

(1) The report shall accompany the dice when delivered to the commission security agent on duty.

(2) The dice shall be retained for further inspection by the commission security agent on duty.

(3) The commission agent receiving the report shall sign the dice discrepancy report and retain the original at the commission office. (Authorized by and implementing K.S.A. 2010 Supp. 74-8772; effective Jan. 8, 2010; amended Dec. 9, 2011.)

**112-108-24. Mandatory table game count procedure.** Each facility manager shall report to the commission the times when drop boxes will be removed and the contents counted. All drop boxes shall be removed and counted at the times previously reported to the commission. The removal and counting of contents at other than the designated times shall be prohibited, unless the facility manager provides advance written notice to the commission's security staff on site of a change in times or the commission requires a change of authorized times. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-25. Handling of cash at gaming tables.** (a) Whenever cash is presented by a patron at a gaming table to obtain gaming chips, the following requirements shall be met:

(1) The cash shall be spread on the top of the gaming table by the dealer or boxperson accepting the cash, in full view of the patron who presented the cash and the supervisor assigned to that gaming table.

(2) The cash value amount shall be verbalized by the dealer or boxperson accepting the cash, in a tone of voice calculated to be heard by the patron and the supervisor assigned to that gaming table.

(3) The boxperson or dealer shall count and appropriately break down an equivalent amount of chips in full view of surveillance and the patron.

(4) The cash shall be taken from the top of the gaming table and placed by the dealer or boxperson into the drop box attached to the gaming table.

(b) No cash wagers shall be allowed to be placed at any gaming table. The cash shall be converted to chips before acceptance of a wager. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-26. Table game tips.** (a) Each tip given to a dealer shall be handled in the following manner:

(1) Immediately deposited into a transparent locked box reserved for tips, except that value chips received at table games may first be placed in a color-up tube if approved internal controls are in place for this action. If non-value chips are received at a roulette table, the marker button indicating their specific value at that time shall not be removed or changed until after a dealer, in the presence of a supervisor, has converted the non-value chips into value chips that are immediately deposited in a transparent locked box reserved for tips; and

(2) accounted for by a recorded count conducted by a randomly selected dealer for each respective count and a randomly selected employee of the security department. This count shall be recorded on a tips and gratuity deposit form.

(b) Any facility manager may submit internal controls for the commission's approval that would allow poker dealers to either pool tips with other dealers operating poker games in the poker room or receive tips on an individual basis. The receiving of tips individually may be allowed only when the dealer does not make decisions that can affect the outcome of the gambling game, is not eligible to receive winnings from the gambling game as an agent of the facility manager, and uses an approved shuffling machine during the course of the poker game. If tips are received by poker dealers on an individual basis, all tips shall be immediately placed into a locked individual transparent tip box that shall be assigned to and maintained by the dealer while working. The locked individual tip box shall be given to the facility manager at the end of the shift for counting, withholding of taxes, and subsequent payment during the normal payroll process. For the purposes of this subsection, winnings from a gambling game shall not include commissions, commonly referred to as the "rake," withheld from amounts wagered in a game. Poker dealers may be permitted to receive tips on an individual basis only if the facility manager has internal controls governing this practice that have been approved by the commission.

(c) For exchanging, which is sometimes called "coloring up," dealer tips to a higher denomina-

tion before insertion into the tip box, the following requirements shall be met:

(1) A transparent cylinder or tube shall be attached to the table to maintain the chips until exchanged or colored up. The cylinder or tube shall have a capacity of no more than 25 chips.

(2) Before any chips are exchanged or colored up, the dealer shall make the announcement in a voice that can be heard by the table games supervisor that chips are being colored up. The dealer shall then deposit an equal value of higher denomination chips into the tip box and place the lower denomination chips into the chip tray.

(d) Upon receipt of a tip from a patron, a dealer shall extend the dealer's arm in an overt motion and deposit the tip into the transparent locked box or color-up tube reserved for this purpose.

(e) Applicable state and federal taxes shall be withheld on tips and gifts received by facility manager employees.

(f) The facility manager shall include in its internal controls the procedures for dropping tip boxes.

(g) The contents of tip boxes shall be collected, transported, stored, counted, and distributed in a secure manner on a regular basis pursuant to a schedule approved by the commission.

(h) Before any tip box collection, a security department employee shall notify the surveillance department that the tip box collection process is about to begin.

(i) If a tip box becomes full, a security department employee and an employee from the applicable department shall notify the surveillance department and empty the full tip box into a secure bag or other approved container for the applicable department. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-27. Table inventory.** (a) Chips shall be added or removed from the table inventory only in any of the following instances:

(1) In exchange for cash presented by the patron;

(2) for payment of winning wagers or collection of losing wagers made at the table;

(3) through approved internal controls governing table fill and credit procedures;

(4) in exchange with patrons for gaming chips of equal value;

(5) in exchange for a verified automated tip receipt from a commission-approved automated table game controller; or

(6) in exchange with patrons for non-value chips on the roulette table.

(b) A facility manager shall not transfer or exchange chips or currency between table games.

(c) Table inventories shall be maintained in trays that are covered with a transparent locking lid when the tables are closed. The information on the table inventory slip shall be placed inside the transparent locking lid and shall be visible from the outside of the cover. In case of an emergency, the transparent lid shall be locked over the inventory until normal play resumes.

(d) The table inventory slip shall be at least a two-part form, one of which shall be designated as the "opener" and the other as the "closer."

(e) If a gaming table is not opened during a gaming day, preparation of a table inventory slip shall not be required. However, the table games department shall provide a daily list of table games not open for play, including the inventory amount and date on the last closing table inventory slip.

(f) If a table game is not open for play for seven consecutive gaming days, the table inventory shall be counted and verified either by two table games supervisors or by a table games supervisor and a dealer or boxperson, who shall prepare a new table inventory slip and place the previous inventory slip in the table drop box. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-28. Opening of gaming tables.** (a) Immediately before opening a table for gaming, a table games supervisor or table games manager shall unlock the transparent table tray lids in the presence of the dealer or boxperson assigned to the table.

(b) Either the dealer or boxperson in addition to either the table games supervisor or table games manager shall each count the chips by denomination and verify the count to the opening table inventory slip.

(c) The dealer or boxperson and the table games supervisor or table games manager shall sign and attest to the accuracy of the information recorded on the opener.

(d) Once signed, the dealer or boxperson shall immediately deposit the opener into the drop box attached to the gaming table.

(e) Internal controls shall include procedures for reconciling instances when counted inventory

differs from the amount recorded on the opener and shall include the name of the table games supervisor or table games manager preparing a table games variance slip, the signatures required, distribution of each part of the form, and the assurance that one part is deposited in the drop box. Each variance of $100 or more at any table shall be reported immediately by the table games supervisor or table games manager to a commission security agent on duty. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-29. Closing of gaming tables.** (a) Whenever a gaming table is closed, all chips remaining at the table shall be counted and verified by either two table games supervisors or a table games supervisor in addition to either a dealer or a boxperson, who shall prepare a table inventory slip.

(b) After the table inventory slip is signed by the table games supervisor and the dealer or boxperson, the dealer or boxperson shall immediately deposit the closing table inventory slip in the drop box.

(c) The table games supervisor shall place the opening inventory slip under the table tray lid in a manner that the amounts on the opening inventory slip may be read and lock the lid in place.

(d) Each time a table game is closed, complete closing procedures shall be followed to include the counting, verification, recording, and securing of the chips in the tray, as well as the proper disposal of the cards or dice that were in play. If the game is reopened again on the same gaming day, complete opening procedures shall be followed to include the counting and verification of chips in the tray and inspection of cards or dice and all applicable gaming equipment. The opening and closing inventory table slip for games that are opened and closed more than once in a gaming day may be marked in a manner that indicates the sequence of the slips. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-30. During 24-hour gaming.** During 24-hour gaming, a closing table inventory slip shall be prepared in conjunction with the table drop for that gaming day. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-31. Procedures for manually filling chips from cage to tables; form procedures.** (a) Cross-fills, even money exchanges, and foreign currency exchanges in the pit shall be prohibited.

(b) To request that chips be filled at table games, a supervisor or table games manager shall prepare a two-part order for fill form in ink entering the following information:

(1) The amount of the fill by denomination of chips;

(2) the total amount of the fill;

(3) the table or game number; and

(4) the signature of the supervisor or manager.

(c) The order for fill shall be transferred to the facility manager's accounting department by the end of the gaming day. The order for fill shall be taken by a security department employee to the cashier's cage. A copy of the order for fill shall be placed on top of the table requesting the fill.

(d) A three-part manual fill slip shall be used to record the transfer of chips from the cashier's cage to a gaming table. The fill slips shall be sequentially numbered by the vendor. The alphabet shall not be required to be used if the numerical series is not repeated during the business year. Chips shall not be transported unless accompanied by a fill slip.

(e) Unless otherwise approved by commission, manual fill slips shall be inserted in a locked dispenser that permits an individual slip in the series and its copies to be written upon simultaneously. The dispenser shall discharge the original and duplicate copies while the triplicate remains in a continuous, unbroken form in the locked dispenser.

(f) If a manual fill slip needs to be voided, the cage cashier shall write "VOID" and an explanation of why the void was necessary. Both the cage cashier and either a security department employee or another level II employee independent of the transaction shall sign the voided fill slip. The voided fill slips shall be submitted to the facility manager's accounting department for retention.

(g) Corrections on manual table fills shall be made by crossing out the error, entering the correct information, and then obtaining the initials and employee license number of at least two cage employees. Each employee in accounting who makes corrections shall initial and include the employee's commission license number.

(h) A small inventory of unused manual fill slips may be issued to the facility manager's security

department by accounting for emergency purposes. These unused fill slips shall be maintained by the facility manager's accounting or security departments.

(i) A cashier's cage employee shall prepare a three-part fill slip in ink by entering the following information:

(1) Denomination;

(2) total amount;

(3) game or table number and pit;

(4) date and time; and

(5) required signatures.

(j) A cashier's cage employee shall sign the order for fill after comparing it to the fill slip and then prepare the proper amount of chips. A facility manager's security department employee shall verify the chip totals with the fill slip. A cashier's cage employee shall present the ordered chips to the security department employee in a covered clear chip carrier. Once verified, both the cashier's cage employee and the security department employee shall sign the fill slip, and the cashier's cage employee or security department employee shall also time- and date-stamp the fill slip. A cashier's cage employee shall retain the order for fill and staple it to a copy of the fill slip after the required signatures from pit personnel are obtained by a security department employee.

(k) After notifying surveillance, a facility manager's security department employee shall take the chips and the fill slips to the indicated table. The chips shall be counted by the dealer or boxperson and witnessed by a table games supervisor and security department employee in full view of surveillance. After verifying the chips against the amounts listed on the fill slip, the table games supervisor and dealer or boxperson shall sign the fill slips. The table games supervisor and security department employee shall observe the dealer or boxperson place the chips in the rack and deposit the fill slips in the table drop box. A security department employee shall not leave the table until the chips have been placed in the racks and the fill slips have been dropped. A security department employee shall return a copy of the fill slip to the cashier.

(l) The copies of the fill slips shall be reconciled by accounting at least once daily. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-32. Procedures for automated filling of chips.** (a) The table games supervisor or table games manager shall determine whether a fill is necessary and initiate the request for fill process. If a request for fill slip is used, procedures for distribution of the slip shall be included in the internal controls.

(b) The table games manager or the pit clerk shall enter a request for fill into the computer, including the following information:

(1) The amount by denomination;

(2) the total amount;

(3) the game or table number and pit;

(4) the dates and time; and

(5) the required signatures.

(c) A two-part computer-generated fill slip shall be used to record the transfer of chips from the cashier's cage to a gaming table. The fill slips shall be numbered by the computer in a manner that ensures that every fill in a given calendar year has a unique sequential number.

(d) Two copies of the computerized fill slips shall be printed simultaneously, and a record of the transaction shall be stored within the computer database.

(e) If a computerized fill slip needs to be voided, the cage cashier shall write "VOID" across the original and all copies of the fill slip and an explanation of why the void was necessary. Both a cashier's cage employee and either a security department employee or another level II employee independent of the transaction shall sign the voided fill slip. The voided fill slips shall be submitted to the accounting department for retention and accountability. The transaction shall be properly voided in the computer database.

(f) A two-part fill slip shall be printed in the cashier's cage containing the information required in subsection (b). A security department employee shall verify the chip totals with the fill slip. A cashier's cage employee shall present the ordered chips to a security department employee in a clear chip carrier. Once verified, both a cashier's cage employee and security department employee shall sign the fill slip.

(g) After notifying surveillance, a security department employee shall take the chips and the fill slips to the indicated table. Only a security department employee shall transport fills. The chips shall be counted by the dealer or boxperson and witnessed by a table games supervisor and security department employee in full view of surveillance. After verifying the chips to the amounts listed on the fill slip, the table games supervisor and a dealer or boxperson shall sign the fill slips. The

table games supervisor and security department employee shall observe the dealer or boxperson place the chips in the rack and deposit the fill slip in the table drop box. A security department employee shall not leave the table until the chips have been placed in the racks and the fill slip has been dropped. A security department employee shall return a copy of the fill slip to the cashier's cage.

(h) The main bank cashier shall run an adding machine tape on the fill slips and verify the total to the amount in the automated accounting system. All fill paperwork shall be forwarded to accounting.

(i) The ability to input data into the gaming facility computer system from the pit shall be restricted to table game managers and pit clerks. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-33. Procedures for recording manual table credits.** (a) Three-part manual credit slips shall be used to record the transfer of chips from a gaming table to the cage. The credit slips shall be sequentially numbered by the vendor. The alphabet shall not be required to be used if the numerical series is not repeated during the calendar year. Chips shall not be transported unless accompanied by a credit slip.

(b) The inventory of nonissued credit slips shall be maintained by the facility manager's accounting or security department. The accounting department shall be responsible for the initial receipt of manual credit slips.

(c) If a table game supervisor or table game manager determines that a table credit is required, a three-part order for credit shall be completed in ink by entering the following information:

(1) The amount by denomination of chips needed;

(2) the total amount;

(3) the game or table number and pit;

(4) the date and time; and

(5) the signature of the manager or supervisor.

(d) The table game supervisor or the table game manager shall keep one copy of the order for credit on the table and take the other copy of the order for credit to the pit stand. The pit stand employee shall record that copy in the pit paperwork log and then return the copy to the table. The table game manager shall give a copy of the order for credit to a security department employee, who shall take it to the cashier's cage, where the cashier shall prepare a three-part credit slip in ink by entering the following:

(1) The chip denomination;

(2) total amount;

(3) game or table number; and

(4) time and date.

(e) The security department employee shall take the credit slip to the gaming table. A copy of the order for credit shall be retained at the cage.

(f) The dealer or boxperson shall count the chips in full view of a security department employee and either the table game supervisor or an employee in a higher position. The count shall be conducted in full view of cameras connected to the surveillance department.

(g) The dealer or boxperson and the table game supervisor shall verify the chips against the credit slip, and the credit slip against the order for credit. The dealer or boxperson and the table game supervisor shall sign the credit slip and the order for credit. The security department employee shall verify the chips against the order for credit, sign the order for credit and the credit slip, and receive the chips in a clear chip carrier. The security department employee shall carry the chips and the credit slip back to the cashier's cage. A copy of the order for credit shall be retained at the table until a copy of the credit slip is returned.

(h) The cashier's cage employee shall receive the credit slips and the chips from the security department employee and verify that the chips match the order for credit and credit slip. The cashier's cage employee shall then sign the credit slips and the order for credit. The cashier's cage employee shall time- and date-stamp the credit slips. Unless otherwise approved by the commission, a copy shall remain unbroken in the locked form dispensing machine. The order for credit shall be attached to a copy of the credit slip and be retained by the cashier's cage.

(i) The copy of the credit slip issued by the cashier's cage shall be taken back to the table by the security department employee. The table game supervisor and the dealer or boxperson shall compare the copy of the credit slip to the order for credit. The table game supervisor shall observe the dealer or boxperson deposit the order for credit slip and the credit slip in the table drop box.

(j) The copies of the credit slips, with the copies of the order for credit attached, shall be transferred to the main bank. The main bank cashier shall run a tape on the credit slips and verify the

total against the amount in the automated accounting system.

(k) The locked copies of the manual credit slips shall be removed from the machines by the accounting department.

(l) If a credit slip needs to be voided, the cage cashier shall write "VOID" and an explanation of why the void was necessary across the original and all copies of the credit slip. Both the cashier's cage employee and either a security department employee or another level II employee independent of the transaction shall sign the voided credit slip. The voided credit slips shall be subsequently transferred to the accounting department and retained.

(m) Corrections on manual table fill or credit shall be made by crossing out the error, entering the correct information, and then obtaining the initials and commission license numbers of at least two cashier's cage employees.

(n) Each accounting employee who makes corrections shall initial and note that employee's commission license number on the request. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-34. Automated table credits.** (a) Two-part computer-generated credit slips shall be used to record the transfer of chips from a gaming table to the cashier's cage. The credit slips shall be sequentially numbered by the computer system, ensuring that each credit in a given calendar year is assigned a unique number. Chips shall not be transported unless accompanied by a credit slip.

(b) The table game manager or the pit clerk shall enter a request for credit into the computer, including the following information:

(1) The amount by denomination;

(2) total amount;

(3) game or table number and pit;

(4) dates and time; and

(5) required signatures.

(c) A security department employee shall obtain the credit slip and chip carrier from the cage and proceed to the pit area.

(d) The dealer or boxperson shall count the chips in full view of a security department employee and either the table games supervisor or an employee in a higher position. The count shall be conducted in full view of a camera connected to the surveillance department.

(e) The table games supervisor and either a dealer or a boxperson shall verify that the value of the chips in the carrier matches the amount on the credit slip and sign the credit slip. The security department employee shall verify that the chips match the credit slip, sign the credit slip, and carry the chips and the credit slip to the cashier's cage.

(f) A cashier's cage employee shall receive the credit slip and the chips from the security department employee, verify that the chips match the credit slip, and sign the credit slip. A copy of the credit slip shall be retained by the cashier's cage.

(g) The copy of the credit slip shall be taken back to the table by the security department employee. The table games supervisor shall observe the dealer or boxperson deposit the copy of the credit slip into the table drop box.

(h) The main bank cashier shall run an adding machine tape on the credit slips and verify the total against the amount on the automated accounting system. All credit paperwork shall be forwarded to the accounting department by the main bank cashier.

(i) If a credit slip needs to be voided, the cashier's cage employee shall write "VOID" and an explanation of why the void was necessary across the original and all copies of the credit slip. Both the cashier's cage employee and a security department employee independent of the transaction shall sign the voided credit slips. The voided credit slip shall be transferred to the accounting department, where the slip shall be retained. The transaction shall be properly voided in the computer database.

(j) The ability to input data into the gaming facility computer system from the pit shall be restricted to table games managers and pit clerks.

(k) Each employee in accounting who makes corrections shall initial each correction and include that employee's commission license number. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-35. Table game layouts.** (a) All table game layouts shall be consistent with the facility manager's internal controls and meet the following requirements:

(1) Markings on the layout shall be of a size that can be adequately seen by the surveillance.

(2) The odds of winnings and payouts shall be included in markings on the layout when required by the executive director.

(3) The designs shall not contain any advertising

other than the facility manager's logo or trademark symbol or Kansas lottery-approved design.

(4) The designs shall not contain any feature that tends to create a distraction from the game.

(5) All other components of the game on the layout shall be of a size that can be adequately seen by surveillance.

(6) A colored depiction of the table shall be submitted to the executive director for approval before being placed into play.

(b) Table layouts shall not be stored in a nonsecure area.

(c) Used table layouts that display the licensee's logo and are not used for internal training purposes approved by commission shall be destroyed and shall not be sold or given to the public. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-36. Required personnel for specific table games.** (a) Pit areas may be on multiple levels or locations within a gaming facility. Pit areas shall be described by facility managers in their internal controls at a minimum by their locations, configurations, and restrictions on access. Each full-size baccarat table shall be in a separate room or clearly segregated area of the floor that functions as a separate area from the other table games and is surrounded by baccarat tables. For the purposes of access to a pit, card and dice control, and other table games activities, a "pit" shall be more narrowly defined as a single, separate area that is completely enclosed or encircled by gaming tables.

(b) The number of required table games supervisors shall be determined as follows:

(1) One table games supervisor shall not oversee more than six open table games if no craps table is open.

(2) One table games supervisor shall not oversee more than four open table games if one of the open table games is a craps table.

(3) One table games supervisor shall not oversee more than two open table games if both table games are craps tables.

(c) The table games supervisors and the oversight of their assigned table games and pit operations shall be directly supervised in the following configuration by either a table games manager or casino shift manager:

(1) In either of the following instances, a table games manager shall not be required to be on duty, but at least one casino shift manager shall provide direct supervision by acting as a table games manager:

(A) When one craps table is open; or

(B) when up to six tables are open.

(2) In either of the following instances, a table games manager shall provide direct supervision and a casino shift manager shall not act as a table games manager:

(A) When two or more craps or baccarat tables are open; or

(B) when seven to 36 table games are open.

(3) If more than 36 tables are open, one additional table games manager shall provide direct supervision for each additional set of one to 36 tables open. A casino shift manager shall not act as a table games manager.

(d) Other than a casino shift manager acting as a table games manager, table games managers shall be physically present in the pit for at least 90 percent of their shift and be solely dedicated to supervising activities at open table games and activities within the pits. Each absence of a longer duration shall require a replacement table games manager to be on duty in the pit. If a facility manager uses job titles other than "table games supervisor" or "table games manager," then the internal controls shall specify which job titles used by the facility manager correspond to these positions and ensure that the job descriptions of those positions properly delineate the duties. Table games managers supervising pit areas separated by sight or sound shall have a communications device enabling them to be immediately notified of any incident requiring their attention and shall promptly respond. The gaming facility shift manager shall assign table games managers specific responsibilities regarding activities associated with specific tables.

(e) Each full-size baccarat table shall be directly supervised by at least one table games supervisor. (Authorized by K.S.A. 2010 Supp. 74-8772; implementing K.S.A. 2010 Supp. 74-8752 and 74-8772; effective Jan. 8, 2010; amended April 1, 2011.)

**112-108-37. Instructional table games offered to public.** (a) A facility manager may offer instructional table games if all of the following conditions are met:

(1) Only cancelled cards and dice are used.

(2) Gaming chips are marked "no cash value" or are distinctively different from any value and non-value chips used in the gaming facility and

can be readily seen if intermingled into a stack of active chips of a similar color.

(3) For roulette, non-value chips are distinctively different in design than those used on the gaming floor or have been drilled or otherwise cancelled.

(4) No wagering is permitted.

(5) No prizes are awarded in association with the games.

(6) All participants are at least 21 years of age.

(7) The executive director gives approval to the facility manager to use the instructional table game.

(b) Written notification setting forth the date, time, type of event, and event location shall be submitted for approval to the executive director at least 15 days in advance of the instructional game. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-38. Minimum and maximum table game wagers.** (a) All minimum and maximum wagers shall be posted at each table and may be changed between games by posting new table limits.

(b) If the minimum or maximum wager is changed, the sign shall be changed to reflect the new amount. A facility manager may allow the following bets during a table limit change:

(1) Patrons who were playing when minimum table limits were raised may continue to place bets under the old table minimum limit; and

(2) patrons who were playing when a maximum table limit was raised may be allowed to continue placing bets under the previous table maximum bet.

(c) Payment on wagers that cannot be made evenly shall be rounded up to the next chip denomination. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-39. Dealer and boxperson hand clearing.** (a) Each dealer and each boxperson shall clear that individual's hands in view of all persons in the immediate area and surveillance before and after touching that individual's body and when entering and exiting the game. "Clearing" one's hands shall mean holding and placing both hands out in front of the body with the fingers of both hands spread and rotating the hands to expose both the palms and the backs of the hands to demonstrate that the hands are empty. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-40. Table games jackpot; employee pocketbooks.** (a) A table games jackpot slip or manual jackpot form shall be used to pay any table games jackpot that triggers IRS required reporting. If a manual jackpot form is used, the form shall include all the information as required on the table games jackpot slip. The table games jackpot slip or manual jackpot form shall be a sequentially numbered, two-part form. One part shall be deposited in the table game drop box, and the other copy shall be retained at the cashier's cage.

(b) Each employee shall be prohibited from taking a pocketbook or other personal container into the pit area unless the pocketbook or container is transparent. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-41. Poker room; general.** (a) Live poker games in which the dealer does not play a hand and a rake is collected shall be played only in an approved poker room. All other poker games in which the dealer plays a hand and the player competes against the dealer shall be played at gaming tables that are part of a pit on the gaming floor.

(b) The facility manager shall have the current house rules in writing. These rules shall be available in hard copy in the poker room for patrons, employees, and commission personnel. All revised or rescinded house rules shall be kept on file and shall be available for at least one year. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-42. Poker room; supervision.** (a) Each poker room shall be under the general control of a poker room manager or table games manager and the direct oversight of at least one poker room supervisor. Poker room supervisors shall be solely dedicated to supervising poker room personnel and all activities within the poker room when the poker room is opening, in operation, or closing at the end of the gaming day. A poker room supervisor may operate the poker room bank, if so authorized in the internal controls system. The poker room shall be staffed with at least one poker supervisor for every one to eight tables open.

(b) If a facility manager uses job titles other

than "poker room manager" or "poker room supervisor," the internal controls shall specify which job titles used by the facility manager correspond to these positions and ensure that the job descriptions of those positions properly describe the duties assigned. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-43. Poker room; banks and transactions.** (a) If a facility manager uses a poker room bank, the facility manager's internal controls shall state whether the bank is operated as a branch of the main cage with a cashier's cage or if accountability and staffing of the bank are the responsibility of the poker room manager or poker room supervisor.

(b) Both the outgoing and incoming individuals responsible for the bank shall sign the completed count sheet attesting to the accuracy of the information at the beginning and ending of each shift. If there is no incoming or outgoing individual, the countdown, verification, and signatory requirements shall be performed by the individual who is responsible for the bank and a cashier's cage employee or a supervisor independent of the poker room.

(c) Each transfer between any table banks and the poker room bank shall be authorized by a poker room supervisor and evidenced by the use a transfer slip as specified in the internal controls. The poker dealer and poker room supervisor shall verify the amount of chips to be transferred. Transfers between table banks, poker room banks, or cashier's cages within the poker room shall not require a security escort.

(d) Transfers between the table banks, poker room banks, or the cashier's cages outside the poker room shall be properly authorized and documented by the poker room supervisor on an even exchange slip as specified in the internal controls.

(e) A facility manager may permit patrons to exchange cash for chips only at the poker room bank or cashier's cage and then only within submitted and commission-approved buy-in procedures.

(f) When a poker table is opened, a poker dealer shall count the poker table bank inventory, and the accuracy of the count shall be verified by the poker room supervisor and attested to by their signatures on a table inventory slip. The count shall be recorded and reconciled when the poker table is closed.

(g) When a poker table is not open for play for seven consecutive gaming days, the poker table inventory shall be counted and verified by either two poker room supervisors or a poker room supervisor and a dealer. The poker room supervisor shall prepare a new table inventory slip and place the previous inventory slip in the table drop box. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-44. Poker room; drops and counts.** The procedures for the collection of poker table drop boxes, toke boxes, and the count of the contents of these boxes shall meet the requirements of the internal control standards applicable to the table game drop boxes in K.A.R. 112-108-48. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-45. Bad beat and special hand.** (a) If the facility manager offers a bad beat or special hand, all funds collected for the jackpot shall be used to fund the primary, secondary, and tertiary jackpots and be available for poker players to win. The percentage of the funds attributable to each jackpot shall be included in the rules of the game in the facility manager's internal control standards.

(b) When a patron wins a bad beat or special hand, the following information shall be recorded on the bad beat payout documentation, and copies of the internal revenue service forms, if applicable, shall be attached:

(1) A description of the cards that comprised the winning poker hand for that game;

(2) a description of the cards that comprised the winning bad beat hand;

(3) the name of the person that had the winning poker hand for that game;

(4) the name of the person that had the winning bad beat hand;

(5) the names of the other players in the game; and

(6) the amount won by each person.

(c) Surveillance staff shall be notified and shall visually verify all winning hands when a bad beat or special hand is won. The verification by surveillance shall be documented in the surveillance log.

(d) The amount of primary bad beat and any special hand shall be prominently displayed at all times in the poker room, and the amount displayed shall be promptly updated at least once

each gaming day by adding the correct percentage of funds that were collected from the previous gaming day. If the bad beat is won and the amount displayed has not yet been updated, the poker room supervisor shall contact accounting and update the bad beat amount before paying the winners. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-46. Gaming table drop device characteristics.** (a) Each gaming table in the gaming facility shall have an attached drop device for the following items:

(1) Deposited currency;

(2) copies of table transaction documents; and

(3) mutilated chips.

(b) Each gaming table drop device shall have the following features:

(1) A lock that secures the drop device to the gaming table;

(2) a lock that secures the contents of the drop device from being removed without authorization;

(3) a slot opening or mechanism through which all currency, documents, and mutilated chips shall be inserted;

(4) a mechanical device that shall automatically close and lock the slot opening upon removal of the drop device from the gaming table; and

(5) a marking that is permanently imprinted and clearly visible and that identifies the game and table number to which it is attached. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-47. Emergency gaming table drop devices; drop procedures.** (a) The facility manager shall maintain emergency gaming table drop devices with the same physical characteristics as those specified in K.A.R. 112-108-46, except for the game and table number markings. The emergency drop device shall be permanently marked with the word "EMERGENCY" and shall have an area for the temporary marking of the game and table number.

(b) Emergency drop devices shall be maintained in the soft count room or in a secured area as approved by the commission. The storage location, controls, and authorized access shall be described in the internal control system.

(c) At least two individuals shall be responsible for performing the emergency drop. One individual shall be a security department employee, and one individual shall be a level I or level II employee independent of the table games department. The table games department shall notify the commission security agent on duty that an emergency drop is needed. Security staff shall notify surveillance that an emergency drop is needed.

(d) The internal control procedures for emergency drop devices shall include the following items:

(1) Procedures for retrieval of the emergency drop device;

(2) the process for obtaining drop device release keys;

(3) procedures for removal of the drop device; and

(4) the location and safekeeping of the replaced drop device.

(e) All contents removed during the emergency drop shall be counted and included in the next count. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-48. Procedures for the collection and transportation of drop devices.** (a) Each facility manager shall submit the current drop schedule to the commission's security agent showing the times and days when the drop devices will be removed from the gaming tables. At a minimum, the gaming table drop devices shall be dropped at the end of each gaming day.

(b) Each facility manager shall be allowed to conduct drops while patrons are present in accordance with commission-approved drop procedures.

(c) The internal control system shall state which job titles will participate in each drop ensuring that there are at least two employees, one of whom shall be a security employee. The actual removal of the drop devices from the gaming tables shall be performed by an employee independent of the table games department.

(d) The collection and transportation of gaming table drop devices containing funds shall be conducted using locked storage carts that shall be escorted by a security department employee at all times.

(e) The collection and transportation procedures of each type of drop device shall be described in the internal control system, including alternative procedures for malfunctions, emergencies, and occasions when multiple trips are required to transport the drop devices to the count room.

(f) Access to stored drop devices that contain

funds shall be restricted to authorized members of the drop and count teams.

(g) Each drop device collection process, including transportation of drop devices, shall be continuously monitored by surveillance personnel and recorded.

(h) Each drop and count team member, except security department employees, assigned to the collection of drop devices shall wear a one-piece, pocketless jumpsuit, or other apparel approved by commission, as supplied by the facility manager. Drop apparel shall be issued immediately before use by the facility manager.

(i) A security department employee shall be present for and observe the entire drop process. All drop devices shall be observed by security staff from the time the drop devices are no longer secured in the gaming device until the drop devices are secured in the respective count rooms.

(j) All drop devices shall be transported to the soft count room. The facility manager shall describe, in the internal control system, security procedures to be used when the empty drop storage carts must be stored elsewhere because of space limitation in the count rooms. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-49. Exchange and storage of foreign chips.** (a) Foreign chips shall mean chips that are not authorized for use at a specific gaming facility.

(b) Foreign chips inadvertently received in the rake shall be recorded as drop for adjusted gross receipt purposes.

(c) Foreign chips shall be separated from the facility manager's chips and stored in a locked compartment in the main bank or vault.

(d) The internal control system shall describe procedures for the storage of and accountability concerning foreign chips.

(e) Facility managers exchanging foreign chips with other gaming facilities shall ensure that each employee performing the exchange is independent of the transaction.

(f) Foreign chips shall be exchanged only for an equal value of the facility manager's chips, a check, or cash.

(g) Each facility manager shall maintain documentation of the exchange of foreign chips. The documentation shall include the signatures of all the individuals involved in the exchange and an inventory of all the items exchanged. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-50. Procedures for monitoring and reviewing game operations.** (a) Each facility manager shall establish procedures for monitoring and reviewing daily table games transactions for the following activities:

(1) Table games;

(2) gaming facility cashiering;

(3) currency transaction reporting;

(4) sensitive key access; and

(5) reconciliation of numerical sequence of forms used, matching and reviewing all copies of forms, matching computer monitoring system reports with actual fill and payout forms, and examination of voided forms.

(b) The procedures in subsection (a) shall include a description of the computation of the unredeemed liability and the inventory of chips in circulation and reserve.

(c) Each facility manager shall establish procedures for the documentation of resolving questions raised during the review and monitoring of daily gaming transactions.

(d) Each facility manager shall establish procedures for the documentation of the criteria for determining deviations from expected results of gaming operations that require further investigations and the procedures for conducting and recording the results of such investigations. This shall include the notification of a commission agent.

(e) The accounting department shall perform a monthly general ledger reconciliation of the following:

(1) Adjusted gross receipts;

(2) cage accountability;

(3) chip liability; and

(4) progressive jackpot liability.

(f) Each gaming facility's accounting department shall review on a weekly basis the master game report for any unusual variances from the prior week.

(g) The accounting department for each facility manager shall perform daily audits of the following:

(1) Table games;

(2) cashier's cage;

(3) player tracking; and

(4) any other areas deemed appropriate by the executive director.

(h) The daily audits specified in subsection (g)

shall indicate the individual performing the audit and the individual reviewing the audit performed.

(i) Table game procedures shall be performed daily for both computerized and manual forms and shall include, at a minimum, the following:

(1) Trace table game fills and credit slips originals to duplicate copies and to orders for fill and credits to verify agreement;

(2) review the table game fills and credit slips for the proper number of authorized signatures, proper date or time, and accurate arithmetic;

(3) review all voided table game fills and credits for appropriate handling and required number of authorized signatures. Ensure that all appropriate forms are attached;

(4) verify that credits and fills are properly recorded for the computation of win;

(5) trace opening drop cards to the previous shift's closing inventory slip to verify agreement and test for completeness and propriety;

(6) trace the detail from the master gaming report into the accounting entries recording the transactions and to the total cash summary; and

(7) perform any other procedures deemed necessary by the executive director.

(j) All variances or discrepancies in the daily audits specified in subsection (g) shall be investigated, recorded, and reported to the head of the accounting department or equivalent position. The investigation information shall be made available upon demand by the commission staff. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-51. Maintaining table game statistical data.** (a) Each facility manager shall maintain records showing the statistical drop, statistical win, and statistical win-to-drop percentages for each gaming table and type of game. These records shall be maintained by day, cumulative month-to-date, and cumulative year-to-date.

(b) Each facility manager shall prepare and distribute statistical reports to gaming facility management on at least a monthly basis. Fluctuations outside of the standard deviation from the base level shall be investigated, and the results shall be documented in writing and retained, with a copy submitted to the commission. For the purposes of this regulation, the "base level" shall be defined as the facility manager's win-to-drop percentage for the previous business year or previous month in the initial year of operations.

(c) The gaming facility management shall investigate with pit supervisory personnel any fluctuations outside of the standard deviation from the base level in table game statistics. At a minimum, investigations shall be performed for a month for all percentage fluctuations in excess of three percent from the base level. The results of each investigation shall be documented in writing and maintained for at least seven years by the licensee.

(d) Reports of daily table game drop, win or loss, and percentage of win or loss shall be given to the commission, as requested. In addition, if gaming facility management has prepared an analysis of specific table wins, losses, or fluctuations outside of the standard deviation from the base level, these reports shall also be given to the commission. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-52. Required internal audits.** (a) The internal audit procedures specified in this regulation shall be conducted on at least a semi-annual basis, except for the annual cash count. If a procedure does not apply to the operations of the facility manager, this fact shall be noted in the audit report.

(b) Table game audit procedures, which shall be performed by a member of the facility's audit department, shall include the following requirements:

(1) Five table openings and five table closings shall be observed for compliance with the commission-approved internal controls and this article. The related documentation shall be reviewed for accuracy and required information.

(2) A total of 10 table fills and three table credits shall be observed. The observations shall occur over at least three different gaming days. If a member of the facility's audit department is unable to observe three credit fills, the staff member shall verify procedures through interview.

(3) Table game drop and collection procedures as defined in the commission-approved internal controls and this article shall be observed and reviewed for two gaming days with one day being a 24-hour gaming day or a weekend day.

(4) Soft count procedures for table games and poker drops shall be observed and reviewed as defined in the commission-approved internal controls and this article, including the subsequent transfer of funds to the main bank or vault.

(5) Dice inspection procedures shall be ob-

served and reviewed as outlined in the commission-approved internal controls and this article.

(6) Card inspection procedures shall be observed and reviewed as defined in the commission-approved internal controls and this article.

(7) Card and dice inventory control procedures shall be reviewed and verified.

(8) Statistical reports for table game drop, win, and win-to-drop percentages shall be reviewed to determine if fluctuations in excess of three percent from the base level are investigated.

(9) Supervision in the pits shall be verified as required by the commission-approved internal controls and this article.

(10) Dealer tip collection, count verification, and recording procedures shall be observed.

(11) Table game operations shall be observed to ensure compliance with the commission-approved internal controls and this article pertaining to table games, including poker. This observation shall include a representative sample of all table games over a two-day observation period.

(c) Gaming facility cashiering shall be verified by a member of the facility's internal audit department to ensure that any changes to the chip inventory ledgers during the semiannual audit period are documented and the required signatures are present on the ledger or the supporting documentation.

(d) Adjusted gross receipts shall be reconciled by a member of the facility's internal audit department against the following:

(1) The adjusted gross receipts from the table games, cage accountability, chip liability, and progressive jackpot liability. A copy of the reconciliation shall be included in the internal audit report;

(2) a two-day sample of gaming source documents, including table fill slips, table credit slips, and opener or closer slips. These gaming source documents shall also be reviewed in this process for accuracy and completion, as defined in the commission-approved internal controls and this article; and

(3) the transactional data in the central computer system.

(e) On an annual basis, the internal audit department shall conduct an observation of a complete physical count of all cash and chips in accordance with guidelines issued by the executive director. The count shall not be conducted during the last two months of a fiscal year.

(1) The executive director shall be notified 30 days in advance of the count. At the executive director's discretion, commission representatives may be present.

(2) Management staff may be notified no more than 24 hours in advance of the count to ensure that adequate staff is on duty to facilitate access to all areas being counted.

(3) All count sheets shall be signed by each individual performing the inventory.

(4) A summary of the inventory total for each count sheet, along with all shortages and overages and the signed count sheets, shall be included in the internal audit report.

(5) The cash count of cage windows and of the main bank shall be conducted by a member of the facility's internal audit department when the location is closed, unless otherwise approved by the executive director. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-53. Found items.** All cash, chips, tickets, cards, dice, gaming equipment, records, and any other items found in unauthorized or suspicious locations or circumstances shall be reported by the finder to the commission security agent on duty. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-54. Waiver of requirements.** (a) On the commission's initiative, one or more of the requirements of this article applicable to table games may be waived by the commission upon a determination that the nonconforming control or procedure meets the operational integrity requirements of the act and this article.

(b) A facility manager may submit a written request to the commission for a waiver for one or more of the requirements in this article. The request shall be filed on an amendment waiver and request form and shall include supporting documentation demonstrating how the table game controls for which the waiver has been requested will still meet the operational integrity requirements of the act and this article. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-55. Shipment of table games and table game mechanisms.** (a) Each facility manager shall ensure that the shipment of any table game or table game mechanism for use in a gaming facility shall be approved in advance by the executive director. The person causing the

shipment shall notify the executive director of the proposed shipment at least 15 days before the shipment, unless otherwise approved by the executive director. The notice shall include the following information:

(1) The name and address of the person shipping the table game or table game mechanism;

(2) the name and address of the person who manufactured, assembled, distributed, or resold the table game or table game mechanism, if different from the person shipping the item;

(3) the name and address of a new owner if ownership is being changed in conjunction with the shipment;

(4) the method of shipment and the name and address of the third-party carrier, if applicable;

(5) the name and address of the person to whom the table game or table game mechanism is being sent and the destination of the item, if different from that address;

(6) the quantity of table games or table game mechanisms being shipped and the manufacturer's make, model, and serial number of each item;

(7) the expected date and time of delivery to, or removal from, any authorized location within this state;

(8) the port of entry or exit, if any, of the table game or table game mechanism if the origin or destination of the table game or table game mechanism is outside the continental United States; and

(9) the reason for shipping the table game or table game mechanism.

(b) Each shipment of table games or table game mechanisms shall be sealed before being transported. On arrival at the gaming facility, the shipment shall not be opened or inventoried until the seal is witnessed and broken by an agent of the commission. An agent of the commission shall verify that each table game and table game mechanism is unloaded, inventoried, and compared to the notice required in subsection (a). (Authorized by and implementing K.S.A. 2009 Supp. 74-8772; effective Jan. 8, 2010; amended April 1, 2011.)

**112-108-56. Handling chips.** A dealer shall "prove chips" when opening or closing a table, filling a table, or exchanging chips for a patron by displaying and counting the chips in full view of either of the following, in accordance with the facility's procedures:

(a) Surveillance and either the pit manager or an employee in a higher position; or

(b) surveillance and the affected patron. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective Jan. 8, 2010.)

**112-108-57. Progressive table games.** (a) A facility manager shall place a table game that offers a progressive jackpot only if the executive director has approved the following:

(1) The initial and reset amounts for the progressive meters;

(2) the system for controlling the keys and applicable logical access controls to the table games;

(3) the proposed rate of progression for each jackpot;

(4) the proposed limit for progressive jackpot, if any; and

(5) the calculated probability of winning each progressive jackpot. The probability shall not exceed 50 million to one.

(b) Progressive meters shall not be reset or reduced unless one of the following occurs:

(1) The amount indicated has been actually paid to a winning patron.

(2) The progressive jackpot amount won by the patron has been recorded in accordance with a system of internal controls approved by the commission.

(3) The progressive jackpot has been transferred to another progressive table game and the transfer has been approved by the executive director.

(4) The change is necessitated by a meter malfunction, and the commission has been notified of the resetting in writing.

(c) A facility manager shall not alter the odds of winning a progressive jackpot unless the jackpot has been transferred to another progressive table game in accordance with subsection (d).

(d) A facility manager may limit, transfer, or terminate a progressive jackpot or progressive game offered on the gaming floor under any of the following circumstances:

(1) A progressive jackpot may be limited if the payout limit is greater than the payout amount displayed on the progressive jackpot meter to patrons. The facility manager shall provide notice to the commission of the imposition or modification of a payout limit on a progressive meter concurrent with the setting of the payout limit.

(2) A progressive jackpot game may be terminated concurrent with the winning of the pro-

gressive jackpot if the progressive controller was configured to automatically establish a fixed reset amount with no progressive increment.

(3) A progressive jackpot amount may be transferred from a gaming floor. The facility manager shall give notice to the commission of its intent to transfer the progressive jackpot at least 30 days before the anticipated transfer, and the facility manager shall conspicuously display the facility manager's intent to transfer the progressive jackpot on the front of each affected table game for at least 30 days. To be eligible for transfer, the progressive jackpot shall be transferred in its entirety and shall meet one of the following conditions:

(A) Be transferred to the progressive meter for a table game with the same or greater probability of winning the progressive jackpot, with the same or lower wager requirement to be eligible to win the progressive jackpot, and with the same type of progressive jackpot;

(B) be transferred to the progressive meters of two separate table games if each table game progressive system to which the jackpot is transferred individually meets the requirements of paragraph (d)(3)(A); or

(C) be transferred to the most similar table game progressive system that is available if approved by the executive director.

(4) A progressive jackpot on a stand-alone progressive table game system may be removed from a gaming floor if notice of intent to remove the progressive jackpot meets the following conditions:

(A) The notice is conspicuously displayed on the front of each table game for at least 30 days.

(B) The notice of intent is provided in writing to the commission at least 30 days before the removal of the progressive jackpot.

(e) The amount indicated on the progressive meter on each table game governed by subsection (a) shall be recorded by the facility manager's accounting department on a progressive electronic gaming summary report at least once every seven calendar days. Each report shall be signed by the person preparing the report. If the report is not prepared by the accounting department, the progressive electronic gaming summary report shall be forwarded to the accounting department at the end of the gaming day on which the report is prepared. An employee of the accounting department shall be responsible for calculating the correct amount that should appear on a progressive meter. If an adjustment to the progressive meters is necessary, the adjustment shall be made by a member of the EGM department as follows:

(1) Supporting documentation shall be maintained to explain any addition or reduction in the registered amount on the progressive meter. The documentation shall include the date, the asset number of the table game, the amount of the adjustment, and the signatures of the accounting department member requesting the adjustment and the EGM department member making the adjustment.

(2) The adjustment shall be effectuated within 48 hours of the meter reading.

(f) Except as otherwise authorized by this regulation, each table game offering a progressive jackpot that is removed from the gaming floor shall be returned to or replaced on the gaming floor within five gaming days. The amount on the progressive meter on the returned or replacement table game shall not be less than the amount on the progressive meter at the time of removal, unless the amount was transferred or paid out in accordance with these regulations. If a table game offering a progressive jackpot is not returned or replaced, any progressive meter amount at the time of removal shall, within five days of the table game's removal, be added to a table game offering a progressive jackpot approved by the executive director. The table game shall offer the same or greater probability of winning the progressive jackpot and shall require the same or lower denomination of currency to play that was in use on the table game that was removed.

(g) If a table game is located adjacent to a table game offering a progressive jackpot, the facility manager shall conspicuously display on the table game a notice advising patrons that the table game is not participating in the progressive jackpot of the adjacent table game. (Authorized by K.S.A. 2008 Supp. 74-8772; implementing K.S.A. 2008 Supp. 74-8752 and 74-8772; effective Jan. 8, 2010.)

## Article 110.—TECHNICAL STANDARDS

**112-110-1. Adoptions by reference.** The following texts by gaming laboratories international (GLI) are hereby adopted by reference:

(a) "GLI-11: gaming devices in casinos," version 2.0, dated April 20, 2007, except the following:

(1) Each reference to a "75% payout percent-

age," which shall be replaced with "an average of not less than 87% of the amount wagered over the life of the machine";

(2) section 1.1;

(3) section 1.2;

(4) section 1.4; and

(5) the section titled "revision history";

(b) "GLI-12: progressive gaming devices in casinos," version 2.0, dated April 20, 2007, except the following:

(1) Section 1.1;

(2) section 1.2;

(3) section 1.4; and

(4) the section titled "revision history";

(c) "GLI-13: on-line monitoring and control systems (MCS) and validation systems in casinos," version 2.0, dated April 20, 2007, except the following:

(1) Section 1.3;

(2) section 1.5;

(3) the "note" in section 3.4.3; and

(4) the section titled "revision history";

(d) "GLI-15: electronic bingo and keno systems," version 1.2, dated April 12, 2002, except the following:

(1) Section 1.3;

(2) section 1.5; and

(3) the section titled "revision history";

(e) "GLI-16: cashless systems in casinos," version 2.0, dated April 20, 2007, except the following:

(1) Section 1.2;

(2) section 1.4; and

(3) the section titled "revision history";

(f) "GLI-17: bonusing systems in casinos," version 1.2, dated February 27, 2002, except the following:

(1) Section 1.2;

(2) section 1.4; and

(3) the section titled "revision history";

(g) "GLI-18: promotional systems in casinos," version 2.0, dated April 20, 2007, except the following:

(1) Section 1.2;

(2) section 1.4; and

(3) the section titled "revision history";

(h) "GLI-20: kiosks," version 1.4, dated July 1, 2006, except the following:

(1) Section 1.3; and

(2) the section titled "revision history";

(i) "GLI-21: client-server systems," version 2.1, dated May 18, 2007, except the following:

(1) Section 1.1;

(2) section 1.2;

(3) section 1.4;

(4) each reference to a "75% payout percentage," which shall be replaced with "an average of not less than 87% of the amount wagered over the life of the machine"; and

(5) the section titled "revision history";

(j) "GLI-24: electronic table game systems," version 1.2, dated September 6, 2006, except the following:

(1) Section 1.1;

(2) section 1.3;

(3) each reference to "75% payout percentage," which shall be replaced with "an average of not less than 87% of the amount wagered over the life of the machine"; and

(4) the section titled "revision history";

(k) "GLI-25: dealer controlled electronic table games," version 1.1, dated September 8, 2006, except the following:

(1) Section 1.1;

(2) section 1.3; and

(3) the section titled "revision history";

(l) "GLI-26: wireless gaming system standards," version 1.1, dated January 18, 2007, except the following:

(1) Section 1.1;

(2) section 1.2;

(3) section 1.4; and

(4) the section titled "revision history"; and

(m) "GLI-28: player user interface systems," version 1.0, dated February 14, 2011, except section 1.1. (Authorized by K.S.A. 2010 Supp. 74-8772; implementing K.S.A. 2010 Supp. 74-8750 and 74-8772; effective May 1, 2009; amended Dec. 9, 2011.)

**112-110-2. Central computer system accounting.** (a) Each central computer system (CCS) provided to the commission shall include an accounting and auditing mechanism.

(b) Each CCS shall be capable of supporting a network of 15,000 EGMs and the location controllers and validation stations needed to support the EGMs.

(c) Each CCS shall meet all of the following requirements:

(1) The CCS computers shall obtain all meter reading data in real time, which shall be no longer than two and one-half minutes after any meter acquisition request.

(2) The CCS shall keep accurate records, maintaining a total of at least 14 digits, including cents,

in length for each type of datum required and of all income generated by each electronic gaming machine (EGM).

(3) The CCS shall be capable of monitoring the operation of each game and EGM.

(4) The CCS shall be capable of creating reports from the following information by EGM and by game, if applicable:

(A) The number of cents wagered;

(B) the number of cents won;

(C) the number of cents paid out by a printed ticket;

(D) the number of cents accepted from a printed ticket;

(E) the number of cents accepted from each coin, bill, ticket, or other instrument of value;

(F) the number of cents electronically transferred to the EGM;

(G) the number of cents electronically transferred from the EGM;

(H) the number of cents paid out by hand pay, which means the payment of credits that are not totally and automatically paid directly from an EGM, or canceled credit;

(I) the number of cents paid out by jackpot;

(J) the number of cumulative credits representing money inserted by a player;

(K) the number of cents on the credit meter;

(L) the number of games played;

(M) the number of games won;

(N) the number of times the logic area was accessed; and

(O) the number of times the cash door was accessed.

(d) The CCS shall be capable of generating the following reports:

(1) Gaming facility performance reports. The gaming facility performance report for the previous period shall be available to be printed on the first day of the next period. Each gaming facility performance report shall be available to be printed for all facilities and for specific facilities. The report shall include data from each EGM in play at the gaming facility. Each report shall contain the following information:

(A) EGM serial number;

(B) the number of cents played;

(C) the number of cents won;

(D) net terminal income, which is the amount played minus the amount won;

(E) Kansas lottery's administrative expenses;

(F) gross profits;

(G) drop amount; and

(H) drop time frame;

(2) a report that calculates the prize payout percentage of each EGM on the basis of cents won divided by cents played;

(3) a report that calculates cents played less cents won, divided by the number of EGMs in play at a facility, during the period;

(4) a report that compares cents played less cents won against total cents in less total cents out by EGMs. This report shall also include the value on the EGM's credit meter;

(5) a daily report showing the total number of EGMs in play and cents played less cents won;

(6) performance reports by brand of EGM, game name, game type, and facility number;

(7) a report by EGM number;

(8) a report of nonreporting EGMs by facility and by EGM supplier, summarizing the last polled date, EGM manufacturer and serial number, reason for error, and poll address;

(9) a report of nonreporting intermediary servers that are communicating with the EGMs but not reporting data by facility and by EGM that summarizes the last polled date, EGM manufacturer and serial number, reason for error, and poll address;

(10) a financial summary report listing facility summaries by date, amount played, amount won, net revenue, number of EGMs, and average net revenue by EGM;

(11) a transaction report listing facility, by EGM supplier and by EGM, that summarizes the electronic game machine manufacturer and serial number, cents in, cents out, net revenue, amount played, amount won, progressive jackpot contribution, win frequency, payback percentage, net jackpot won, number of times each game was played, and number of times each play resulted in a win;

(12) a report containing a record of all security events by EGM or event type over a specific time range; and

(13) a financial report based upon a user-specified time frame, by EGM, that summarizes cents in, cents out, net revenue, cents played, cents won, progressive jackpot contribution, win frequency, payback percentage, net jackpot won, games played, and games won.

(e) Each report specified in this regulation shall be available on demand and, if applicable, cover a period determined by Kansas lottery or commission auditing staff. On-demand reporting shall be sortable by date, EGM, game, EGM manufac-

turer, location, and facility. The time period of each report may be daily, weekly, monthly, and yearly, and sufficient data shall be resident on the database to accommodate a facility manager's need to report on a basis specified by the Kansas lottery or commission auditing staff.

(f) Each EGM event and all configuration data, including configurable pay table information, if applicable, shall be retained for each individual EGM in a backed-up CCS system.

(g) All security event data shall be retained for each individual EGM as well as accumulated for each facility.

(h) All game play statistics, EGM event data, and configuration data, including configurable pay table information, if applicable, shall be retained for each EGM in a backed-up CCS system.

(i) All accounting and security event data shall be retained and shall be accessible for at least seven years.

(j) All accounting and security event data shall be retained for each individual EGM and accumulated for each facility.

(k) Each CCS provider shall provide an invoicing software package for facility licensees. That software package shall allow the Kansas lottery to create periodic statements that interface with an electronic funds transfer account. The CCS shall be able to perform the following functions:

(1) Provide a gross terminal income summary to facilitate daily electronic funds transfer (EFT) sweeps that shall, at a minimum, contain the daily number of EGMs reporting, the daily cash in divided by cash out and daily cash played divided by cash won, daily gross EGM income, daily net balances, adjustments, progressive contributions, and jackpot reset values. The gross terminal income summary reports shall show the information by each EGM as well as by track and by total system, retailer, facility manager, and county;

(2) conduct downloading to tape, disk, or other standard data storage devices of the information necessary to facilitate the EFT daily sweep of each facility's net EGM income;

(3) create a balanced data file of general ledger journal entries to record all lottery activities and integrate into general ledger software on a daily basis and on a multiple day basis, as needed;

(4) provide payout analyses that indicate performance by EGM; and

(5) provide reports in a format as specified, by period to period, by the Kansas lottery. (Authorized by K.S.A. 2007 Supp. 74-8772; implementing K.S.A. 2007 Supp. 74-8749 and 74-8772; effective May 1, 2009.)

**112-110-3. Central computer system security.** (a) Each CCS's database shall contain LFG data for at least the prior 24 months. Older data shall also be available from archives for at least seven years. The CCS's vendor shall provide archived data within 24 hours of a request for the data from the Kansas lottery or the commission.

(b) Each CCS shall be capable of the following:

(1) Receiving and retaining a record of events that affect security, including all door openings, stacker access, and signature failure;

(2) receiving and retaining a record of events that affect the LFG state, including power on, power off, and various faults and hardware failures;

(3) receiving and retaining a record of events that affect LFG integrity, including random access memory (RAM) corruption and RAM clear;

(4) receiving and retaining a record of events that affect the status of communication between all components including the LFG, including loss of communication;

(5) reporting of all events specified in this article;

(6) receiving and retaining a record of any other events as specified in writing by the Kansas lottery or the commission; and

(7) automatic reporting of faults that require a manual reactivation of the LFG. These faults shall include the following:

(A) Logic area cabinet access;

(B) LFG RAM reset;

(C) catastrophic software corruption;

(D) unrecoverable hardware faults; and

(E) a failed signature check.

(c)(1) A record of each of the events specified in subsection (b) shall be stored at the central point of the CCS on a hard drive in one or more files of an approved structure.

(2) The record of each stored event shall be marked by a date and time stamp.

(3) Each event shall be detected and recorded to the database and posted to a line printer or terminal monitor within 10 seconds of the occurrence.

(d) Each CCS shall meet the following security requirements:

(1) The ability to deny access to specific databases upon an access attempt, by employing passwords and other system security features. Levels

of security and password assignment for all users shall be solely the function of the Kansas lottery;

(2) the ability to allow multiple security-access levels to control and restrict different classes of access to the system;

(3) password sign-on with two level codes comprising the personal identification code and a special password;

(4) system access accounts that are unique to the authorized personnel;

(5) the storage of passwords in an encrypted, nonreversible form;

(6) the requirement that each password be at least 10 characters in length and include at least one nonalphabetic character;

(7) password changes every 30 days;

(8) prevention of a password from being used if the password has been used as any of the previous 10 passwords;

(9) the requirement that the CCS lock a user's access upon three failed attempted log-ins and send a security alert to a line printer or terminal monitor;

(10) the requirement that connectivity to any gaming system from a remote, non-gaming terminal be approved by the executive director and reported to the Kansas lottery, in accordance with K.A.R. 112-107-31. Remote connections shall employ security mechanisms including modems with dial-back, modems with on-off keylocks, message encryption, logging of sessions, and firewall protection;

(11) the ability to provide a list of all registered users on the CCS, including each user's privilege level;

(12) the requirement that approved software and procedures for virus protection and detection, if appropriate, be used;

(13) the requirement that only programs, data files, and operating system files approved by the Kansas lottery and the commission reside on hard drive or in the memory of the CCS computers;

(14) the requirement that nonroutine access alerts and alarm events be logged and archived for future retrieval;

(15) the requirement that software signatures be calculated on all devices at all facilities and the signatures be validated by devices on the CCS network. These devices shall include gaming equipment, location controllers, and cashier stations. These devices shall exclude non-gaming devices, including dumb terminals;

(16) audit trail functions that are designed to track system changes;

(17) time and date stamping of audit trail entries;

(18) capability of controlling data corruption that can be created by multiple log-ons;

(19) the requirement that the gaming software be maintained under an approved software change control system;

(20) the ability to send an alert to any terminal monitor and line printer for any security event that is generated at an LFG or in the system. The system shall allow the system administrator to determine which events should be posted. The events shall be filtered by location;

(21) equipment with a continuous power supply;

(22) the capability of on-line data redundancy if a hard disk peripheral fails during operation; and

(23) provision of a secure way through a graphic user interface for an auditor to make adjustments to the system. (Authorized by and implementing K.S.A. 2009 Supp. 74-8772; effective May 1, 2009; amended April 1, 2011.)

**112-110-4. Central computer system; configuration and control.** (a) Each CCS shall be able to begin or end gaming functions by a single command for any of the following:

(1) An EGM;

(2) a group of EGMs; or

(3) all EGMs.

(b) Automatic and manual shutdown capabilities shall be available from the CCS.

(c) The software configuration of each CCS gaming system shall be approved by the Kansas lottery and the commission.

(d) Each CCS shall maintain the following information for each EGM or connected device:

(1) Location;

(2) device description, including serial number and manufacturer;

(3) game name;

(4) game type;

(5) configuration, including denomination, software identification number, software version installed on all critical components, game titles available, and progressive jackpot status;

(6) history of upgrades, movements, and reconfigurations; and

(7) any other relevant information as deemed

necessary by the Kansas lottery or the commission.

(e) Each CCS shall be able to individually and collectively enroll EGMs.

(f) Each CCS shall be able to configure each EGM during the initial enrollment process so that the EGM's system-dependent parameters, including denomination, money units, and pay tables, can be programmed or retrieved from the EGMs and validated by the CCS.

(g) Each CCS shall be able to support continuous gaming operations and shall be able to enable and disable electronic gaming machines based on a daily schedule. (Authorized by K.S.A. 2007 Supp. 74-8772; implementing K.S.A. 2007 Supp. 74-8749 and 74-8772; effective May 1, 2009.)

**112-110-5. Central computer system; software validation.** (a) Each CCS shall be programmed to initiate a signature validation when an EGM is enrolled.

(b) If an EGM fails the signature validation, the EGM shall not be placed into gaming mode without manual intervention at the CCS level.

(c) One of the following two methods of storing signature check references shall be implemented in the CCS:

(1) Game software image storage in which game software images existing in the EGM are also stored in the CCS; or

(2) precalculated signature results storage in which the table of signature results have a minimum of five entries and those entries are generated from randomly selected seed values for each game and repopulated on a daily basis. The utility program used to generate the signature check result table shall be approved by the Kansas lottery and the commission's electronic security staff.

(d) The game software image and precalculated signature results shall be secured, including by means of password protection and file encryption.

(e) If the image used for validating the EGM software is comprised of more than one program, both of the following requirements shall be met:

(1) The CCS shall have a method to allow each component to be loaded individually.

(2) The CCS shall combine the individual images based upon the scheme supplied by the EGM manufacturer to create the combined image. (Authorized by K.S.A. 2007 Supp. 74-8772; implementing K.S.A. 2007 Supp. 74-8749 and 74-8772; effective May 1, 2009.)

**112-110-6. Central computer system communication.** (a) Each CCS provider shall furnish specifications, protocols, and the format of messages to and from the central computer system.

(b)(1) The documentation of the communications protocol shall explain all messages, conventions, and data formats and shall be submitted for approval before delivery of the protocol to EGM manufacturers. Approval shall be obtained before distribution of the communications protocol may commence.

(2) The documentation shall detail the following:

(A) The data format, including the following:

(i) Byte ordering;

(ii) bit order where bits are referenced; and

(iii) negative number format;

(B) message framing, including the following:

(i) Header field;

(ii) address field;

(iii) control field;

(iv) information or data;

(v) frame check sequence; and

(vi) trailer field;

(C) minimum and maximum frame or packet length;

(D) packet termination indication;

(E) padding techniques;

(F) special characters used and the function of each character;

(G) general principles of data exchange; and

(H) any other specifications required to support the functionality of the system.

(c) All communications between the host system components shall be encrypted with an encryption tool, which may include data encryption standard approved by the commission's auditing staff. Each proprietary encryption system shall be approved by the Kansas lottery before its use.

(d) If the CCS finds an EGM that is not responding within a set number of retries, the EGM shall be logged as not responding and the system shall continue servicing all other EGMs in the network.

(e) Each CCS shall be wired directly to all EGMs.

(f) Each CCS shall be capable of monitoring the functioning of each EGM.

(g) If a CCS provider proposes a proprietary communications protocol, the provider shall supply a perpetual software license to the Kansas lottery at no additional charge. If a proprietary protocol is utilized, the protocol shall be provided to

any vendor designated by the Kansas lottery free of charge within one week of contract signing.

(h) If a CCS uses an industry standard protocol, the provider shall supply and maintain an interoperability document that indicates all of the functionality within the protocol that is used and any additional implementation notes that apply. Each deviation from the protocol shall be approved by the Kansas lottery.

(i) The communication of each CCS shall use cyclic redundancy checks (CRCs).

(j) The communication of each CCS shall withstand error rates based on the protocols in use.

(k) The communications protocol shall provide a method for the recovery of each message received in error or not received at all.

(l) Each CCS shall acknowledge all data messages that the CCS receives.

(m) Any CCS may include a negative acknowledgment (NAK) for messages received in error or messages that are received outside of specified time periods. (Authorized by K.S.A. 2007 Supp. 74-8772; implementing K.S.A. 2007 Supp. 74-8749 and 74-8772; effective May 1, 2009.)

**112-110-7. Central computer system; protocol simulator.** (a) Each CCS shall include a protocol simulator to enable the development of the communications protocol and to assist in acceptance testing.

(b) Each simulator shall support and test all of the transactions and message types that are to be used by the communications protocol.

(c) Each simulator shall be capable of generating common communication errors to confirm that the EGM software is properly handling the event.

(d) Along with the protocol simulator, each CCS provider shall furnish the following:

(1) An operations manual or other suitable documentation;

(2) a definition of the message structure, types, and formats in machine-readable form;

(3) a standard for all program modules, including naming conventions, definitions of module names, and comments; and

(4) a diagram for the communications protocol.

(e) Each simulator shall run on standard computer equipment, including a personal computer.

(f) The communications protocol shall contain only codes or bytes that are defined in the communications protocol. (Authorized by K.S.A. 2007 Supp. 74-8772; implementing K.S.A. 2007 Supp. 74-8749 and 74-8772; effective May 1, 2009.)

**112-110-8. Central computer system; general hardware specifications.** (a) Each CCS shall be a state-of-the-art, fault-tolerant, redundant, and high-availability system. Any CCS may be configured in a duplex, triplex, or multiredundant configuration. All computer system components and peripheral equipment, including front-end communications processors, system printers, and tape drives, shall be fault-tolerant and redundant and maintain high availability. No performance degradation or loss of system functionality shall occur with the failure of a single system component. The central computer system's storage management solution shall provide fault tolerance and scalability.

(b) The performance of each CCS shall match or exceed the performance of any similar systems installed by North American lotteries or gaming central control systems in casinos in the last three years.

(c) The functions of each CCS shall not interfere with players, employees who require real-time monitoring of security events, cashiers who handle financial transactions of the electronic gaming machines, or attendants who service the EGM.

(d) Performance of each CCS shall not degrade noticeably during ordinary functionality. The CCS shall provide capacity to accommodate EGM populations, play volumes, user sessions, and event recording consistent with all specifications.

(e) All hardware and ancillary peripherals comprising the CCS shall be new equipment that has not previously been used or refurbished.

(f) The supplier of each CCS shall be able to produce system checksums or comparable system file checker reports when requested by Kansas lottery or the commission.

(g) Each supplier of CCS hardware and software shall obtain written approval from the Kansas lottery director or the director's designee before making any enhancement or modification to the operating software.

(h) Each CCS supplier shall provide all hardware, operating system software, third-party software, and application software necessary to operate the CCS.

(i) Each CCS shall be able to operate 24 hours a day, seven days a week, with the database up and running. Off-hours backup shall be able to

run without shutting down the database. The Kansas lottery shall be able to do a full system backup, which shall include backing up the operating system and any supplier software.

(j) The central processing unit and peripheral devices of each CCS shall employ physical security measures in the form of sealed casings, lockable containment, or any other means of physical security approved by the Kansas lottery and the commission.

(k) Each CCS shall be able to support gaming in at least seven gaming facilities in the state of Kansas.

(l) Each CCS shall have one or more management terminals located at each of the facilities. Management terminals may be accessed only with the permission of the Kansas lottery. A monitoring terminal shall also be located at the Kansas lottery headquarters.

(m) Each CCS shall have two or more monitoring terminals at each facility, as approved by the commission, with at least one terminal to be utilized by the commission. A monitoring terminal shall be located at the commission headquarters.

(n) The responsibility to audit all lottery gaming facility revenues shall rest with the commission. Each CCS supplier shall provide a separate data feed that contains the original accounting data from the EGM before any adjustments and means to reconcile the values or other means of validating any adjustments are made to any data on the system. This separate data feed shall be approved by the commission. (Authorized by K.S.A. 2007 Supp. 74-8772; implementing K.S.A. 2007 Supp. 74-8749 and 74-8772; effective May 1, 2009.)

**112-110-9. Central computer system backup.** (a) Each CCS supplier shall provide one or more remote backup systems that will take over for the primary site systems, if necessary. Redundant arrays of inexpensive disks (RAID) shall be used to protect key data at the remote site. Data recorded at the remote site shall always contain the most recent transactions. The facility networks shall be routed to permit transaction processing at the backup site. Other communications to permit Kansas lottery operations shall also connect to the backup site. The backup site system shall be able to be tested monthly to ensure that the remote site is fully functional.

(b) Each remaining system shall assume all system functions in case of a failure in one system, without loss or corruption of any data and transactions received before the time of the failure.

(c) Multiple components in the CCS shall have a time-synchronizing mechanism to ensure consistent time recording and reporting for all events and transactions.

(d) The remote backup systems shall have the same processing capacity and architecture as those of the central site systems.

(e) Primary site system recovery from a one-system failure shall be accomplished in no more than two minutes while still maintaining current transactions, including the ability to fully service the communications network supporting the EGM and management terminals.

(f) Backup site system recovery from a primary site failure shall be accomplished in less than 10 minutes without loss of transactions. (Authorized by K.S.A. 2007 Supp. 74-8772; implementing K.S.A. 2007 Supp. 74-8749 and 74-8772; effective May 1, 2009.)

**112-110-10. Central computer system manuals.** (a) Each CCS supplier shall provide the following manuals and diagrams for the CCS:

(1) Operation manuals;

(2) service manuals;

(3) CCS architecture diagrams; and

(4) other circuit diagrams.

(b) The required service manuals shall meet the following requirements:

(1) Accurately depict the CCS that the manual is intended to cover;

(2) provide adequate detail and be sufficiently clear in their wording and diagrams to enable a qualified repairperson to perform repair and maintenance in a manner that is conducive to the long-term reliability of the CCS;

(3) include maintenance schedules outlining the elements of the EGM that require maintenance and the frequency at which that maintenance should be carried out; and

(4) include maintenance checklists that enable EGM maintenance staff to make a record of the work performed and the results of the inspection.

(c) The required CCS architecture diagrams shall meet the following requirements:

(1) Accurately depict the CCS that the diagrams are intended to cover;

(2) provide adequate detail and be sufficiently clear in their wording and depiction to enable qualified technical staff to perform an evaluation of the design of the component; and

(3) be professionally drafted in order to meet the requirements specified in this subsection. (Authorized by K.S.A. 2007 Supp. 74-8772; implementing K.S.A. 2007 Supp. 74-8749 and 74-8772; effective May 1, 2009.)

**112-110-11. Central computer system; support of progressive games.** (a) As used within this regulation, the following terms shall have the meanings specified in this subsection:

(1) "Linked progressive games" means a group of EGMs at a gaming facility that offers the same game and involves a manner of wagering providing the same probability of hitting the combination that will award the progressive jackpot that increases by the same increments as the EGM is played.

(2) A "wide-area progressive game" means a game that consists of a group of EGMs located at two or more gaming facilities, linked to a single CCS computer that has a manner of wagering that will provide the same probability of hitting the combination that will award the progressive jackpot that increases, by the same increments, as the EGM is played.

(b) Each CCS shall be able to support a variety of different progressive jackpot games, including single-machine games, linked games at a gaming facility, and wide-area progressive games shared by two or more gaming facilities.

(c) The CCS communication for the wide-area progressive system shall be by means of dedicated on-line communication lines, satellite, or another preapproved communications system. All communication packets between each participating facility manager and the CCS shall be encrypted, and the encryption keys shall be alterable upon demand. The protocol shall ensure delivery of all information packets in a valid and correct form.

(d) The CCS computer's wide-area progressive gaming subsystem shall have the ability to monitor the opening of the front door of the EGM and the logic area of the EGM, and to report all these events to the CCS within one polling cycle.

(e) Each CCS shall have the ability to produce reports that demonstrate the method used to calculate the progressive jackpot amount, including the documentation of credits contributed from the beginning of the polling cycle and all credits contributed throughout the polling cycle that includes the jackpot signal. The method shall assume that credits contributed to the system after the jackpot win occurs, in real-time but during the same polling cycle, are contributed to the progressive jackpot amount before the win.

(f) Each CCS shall be able to produce fiscal reports that support and verify the economic activity of the games, indicating the amount of and basis for the current progressive jackpot amount. These reports shall include the following:

(1) An aggregate report to show only the balancing of the progressive link with regard to facilitywide totals;

(2) a detail report in a format that indicates for each EGM, summarized by location, the cash-in, cash-out, credits-played, and credits-won totals, as these terms are commonly understood by the Kansas lottery; and

(3) a jackpot contribution invoice that includes documentation of contributions by the following:

(A) Each of its participating EGMs;

(B) the credits contributed by each EGM to the jackpot for the period for which an invoice is remitted;

(C) the percentage contributed by that gaming facility; and

(D) any other information required by the Kansas lottery or the commission to confirm the validity of the facility manager's aggregate contributions to the jackpot amount.

This report shall be available for any facility manager participating in a wide-area progressive electronic gaming machine system.

(g) Each CCS shall be designed to have continuous operation of all progressive games.

(h) Each CCS shall have a method to transfer the balance of one progressive pool to another.

(i)(1) Each progressive controller linking one or more progressive EGMs shall be housed in a double-keyed compartment or an alternative approved by the Kansas lottery and the commission.

(2) The Kansas lottery or the Kansas lottery's designee shall be given possession of one of the keys, or the Kansas lottery's designee shall authorize each instance of access to the controller in advance. No person may have access to a controller without notice to the Kansas lottery.

(3) A progressive entry authorization log shall be included with each controller, and the log shall be completed by each person gaining entrance to the controller. The log shall be entered on a form provided by the Kansas lottery.

(4) If a progressive jackpot is recorded on any progressive EGM, the progressive controller shall be able to identify the EGM that caused the progressive meter to activate, and the progressive

controller shall display the winning progressive amount.

(5) If more than one progressive EGM is linked to the progressive controller, the progressive controller may automatically reset to the minimum amount and continue normal play only if the progressive meter displays the following information:

(A) The identity of the EGM that caused the progressive meter to activate;

(B) the winning progressive amount; and

(C) the minimum amount that is displayed to the other players on the link.

(6) A progressive meter or progressive controller shall keep the following information in nonvolatile memory, which shall be displayed upon demand:

(A) The number of progressive jackpots won on each progressive meter if the progressive display has more than one winning amount;

(B) the cumulative amounts paid on each progressive meter if the progressive display has more than one winning amount;

(C) the maximum amount of the progressive payout for each meter displayed;

(D) the minimum amount or reset amount of the progressive payout for each meter displayed; and

(E) the rate of progression for each meter.

(7) Waivers may be granted by the Kansas lottery to ensure that individual EGMs and multiple EGMs linked to a progressive controller meet the requirements of this regulation. (Authorized by K.S.A. 2007 Supp. 74-8772; implementing K.S.A. 2007 Supp. 74-8749 and 74-8772; effective May 1, 2009.)

**112-110-12. Central computer system; additional functionality.** (a) Each CCS shall be able to support ticket in-ticket out (TITO) processes.

(b) Any CCS may perform the following:

(1) Downloading operating and game software to EGMs that use electronic storage media on which the operation software for all games resides or at a minimum approving, auditing, and verifying the downloading of software to EGMs;

(2) allowing gaming software to be driven by down-line loading on the communications line. Gaming software may be either solicited by the EGM or unsolicited; and

(3) allowing gaming software to be downloaded in a modular fashion with only the modules requiring a change being downloaded. Downloading shall not preclude continuous operation of the EGM network. The CCS provider shall detail for the Kansas lottery and the commission any particular download features of the software, including downloading in the background, eavesdropping, and compression. (Authorized by K.S.A. 2007 Supp. 74-8772; implementing K.S.A. 2007 Supp. 74-8749 and 74-8772; effective May 1, 2009.)

**112-110-13. Central computer system; acceptance testing.** (a) Each CCS supplier shall make that provider's system available for independent acceptance and compatibility testing.

(b) If a CCS fails the acceptance testing, the CCS supplier shall make all necessary modifications required for acceptance by the Kansas lottery and the commission within the time frame specified by the Kansas lottery and the commission.

(c) Each CCS supplier shall provide at least one test system, including all hardware and software, to the commission or its independent testing laboratory for the duration of the contract. The test system shall include any third-party software and licenses used by the system. The test system shall use the identical software that exists on the production system, though the test system may utilize similar but not identical hardware.

(d) Each CCS supplier shall provide a complete set of manuals at the beginning of acceptance testing. Updates to the manuals shall be supplied concurrently with any CCS modifications that result in updating the manual.

(e) A test system in addition to the system required in subsection (b) may be required if the Kansas lottery determines that a system shall be located at the Kansas lottery.

(f) The cost of initial acceptance testing by the Kansas lottery, the commission, and the commission's independent testing laboratory shall be paid by the CCS supplier. The cost of any testing resulting from system modifications or enhancements shall be paid by the CCS supplier. These costs shall include travel time and expenses for functionality that must be tested on-site or at an alternate location.

(g) Each CCS supplier shall be responsible for the consulting costs incurred by the commission and the Kansas lottery to develop the test scripts. (Authorized by K.S.A. 2007 Supp. 74-8772; implementing K.S.A. 2007 Supp. 74-8749 and 74-8772; effective May 1, 2009.)

**112-110-14. Procedures for resolving**

**EGM breaks in communication with the central computing system.** (a) If one or more EGMs have an unscheduled break in communications with the central computer system for more than 60 seconds, unless another time is specified by the executive director, the following requirements shall be met:

(1) The supplier for the central computer system shall notify the lottery gaming facility's surveillance department of the break in communication.

(2) The lottery gaming facility's surveillance department shall notify the slot shift supervisor on duty or the person in an equivalent position of the break in communication.

(3) The lottery gaming facility's EGM department shall perform the following:

(A) Investigate the reason for the break in communication with the central computer system; and

(B) identify the party responsible for correcting the problem and a time frame for correction.

(b)(1) If one or more EGMs have an unscheduled break in communications with the central computer system for longer than 10 minutes, the supplier for the central computer system shall notify the commission personnel on duty.

(2) For communication breaks that last longer than 10 minutes, a determination shall be made by the commission as to whether to cease operation of the EGMs affected by the central communication system's break in communication. The following may be considered by the commission:

(A) The potential for any data loss;

(B) the projected length of outage;

(C) the circumstances of the break in communication;

(D) the proposed solution to the problem; and

(E) any other factor that arises.

(c) If one or more EGMs have an unscheduled break in communications with the central computer system for longer than 30 minutes, the supplier for the central computer system shall perform the following:

(1) Contact the facility manager slot shift supervisor on duty or the person in an equivalent position to assist in reestablishing communications; and

(2) send updated notification to the commission personnel on duty of the situation at least every two hours until the situation is resolved. When EGM communications have been restored, the supplier for the central computer system shall notify all parties involved.

(d) For the purpose of this regulation, notification may include automated electronic communications. (Authorized by and implementing K.S.A. 2010 Supp. 74-8772; effective Dec. 9, 2011.)

## Article 111.—INVOLUNTARY EXCLUSIONS

**112-111-1. Involuntary exclusion list.** (a) An "involuntary exclusion list" shall be created by the commission staff and shall consist of the names of people who the executive director determines meet any one of the following criteria:

(1) Any person whose presence in a gaming facility would be inimical to the interest of the state of Kansas or gaming in Kansas, including the following:

(A) Any person who cheats, including by intentionally doing any one of the following:

(i) Altering or misrepresenting the outcome of a game or event on which wagers have been made, after the outcome is determined but before the outcome is revealed to the players;

(ii) placing, canceling, increasing, or decreasing a bet after acquiring knowledge, not available to other players, of the outcome of the game or subject of the bet or of events affecting the outcome of the game or subject of the bet;

(iii) claiming or collecting money or anything of value from a game or authorized gaming facility not won or earned from the game or authorized gaming facility;

(iv) manipulating a gaming device or associated equipment to affect the outcome of the game or the number of plays or credits available on the game; or

(v) altering the elements of chance or methods of selection or criteria that determine the result of the game or amount or frequency of payment of the game;

(B) any person who poses a threat to the safety of the patrons or employees;

(C) persons who pose a threat to themselves;

(D) persons with a documented history of conduct involving the disruption of a gaming facility;

(E) persons included on another jurisdiction's exclusion list; or

(F) persons subject to an order of the courts of Kansas excluding those persons from any gaming facility;

(2) any felon or person who has been convicted of any crime or offense involving moral turpitude

and whose presence in a gaming facility would be inimical to the interest of the state of Kansas or of gaming in Kansas; or

(3) any person who has been identified by the director of security as being a criminal offender or gaming offender and whose presence in a gaming facility would be inimical to the interest of the state of Kansas or of gaming in Kansas.

(b) As used in this article, a person's presence shall be deemed "inimical to the interest of the state of Kansas or gaming in Kansas" if the presence meets any one of the following conditions:

(1) Is incompatible with the maintenance of public confidence and trust in the integrity of licensed gaming;

(2) is reasonably expected to impair the public perception of or confidence in the regulation or conduct of gaming; or

(3) creates or enhances a risk of unfair or illegal practices in the conduct of gaming.

(c) The executive director's determination of inimicality may be based upon any of the following:

(1) The nature and notoriety of the person to be excluded from gaming facilities;

(2) the history and nature of the involvement of the person with a gaming facility in Kansas or any other jurisdiction or with any particular licensee or licensees or any related company of any licensee;

(3) the nature and frequency of any contacts or associations of the person with any licensee; or

(4) any other factor reasonably related to the maintenance of public confidence in the regulatory process or the integrity of gaming in Kansas.

(d) The involuntary exclusion list shall contain the following information, if known, for each excluded person:

(1) The full name and all known aliases and the date of birth;

(2) a physical description;

(3) the date the person's name was placed on the list;

(4) a photograph, if available;

(5) the person's occupation and current home and business addresses; and

(6) any other relevant information as deemed necessary by the commission.

(e) The involuntary exclusion list shall be open to public inspection and shall be distributed by the executive director. (Authorized by K.S.A. 2007 Supp. 74-8772; implementing K.S.A. 2007 Supp. 74-8752 and 74-8772; effective May 1, 2009.)

**112-111-2. Inclusion on list; notice.** (a) Upon the executive director's determination that a person meets the criteria for exclusion from gaming facilities in this article, the person's name shall be added to the involuntary exclusion list, and the commission staff shall be directed by the executive director to file a notice of exclusion. The notice of exclusion shall identify all of the following:

(1) The person to be excluded;

(2) the nature and scope of the circumstances or reasons that the person should be placed on the involuntary exclusion list;

(3) the names of potential witnesses;

(4) a recommendation as to whether the exclusion will be permanent; and

(5) the availability of a hearing by the commission.

(b) The notice of exclusion shall be served on the excluded person using any method that is appropriate for service under Kansas law.

(c) A written request for a hearing shall be delivered to the executive director within 10 calendar days from the date the notice of exclusion was served on the person to be excluded. If no request for hearing is made, an order shall be issued by the commission affirming the placement of the person on the involuntary exclusion list. If the excluded person timely requests a hearing, the commission staff shall set the matter for a hearing before the commission. (Authorized by K.S.A. 2007 Supp. 74-8772; implementing K.S.A. 2007 Supp. 74-8752 and 74-8772; effective May 1, 2009.)

**112-111-3. Effect of placement on the exclusion list.** (a) Each excluded person shall be prohibited from entry to a gaming facility.

(b) If the commission or a Kansas court finds that the person does not meet the criteria for exclusion, then the person's name shall be removed from the involuntary exclusion list and the exclusion shall be terminated effective upon the date of the action by the commission or the court. (Authorized by and implementing L. 2007, Ch. 110, § 41; effective May 1, 2009.)

**112-111-4. Facility manager duties.** (a) Each facility manager shall exclude from the gaming facility any person on the involuntary exclusion list.

(b) Each facility manager's director of security shall notify the commission's security staff if an excluded person has attempted entry to the gaming facility.

(c) Each facility manager shall distribute copies of the involuntary exclusion list to its employees.

(d) Each facility manager shall notify the commission in writing of the names of persons the facility manager believes meet the criteria for placement on the involuntary exclusion list. (Authorized by and implementing K.S.A. 2008 Supp. 74-8772; effective May 1, 2009.)

**112-111-5. Petition for removal.** (a) An excluded person shall not petition the commission for removal from the involuntary exclusion list until at least five years have passed from date of the commission's order affirming placement of the person on the list.

(b) Each petition shall be verified with supporting affidavits and shall state in detail the grounds that the petitioner believes constitute good cause for the petitioner's removal from the list.

(c) The petition may be decided by the commission on the basis of the documents submitted by the excluded person. The petition may be granted or summarily denied by the commission or a hearing on the matter may be directed to be held by the commission. The petition may be granted or a hearing may be directed to be held by the commission only upon a finding that there is new evidence that would alter the original decision to affirm the person's placement on the involuntary exclusion list. (Authorized by and implementing K.S.A. 2007 Supp. 74-8772; effective May 1, 2009.)

## Article 112.—RESPONSIBLE GAMBLING

**112-112-1. Office of responsible gambling.** A staff person shall be appointed by the executive director to direct the office of responsible gambling. This staff person shall administer all of the commission's programs to assist individuals with issues related to gambling and to help prevent problem gambling in Kansas. The office of responsible gambling shall coordinate resources to maximize the efficiency and effectiveness of the programs of other state agencies and private organizations that allocate resources to assisting individuals with issues related to gambling and preventing problem gambling. (Authorized by K.S.A. 2009 Supp. 74-8772 and 74-8804; implementing K.S.A. 2009 Supp. 74-8772 and 74-8773; effective Sept. 26, 2008; amended April 1, 2011.)

**112-112-3. Responsible gambling plan.** (a) Each applicant for a facility manager certificate shall submit a responsible gambling plan to the commission with its initial application or at least 90 days before opening a racetrack gaming facility. The responsible gambling plan shall not be inconsistent with any facility manager's contractual obligation with the Kansas lottery. A responsible gambling plan shall be approved by the commission before the commission issues or renews a certificate. Each plan shall include the following:

(1) The goals of the plan and the procedures and deadlines for implementation of the plan;

(2) the identification of the individual at each applicant or facility manager location who will be responsible for the implementation and maintenance of the plan;

(3) procedures for maintaining the confidentiality of the information regarding the persons on the self-exclusion list, as specified in K.A.R. 112-112-7;

(4) procedures for informing patrons about self-transaction exclusion programs;

(5) procedures for compliance with the commission's self-exclusion program;

(6) procedures for creating and disseminating promotional material to educate patrons about problem gambling and to inform patrons about treatment services available. The applicant or facility manager shall provide examples of the material to be used as part of its promotional materials, including signs, brochures, and other media, and a description of how the material will be disseminated;

(7) details of the training about responsible gambling for the applicant's or facility manager's employees;

(8) the duties and responsibilities of the employees designated to implement or participate in the plan;

(9) procedures to prevent underage gambling;

(10) procedures to prevent patrons impaired by drugs or alcohol, or both, from gambling;

(11) an estimation of the cost of development, implementation, and administration of the plan; and

(12) any other policies and procedures to prevent problem gambling and encourage responsible gambling.

(b) Each applicant or facility manager shall submit any amendments to the responsible gambling plan to the commission for review and approval before implementing the amendments. Each facility manager shall report to the commission sem-

iannually on the status and success of the responsible gambling plan. (Authorized by K.S.A. 2009 Supp. 74-8772 and K.S.A. 74-8804; implementing K.S.A. 2009 Supp. 74-8772; effective Sept. 26, 2008; amended April 1, 2011.)

**112-112-4. Self-exclusion list.** (a) A "self-exclusion list" shall consist of the names of those persons who have complied with the requirements of this article and have been placed on the list by the executive director. The self-exclusion list shall provide the means for each individual with issues related to gambling to formally notify the commission that the individual has a gambling problem and that the individual will refrain from visiting gaming facilities, parimutuel licensee locations, and fair association race meets in Kansas.

(b) Each facility manager shall be notified by the executive director of the placement of any person on the self-exclusion list. Any or all information contained on the person's application may be disclosed to each facility manager and the facility manager's agents or employees by the executive director. (Authorized by K.S.A. 2009 Supp. 74-8772 and 74-8804; implementing K.S.A. 2009 Supp. 74-8772; effective Sept. 26, 2008; amended April 1, 2011.)

**112-112-7. Confidentiality of the self-exclusion list.** (a)(1) As part of the responsible gambling plan required by K.A.R. 112-112-3(a), each facility manager or applicant for a facility manager certificate shall submit to the commission a plan for maintaining the confidentiality of the information regarding the persons on the self-exclusion list. The plan shall reasonably safeguard the confidentiality of the information but shall include dissemination of the information to at least the general manager, facility management, and all security and surveillance personnel. Each plan shall be submitted to the commission for approval.

(2) All information disclosed to any facility manager regarding anyone placed on the self-exclusion list shall be deemed a closed record pursuant to K.S.A. 45-221(a)(30) and amendments thereto. However, the information may be disclosed as authorized by the individual seeking placement on the list, by law, and through the provisions in this article.

(b) Any facility manager may disclose the information contained in the application to the facility manager's affiliates, employees, or agents to the extent necessary under this article.

(c) All information associated with the self-exclusion list, including the identities of individuals who have placed themselves on the list and any personal information about those individuals, shall be considered a closed record under the Kansas open records act pursuant to K.S.A. 45-221(a)(30) and amendments thereto.

(d) For administrative, disciplinary, or penalty proceedings regarding any alleged infraction by an individual on the self-exclusion list, the individual who is on the self-exclusion list shall not be named. An alternate means of identification shall be used to keep that individual's identity confidential. (Authorized by K.S.A. 2007 Supp. 74-8772 and K.S.A. 74-8804; implementing K.S.A. 2007 Supp. 74-8772; effective Sept. 26, 2008; amended April 1, 2011.)

**112-112-9. Procedure for removal from the self-exclusion list.** (a) At any time after two years from the original date of application for placement on the self-exclusion list, any person on the self-exclusion list may petition the executive director for removal from the self-exclusion list. The authority to approve or deny each petition shall rest with the executive director. To be eligible for removal from the self-exclusion list, each person shall provide documentation acceptable to the commission that the applicant has met all of the following conditions:

(1) The person has undergone a problem gambling assessment with a gambling counselor certified by the Kansas department of social and rehabilitation services or through any other method approved by the commission.

(2) The person has completed a commission-approved education program on healthy lifestyle choices and problem gambling awareness.

(3) The person has met any other requirements deemed necessary by the commission.

(4) The person has executed an authorization and release to be removed from the self-exclusion list on a form provided by the commission.

(b) Each facility manager shall retain the ability to deny gambling privileges at a gaming facility, parimutuel licensee location, or fair association race meet to the persons who have been removed from the self-exclusion list for any other reason ordinarily available to the facility manager.

(c) Any person who has been removed from the self-exclusion list may reapply for placement on the list at any time as provided in this article.

(d) Upon approval of a petition for removal from the self-exclusion list, a notice of removal

from the self-exclusion list shall be drafted by the executive director. Each notice shall be a closed record pursuant to the Kansas open records act, including K.S.A. 45-221(a)(30) and amendments thereto, except that the notice shall be disclosed to all facility managers and their agents and employees.

(e) A copy of the notice of removal from the self-exclusion list shall be delivered by the executive director to the petitioner by regular U.S. mail to the home address specified on the petition. The petitioner shall be deemed to be removed from the self-exclusion list when the executive director mails the approved notice to the petitioner.

(f) If the executive director finds that a petitioner does not qualify for removal from the self-exclusion list, the petitioner shall be notified by the executive director by regular U.S. mail, using the home address specified on the petition. The petitioner shall remain on the self-exclusion list pursuant to this article. (Authorized by K.S.A. 2009 Supp. 74-8772 and 74-8804; implementing K.S.A. 2009 Supp. 74-8772; effective Sept. 26, 2008; amended April 1, 2011.)

## Article 113.—SANCTIONS

**112-113-1. Sanctions.** (a) Any licensee, certificate holder, permit holder, or applicant may be sanctioned for violating any provision of the act, these regulations, or any other law that directly or indirectly affects the integrity of gaming in Kansas, including a violation of any of the following:

(1) Failing to disclose material, complete, and truthful information to the commission and its staff;

(2) failing to comply with any of the duties in article 101;

(3) being a facility manager and employing unlicensed employees or independent contractors;

(4) being a facility manager and contracting with uncertified gaming or nongaming suppliers;

(5) failing to follow the commission's minimum internal control standards or the facility manager's minimum internal control system;

(6) failing to follow the commission's security regulations or the facility manager's security plan;

(7) failing to follow the commission's surveillance regulations or the facility manager's surveillance plan;

(8) failing to enforce the involuntary exclusion list;

(9) failing to enforce the facility manager's responsible gaming plan or the provisions of article 112;

(10) failing to post signs informing patrons of the toll-free number available to provide information and referral services regarding problem gambling; or

(11) permitting persons who are less than 21 years of age that do not have an occupation license to be in areas where electronic gaming machines or lottery facility games are being conducted.

(b) The commission, disciplinary review board, and executive director shall have the authority to impose any of the following sanctions:

(1) License, certificate, or permit revocation;

(2) license, certificate, or permit suspension;

(3) license, certificate, or permit application denial;

(4) a monetary fine pursuant to K.S.A. 74-8764 and amendments thereto;

(5) warning letters or letters of reprimand or censure. These letters shall be made a permanent part of the file of the licensee, applicant, permit holder, or certificate holder; or

(6) any other remedial sanction agreed to by the licensee, applicant, certificate holder, or permit holder.

(c) Each sanction shall be determined on a case-by-case basis. In considering sanctions, the following may be considered by the executive director, disciplinary review board, or commission:

(1) The risk to the public and to the integrity of gaming operations created by the conduct of the licensee, certificate holder, permit holder, or applicant facing sanctions;

(2) the nature of the violation;

(3) the culpability of the licensee, certificate holder, permit holder, or applicant responsible for the violation;

(4) any justification or excuse for the conduct;

(5) the history of the licensee, certificate holder, permit holder, or applicant with respect to compliance with the act, these regulations, or other law; and

(6) any corrective action taken by the licensee, certificate holder, permit holder, or applicant to prevent future misconduct.

(d) In the case of a monetary fine, the financial means of the licensee, certificate holder, permit holder, or applicant may be considered.

(e) It shall be no absolute defense that the li-

censee, certificate holder, permit holder, or applicant inadvertently, unintentionally, or unknowingly violated a provision of the act or these regulations. These factors shall affect only the degree of the sanction to be imposed by the commission.

(f) Each violation of any provision of these regulations that is an offense of a continuing nature shall be deemed to be a separate offense on each day during which the violation occurs. The commission shall not be precluded from finding multiple violations within a day of those provisions of the regulations that establish offenses consisting of separate and distinct acts. (Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective April 17, 2009.)

## Article 114.—RULES OF HEARINGS

**112-114-1. Definitions.** The following terms as used in these regulations shall have the meanings specified in this regulation, unless the context clearly indicates otherwise:

(a) "Disciplinary review board" means a board established by the executive director. The board members shall be appointed by the executive director to review certain applications and licensee or certificate holder conduct and to ensure compliance by applicants, licensees, and certificate holders with these regulations, the act, and other laws.

(b) "Hearing body" means the commission, disciplinary review board, or executive director, when each of these is conducting a hearing. (Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective May 1, 2009.)

**112-114-2. Report of an alleged violation.** (a) Any person may file a report of an alleged violation with any commission office.

(b) Each person reporting an alleged violation shall complete the commission-approved report form available online and in commission offices. Substantially incomplete forms shall not be accepted by commission personnel. (Authorized by and implementing K.S.A. 2008 Supp. 74-8751 and 74-8772; effective May 1, 2009.)

**112-114-3. Notice of alleged violation and hearing.** (a) If disposition of the allegation raised in a report could result in suspension or revocation, the respondent shall be provided by the commission with reasonable notice of the alleged violation and hearing.

(b) The notice of alleged violation and hearing shall include the following information:

(1) The time and location of the hearing;

(2) the identity of the hearing body;

(3) the case number and the name of the proceeding;

(4) a statement of the legal authority and a general description of the allegation, including the time of occurrence;

(5) a statement that a respondent who fails to attend the hearing may be subject to the entry of an order that is justified by the evidence presented at the hearing; and

(6) a statement that a respondent has the right to appear at the hearing with counsel, the right to produce any evidence and witness on the respondent's behalf, the right to cross-examine any witness who may testify against the respondent, and the right to examine any evidence that may be produced against the respondent. (Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective May 1, 2009.)

**112-114-4. Waiver.** Except to the extent precluded by another provision of law, a person may waive any right conferred upon that person by these regulations. (Authorized by and implementing L. 2007, Ch. 110, § 20 and § 41; effective May 1, 2009.)

**112-114-5. Informal settlements.** Nothing in these regulations shall preclude the informal settlement of matters that could make a hearing unnecessary. (Authorized by and implementing L. 2007, Ch. 110, § 20 and § 41; effective May 1, 2009.)

**112-114-6. Participation by and representation of respondents.** (a) Whether or not participating in person, any respondent who is a natural person may be represented by an attorney licensed to practice law in the state of Kansas in any evidentiary hearing conducted before the commission or its designated presiding officer or officers. The attorney shall represent the respondent at the respondent's own expense.

(b) Each for-profit or not-for-profit corporation, unincorporated association, or other respondent who is a non-natural person shall be represented by an attorney licensed to practice law in the state of Kansas in any evidentiary hearing conducted before the commission or its designated presiding officer or officers. The attorney shall represent the respondent at the respondent's own

expense. (Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective May 1, 2009.)

**112-114-7. Reserved.**

**112-114-8. Presiding officer.** (a) The presiding officer shall be either of the following:

(1) The executive director or the chairperson of the commission; or

(2) a person designated by the commission.

(b) For disciplinary review board hearings, if a substitute is required for a presiding officer or other member of the hearing body who is unavailable for any reason, a substitute shall be appointed by the executive director. Each action taken by the duly appointed substitute shall be as effective as if the action had been taken by the unavailable member. (Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective May 1, 2009.)

**112-114-9. Hearing procedure.** (a) The presiding officer at each hearing shall regulate the course of the proceedings.

(b) To the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence.

(c) Upon the request of the respondent, the presiding officer may conduct all or part of the hearing 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.

(d) The presiding officer shall cause the hearing to be recorded at the commission's expense. The commission shall not be required to prepare a transcript at its expense. Subject to any reasonable conditions that the presiding officer may establish, any party may cause a person other than the commission to prepare a transcript of the proceedings.

(e) Each hearing shall be open to public observation, except for deliberations and parts that the presiding officer states are to be closed pursuant to a provision of law expressly authorizing closure. (Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective May 1, 2009.)

**112-114-10. Evidence.** (a) A presiding officer shall not be bound by technical rules of evidence but shall give the parties reasonable opportunity to be heard and to present evidence. The presiding officer shall act without partiality. The presiding officer shall apply any rules of privilege that are recognized by law. Evidence shall not be required to be excluded solely because the evidence is hearsay.

(b) All testimony of parties and witnesses shall be made under oath or affirmation, and the presiding officer or the presiding officer's designee who is legally authorized to administer an oath or affirmation shall have the power to administer an oath or affirmation for that purpose.

(c) Documentary evidence may be received in the form of a copy or excerpt, including electronically stored information. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

(d) Official notice may be taken of the following:

(1) Any matter that could be judicially noticed in the courts of this state; and

(2) the record of other proceedings before the disciplinary review board or the commission. (Authorized by and implementing L. 2007, Ch. 110, § 20 and § 41; effective May 1, 2009.)

**112-114-11. Orders.** (a) Within 30 days after the hearing, the hearing body shall enter a written order.

(b) Each order shall include a brief statement of the findings of the hearing body and any penalty prescribed. The findings shall be based exclusively upon the evidence of record and on matters officially noticed in the hearing.

(c) For disciplinary review board hearings, the order shall also include a statement that the order is subject to appeal to the commission and the available procedures and time limits for seeking an appeal. The order shall further include a statement that any suspension imposed by the order may be stayed, pending appeal.

(d) For disciplinary review board hearings, the hearing body may impose any penalty authorized by law and may refer the matter to the commission with findings and recommendations for imposition of greater penalties.

(e) Each order shall be effective when rendered.

(f) The presiding officer shall cause copies of the order to be served upon each party to the proceedings. (Authorized by and implementing K.S.A. 2007 Supp. 74-8751 and 74-8772; effective May 1, 2009.)

**112-114-12. Service of order.** (a) Service

of an order shall be made upon the party and the party's attorney of record, if any.

(b) Service shall be presumed if the presiding officer, or a person directed to make service by the presiding officer, makes a written certificate of service.

(c) Service by mail shall be complete upon mailing.

(d) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of an order is made by mail, three days shall be added to the prescribed period. (Authorized by and implementing L. 2007, Ch. 110, § 20 and § 41; effective May 1, 2009.)

**112-114-13. Reserved.**

**112-114-14. Appeals of disciplinary review board hearings.** (a) Each order entered by the disciplinary review board that imposes suspension or revocation, or any other sanction shall be subject to appeal to the commission.

(b) Each party who wishes to appeal a disciplinary review board order shall file a notice of appeal and brief on forms provided by the commission during regular office hours within 11 days after service of the order from which the party is appealing. If an order is served by mail, the party shall have 14 days within which to file a notice of appeal and brief.

(c) Each notice of appeal and brief shall be completed by the appealing party upon the form available in the commission's licensing office at the gaming facility. Each notice of appeal and brief shall fully state the basis for appeal and identify the issues upon which the party seeks administrative review. Incomplete forms shall not be accepted by commission personnel.

(d) A notice of appeal and brief shall constitute the appealing party's written brief. An opposing party shall be afforded an opportunity to file a brief in response to the appealing party's brief within 14 days following the filing of the appealing party's brief.

(e) Each notice of appeal form shall include a statement that, in reviewing any disciplinary review board's order, the following provisions shall apply:

(1) De novo review may be exercised by the commission, one or more commissioners designated by the commission, or a presiding officer designated by the commission.

(2) The disciplinary review board's order may be affirmed, reversed, remanded for further hearing, or modified by the commission, one or more commissioners designated by the commission, or a presiding officer designated by the commission. A new hearing may also be conducted by the commission, one or more commissioners designated by the commission, or a presiding officer designated by the commission. An occupation license may be suspended or revoked for each violation of the act or these regulations, or both.

(f) Any respondent may be deemed to have timely filed a notice of appeal pursuant to subsection (b) if, after service of the disciplinary review board's order, the respondent performs the following:

(1) Within the appeal time described in subsection (b) of this regulation, files a writing that states an intention to appeal the order and that includes substantially the same information requested in the appeal form available in the commission's licensing office at the gaming facility; and

(2) within a period of time authorized by the disciplinary review board, fully executes and files in the commission's licensing office at the gaming facility the appeal form available in that office. (Authorized by and implementing K.S.A. 2008 Supp. 74-8751 and 74-8772; effective May 1, 2009.)

## Agency 115

# Kansas Department of Wildlife, Parks and Tourism

**Editor's Note:**
The Kansas Department of Wildlife and Parks was renamed the Kansas Department of Wildlife, Parks and Tourism (KDWPT) by Executive Reorganization Order (ERO) No. 36. ERO No. 36 also transferred the powers, duties, and functions of the Division of Travel and Tourism Development within the Department of Commerce to the KDWPT. See L. 2012, Ch. 47.

**Editor's Note:**
The Department of Wildlife and Parks formerly used agency numbers 23 and 33, and currently uses agency number 115. See K.S.A. 32-801 through 32-806.

Article 25 in Agency 115 fixes the seasons and establishes creel, size and possession limits for fish, and bag limits and possession limits for game birds, game and fur-bearing animals as authorized by K.S.A. 77-415. Copies of the regulations may be obtained from the Department's website, www.kdwpt.state.ks.us or by contacting the Department: Secretary of Wildlife, Parks and Tourism, 1020 S. Kansas Ave, Suite 200, Topeka, KS 66612.

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### Article 1.—DEFINITIONS

**115-1-1. Definitions.** (a) Except as specified in subsection (b), the following definitions shall apply to all of the department's regulations.

(1) "Arrow" means a missile shot from a bow or a crossbow.

(2) "Bag limit" means the maximum number of any species, except fish and frogs, that may be taken by a person in a calendar day.

(3) "Bait fish" means a member of the minnow or carp family *(Cyprinidae)*, sucker family *(Catostomidae)*, top minnows or killifish family *(Cyprinodontidae)*, shad family *(Clupeidae)*, and sunfish family *(Centrarchidae)*, but excluding black basses and crappie. The fish listed in K.A.R. 115-15-1 and in K.A.R. 115-15-2 shall not be considered as bait fish.

(4) "Bird dog" means a dog used to point, flush, or retrieve game birds, migratory birds, or both.

(5) "Bow" means a handheld device with a cord that connects both of its two ends and that is designed to propel an arrow. This term shall include long, recurve, and compound bows.

(6) "Bridle path" means an established, maintained, and marked pathway for the riding of animals.

(7) "Camping" means erecting a shelter or arranging bedding, or both, or parking a recreation vehicle or other vehicle for the purpose of remaining overnight.

(8) "Camping unit" means any vehicle or shelter specifically used for sleeping upon a portion of department lands or waters.

(9) "Cast net" means a circular or conical

weighted net designed to be cast mouth-downward by hand and withdrawn by lines attached to its margin.

(10) "Creel limit" means the maximum total number of any species of fish or frogs that may be taken by a person in a calendar day.

(11) "Crossbow" means a transverse-mounted bow with a cord that connects the two ends and that is designed to propel an arrow, including compound crossbows. The arrow is released by a mechanical trigger.

(12) "Culling" means replacing one live fish held by an angler for another live fish of the same species if the daily creel limit for that species of fish has not been met.

(13) "Department lands and waters" means state parks, state lakes, recreational grounds, wildlife areas, sanctuaries, fish hatcheries, natural areas, historic sites, and other lands, waters, and facilities that are under the jurisdiction and control of the secretary through ownership, lease, license, cooperative agreement, memorandum of understanding, or other arrangement.

(14) "Depth finder" means an electronic device used to locate fish or determine underwater structures.

(15) "Dip net" means a handheld net that has rigid support about the mouth and is used to land fish.

(16) "Draft livestock" means horses, mules, donkeys, and oxen used singly or in tandem with other horses, mules, donkeys, and oxen for pulling purposes.

(17) "Drag event" means a competitive event in which hounds pursue a scent trail. The event may involve a caged, pen-raised furbearer that is not released from the cage during the event.

(18) "Dryland set" means any trapping device that is placed or set on land or is not in contact with water.

(19) "Eyass" means a young of the year raptor not yet capable of flight.

(20) "Falconer" means the holder of a falconry permit.

(21) "Falconry" means the taking of wildlife with a trained raptor.

(22) "Field trial event for dogs" means a competitive event involving at least six dogs that are judged on hunting or running ability.

(23) "Firearm" means a rimfire or centerfire rifle, handgun, or shotgun; a muzzleloading shotgun, rifle, or handgun; or a cap-and-ball pistol.

(24) "Fire ring" means an open-topped, manmade, fire-retaining device.

(25) "Fireplace" means an enclosed, manmade, fire-retaining device.

(26) "Fishing line" means any hand-operated string or cord, utilizing hooks that may be used in conjunction with rods, poles, reels, bows, or spearguns.

(27) "Fish trap" means a device for catching fish consisting of a net or other structure that diverts the fish into an enclosure arranged to make escape more difficult than entry.

(28) "Fully automatic firearm" means a firearm capable of firing more than one round with a single trigger pull.

(29) "Gaff" means a hook attached to a rigid pole.

(30) "Gig" means a hand-operated spear with one or more prongs with or without barbs.

(31) "Group camping area" means any area within a state park designated by posted notice for camping by organized groups.

(32) "Haggard" means an adult raptor in mature plumage.

(33) "Hook" means a device with a single shaft and one or more points with or without barbs, used for catching fish and frogs.

(34) "Imping" means the repair of damaged feathers.

(35) "Kill site" means the location of the wildlife carcass as positioned in the field immediately after being harvested.

(36) "Length limit" means the minimum length of a fish allowed in order to take it and not release it to the waters immediately. For the purpose of this paragraph, the length of the fish shall be measured from the tip of the snout to the end of the tail, with the mouth closed and the tail lobes pressed together.

(37) "Moorage site" means a location designated for the fastening or securing of a vessel.

(38) "Nonsport fish" means carp, drum, white amur, threadfin and gizzard shad, goldfish, gar, suckers including carpsuckers and buffalo, eel, sturgeon, goldeye, white perch, and bowfin.

(39) "Orthopedic device" means a device that attaches to the body and is required to enable a handicapped person to walk.

(40) "Overflow camping area" means an area in a state park that is separate from the designated overnight camping area and that may be used for a maximum of 24 continuous hours of camping if

no alternative camping facilities are available within reasonable driving distances.

(41) "Passage" means an immature raptor on first fall migration still in immature plumage.

(42) "Pen-raised wildlife" means any wildlife raised in captivity.

(43) "Pets" means domesticated wildlife, including dogs and cats.

(44) "Possession limit" means the maximum total number of a species that can be retained per person at any one time.

(45) "Prime camping site" means any site within a state park so designated by posted notice of the secretary and subject to an additional charge.

(46) "Raptors" means members of the order Falconiformes or Strigiformes and specifically falcons, hawks, and owls.

(47) "Raw pelt" means the undressed skin of an animal with its hair, wool, or fur in its natural state, without having undergone any chemical preservation converting the skin to a leather condition.

(48) "Recreational vehicle" means a vehicle or trailer unit that contains sleeping or housekeeping accommodations, or both.

(49) "Running" means the pursuing or chasing of furbearers or rabbits with hounds. This term shall not include the capturing, killing, injuring, or possessing of furbearers or rabbits, or having a firearm or other weapon in possession while running, except during established furbearer or rabbit hunting seasons.

(50) "Sanctioned or licensed coyote field trial" means a competitive event that involves only sight or trail hounds and that has been advertised in one of the national foxhound journals at least 30 days before the event.

(51) "Sanctioned or licensed furbearer field trial" means a competitive event in which dogs pursue unrestrained furbearers and that is sanctioned or licensed by any of the national kennel or field dog organizations for the express purpose of improving the quality of the breed through the awarding of points or credits toward specific class championships or other national recognition.

(52) "Seine" means a net with a float line and lead line designed to be pulled through the water for the purpose of catching fish.

(53) "Set line" means a string or cord that is anchored at one point, does not have more than two hooks, and is not associated with a hand-operated mechanical reel.

(54) "Sight hound" means a dog used to pursue furbearers, rabbits, hares, or coyotes by sight.

(55) "Skin and scuba diving" means swimming or diving while equipped with a face mask or goggles, allowing underwater vision and possibly involving an underwater breathing apparatus.

(56) "Snagging" means the hooking of a fish in any part of its anatomy other than the inside of the mouth.

(57) "Speargun" means a device used to propel a spear through the water by mechanical means or compressed gas.

(58) "Sport fish" means northern pike, walleye, saugeye, sauger, yellow perch, striped bass, white bass, black bass including largemouth, spotted, and smallmouth bass, striped bass hybrid, trout, muskellunge, tiger muskie, channel catfish, blue catfish, flathead catfish, paddlefish, and panfish including bullhead, black and white crappie, bluegill, redear sunfish, green sunfish, warmouth, and rock bass.

(59) "State fishing lake" means a department facility that contains the words "state fishing lake" in the name of the area.

(60) "Tip-up" means an ice fishing device designed to signal the strike of a fish.

(61) "Trail hound" means a dog used to trail furbearers, rabbits, hares, or coyotes by scent.

(62) "Transfer" means any of the following:

(A) To reassign one's license, permit, or other issue of the department to another individual;

(B) to exchange any license, permit, or other issue of the department between individuals; or

(C) to carry another individual's license, permit, or other issue of the department when that individual is not present.

(63) "Trot line" means a string or cord anchored at one or more points that does not have more than 25 hooks and is not associated with a hand-operated mechanical reel.

(64) "Turkey" means wild turkey.

(65) "Unattended fishing line" means any fishing line set to catch fish that is not marked or tagged as required by K.A.R. 115-7-2 or K.A.R. 115-17-11 and not immediately attended by the operator of the fishing line.

(66) "Wake" means the waves thrown by a vessel moving on water.

(67) "Water race" means a competitive event in which hounds pursue a scent device or a caged, pen-raised furbearer through water. The furbearer is not released during the event.

(68) "Water set" means any trapping device

that has the gripping portion at least half-submerged when placed or set in flowing or pooled water and remains at least half-submerged in contact with the flowing or pooled water.

(b) Exceptions to the definitions in this regulation shall include the following:

(1) The context requires a different definition.

(2) The defined term is specifically defined differently within the department's other regulations. (Authorized by and implementing K.S.A. 32-807; effective Dec. 26, 1989; amended June 8, 1992; amended Sept. 19, 1997; amended Nov. 21, 2003; amended July 22, 2011.)

## Article 2.—FEES, REGISTRATIONS AND OTHER CHARGES

**115-2-1. Amount of fees.** The following fees shall be in effect for the following licenses, permits, and other issues of the department: (a) Hunting licenses and permits.

| | |
|---|---|
| (1) Resident hunting license | $18.00 |
| (2) Resident hunting license (one-time purchase, valid from 16 years of age through 20 years of age) | 40.00 |
| (3) Nonresident hunting license | 70.00 |
| (4) Nonresident junior hunting license (under 16 years of age) | 35.00 |
| (5) Resident big game hunting permit: | |
| General resident: either-sex elk permit | 250.00 |
| General resident: antlerless-only elk permit | 100.00 |
| General resident youth (under 16 years of age): either-sex elk permit | 125.00 |
| General resident youth (under 16 years of age): antlerless-only elk permit | 50.00 |
| Landowner/tenant: either-sex elk permit | 125.00 |
| Landowner/tenant: antlerless-only elk permit | 50.00 |
| Hunt-on-your-own-land: either-sex elk permit | 125.00 |
| Hunt-on-your-own-land: anterless-only elk permit | 50.00 |
| General resident: deer permit | 30.00 |
| General resident youth (under 16 years of age): deer permit | 15.00 |
| General resident: antlerless-only deer permit | 15.00 |
| General resident youth (under 16 years of age): antlerless-only deer permit | 7.50 |
| Landowner/tenant: deer permit | 15.00 |
| Hunt-on-your-own-land: deer permit | 15.00 |
| Special hunt-on-your-own-land: deer permit | 30.00 |
| General resident: antelope permit | 40.00 |
| General resident youth (under 16 years of age): antelope permit | 20.00 |
| Landowner/tenant: antelope permit | 20.00 |
| Hunt-on-your-own-land: antelope permit | 20.00 |
| Antelope preference point service charge | 5.00 |
| Any-deer preference point service charge | 5.00 |
| Application fee for elk permit | 5.00 |
| (6) Wild turkey permit: | |
| General resident: turkey permit (1-bird limit) | 20.00 |
| General resident youth (under 16 years of age): turkey permit (1-bird limit) | 10.00 |
| Landowner/tenant: turkey permit (1-bird limit) | 10.00 |
| Nonresident: turkey permit (1-bird limit) | 30.00 |
| Resident: turkey preference point service charge | 5.00 |
| (7) Wild turkey game tag: | |
| Resident: turkey game tag (1-bird limit) | 10.00 |
| Nonresident: turkey game tag (1-bird limit) | 20.00 |
| (8) Spring wild turkey permit and game tag combination (2-bird limit, must be purchased before April 1 of year of use): | |
| General resident: turkey permit and game tag combination (2-bird limit) | 25.00 |
| General resident youth (under 16 years of age): turkey permit and game tag combination (2-bird limit) | 15.00 |
| Landowner/tenant: turkey permit and game tag combination (2-bird limit) | 15.00 |
| Nonresident: turkey permit and game tag combination (2-bird limit) | 45.00 |
| (9) Nonresident big game hunting permit: | |
| Nonresident hunt-on-your-own-land: deer permit | 75.00 |
| Nonresident: deer permit (antlered deer) | 300.00 |
| Nonresident: deer permit (antlerless only) | 50.00 |
| Nonresident: antelope permit (archery only) | 200.00 |
| Nonresident: deer permit application fee | 20.00 |
| Nonresident: mule deer stamp | 100.00 |
| (10) 48-hour waterfowl hunting permit | 25.00 |
| (11) Field trial permit: game birds | 20.00 |
| (12) Lifetime hunting license | 440.00 |
| or eight quarterly installment payments of | 60.00 |
| (13) Migratory waterfowl habitat stamp | 5.00 |
| (14) Special dark goose hunting permit | 5.00 |
| (15) Sandhill crane hunting permit: validation fee | 5.00 |
| (16) Disabled person hunt-from-a-vehicle permit | 0 |

(b) Fishing licenses and permits.

| | |
|---|---|
| Resident fishing license | 18.00 |
| Resident fishing license (one-time purchase, valid from 16 years of age through 20 years of age) | 40.00 |
| Nonresident fishing license | 40.00 |
| 24-hour fishing license | 3.00 |
| Three-pole permit | 4.00 |
| Tournament bass pass | 10.00 |
| Paddlefish permit (six carcass tags) | 10.00 |
| Paddlefish permit youth (under 16 years of age) (six carcass tags) | 5.00 |
| Hand fishing permit | 25.00 |
| Floatline fishing permit | 0 |
| Lifetime fishing license | 440.00 |
| or eight quarterly installment payments of | 60.00 |
| Five-day nonresident fishing license | 20.00 |
| Institutional group fishing license | 100.00 |
| Special nonprofit group fishing license | 50.00 |
| Trout permit | 10.00 |

(c) Combination hunting and fishing licenses and permits.

| | |
|---|---|
| Resident combination hunting and fishing license | 36.00 |
| Resident combination hunting and fishing license (one-time purchase, valid from 16 years of age through 20 years of age) | 70.00 |

| | |
|---|---|
| Resident lifetime combination hunting and fishing license | 880.00 |
| or eight quarterly installment payments of | 120.00 |
| Nonresident combination hunting and fishing license | 110.00 |

(d) Furharvester licenses.

| | |
|---|---|
| Resident furharvester license | 18.00 |
| Resident junior furharvester license | 10.00 |
| Lifetime furharvester license | 440.00 |
| or eight quarterly installment payments of | 60.00 |
| Nonresident furharvester license | 250.00 |
| Nonresident bobcat permit (1-bobcat limit per permit) | 100.00 |
| Resident fur dealer license | 100.00 |
| Nonresident fur dealer license | 400.00 |
| Field trial permit: furbearing animals | 20.00 |

(e) Commercial licenses and permits.

| | |
|---|---|
| Controlled shooting area hunting license | 15.00 |
| Resident mussel fishing license | 75.00 |
| Nonresident mussel fishing license | 1,000.00 |
| Mussel dealer permit | 200.00 |
| Missouri river fishing permit | 25.00 |
| Game breeder permit | 10.00 |
| Controlled shooting area operator license | 200.00 |
| Commercial dog training permit | 20.00 |
| Commercial fish bait permit | 20.00 |
| Commercial prairie rattlesnake harvest permit (without a valid Kansas hunting license) | 20.00 |
| Commercial prairie rattlesnake harvest permit (with a valid Kansas hunting license or exempt from this license requirement) | 5.00 |
| Commercial prairie rattlesnake dealer permit | 50.00 |
| Prairie rattlesnake round-up event permit | 25.00 |

(f) Collection, scientific, importation, rehabilitation, and damage-control permits.

| | |
|---|---|
| Scientific, educational, or exhibition permit | 10.00 |
| Raptor propagation permit | 0 |
| Rehabilitation permit | 0 |
| Wildlife damage-control permit | 0 |
| Wildlife importation permit | 10.00 |
| Threatened or endangered species: special permits | 0 |

(g) Falconry.

| | |
|---|---|
| Apprentice permit | 75.00 |
| General permit | 75.00 |
| Master permit | 75.00 |
| Testing fee | 50.00 |

(h) Miscellaneous fees.

| | |
|---|---|
| Duplicate license, permit, stamp, and other issues of the department | 10.00 |
| Special departmental services, materials, or supplies | At cost |
| Vendor bond | |
| For bond amounts of $5,000.00 and less | 50.00 |
| For bond amounts of more than $5,000.00 | 50.00 |
| plus $6.00 per additional $1,000.00 coverage or any fraction thereof. | |

This regulation shall be effective on and after January 1, 2011. (Authorized by and implementing K.S.A. 32-807 and K.S.A. 2009 Supp. 32-988; effective Dec. 4, 1989; amended Sept. 10, 1990; amended Jan. 1, 1991; amended June 8, 1992; amended Oct. 12, 1992; amended April 11, 1994; amended Aug. 29, 1994; amended June 5, 1995; amended Aug. 21, 1995; amended Feb. 28, 1997; amended July 30, 1999; amended Jan. 2, 2002; amended Jan. 1, 2003; amended Jan. 1, 2004; amended Feb. 18, 2005; amended Jan. 1, 2006; amended May 1, 2006; amended Jan. 1, 2007; amended Jan. 1, 2008; amended Jan. 1, 2009; amended Jan. 1, 2010; amended Aug. 1, 2010; amended Jan. 1, 2011.)

**115-2-2. Motor vehicle permit fees.** (a) The following motor vehicle permit fees shall be in effect for state parks and for other areas requiring a motor vehicle permit:

| | |
|---|---|
| April 1 through September 30: | |
| One-day temporary motor vehicle permit | $2.70 |
| Annual motor vehicle permit | 22.20 |
| October 1 through March 31: | |
| One-day temporary motor vehicle permit | $2.20 |
| Annual motor vehicle permit | 17.20 |

(b) Each one-day temporary motor vehicle permit shall expire at 2:00 p.m. on the day following its effective date.

(c) Annual motor vehicle permits shall not be valid during designated special events.

This regulation shall be effective on and after January 1, 2012. (Authorized by and implementing K.S.A. 32-807 and K.S.A. 32-901; effective Jan. 22, 1990; amended Oct. 12, 1992; amended Aug. 21, 1995; amended Jan. 1, 2001; amended Jan. 1, 2003; amended Jan. 1, 2005; amended Jan. 1, 2007; amended April 8, 2011; amended Jan. 1, 2012.)

**115-2-3. Camping, utility, and other fees.** (a) Each overnight camping permit shall be valid only for the state park for which it is purchased and shall expire at 2:00 p.m. on the day following its effective date.

(b) Any annual camping permit may be used in any state park for unlimited overnight camping, subject to other laws and regulations of the secretary. This permit shall expire on December 31 of the year for which it is issued.

(c) Any 14-night camping permit may be used in any state park. This permit shall expire when the permit has been used a total of 14 nights, or on December 31 of the year for which it is issued, whichever is first.

(d) Camping permits shall not be transferable.

(e) The fee for a designated prime camping area

permit shall be in addition to the overnight, annual, 14-night, or other camping permit fee, and shall apply on a nightly basis.

(f) Fees shall be due at the time of campsite occupancy and by noon of any subsequent days of campsite occupancy.

(g) Fees set by this regulation shall be in addition to any required motor vehicle permit fee specified in K.A.R. 115-2-2.

(h) The following fees shall be in effect for state parks and for other designated areas for which camping and utility fees are required:

Camping—per camping unit (April 1 through September 30):

| | |
|---|---|
| Annual camping permit | $200.00 |
| Overnight camping permit | 7.00 |
| 14-night camping permit | 99.00 |
| Prime camping area permit | 2.00 |

Camping—per camping unit (October 1 through March 31):

| | |
|---|---|
| Annual camping permit | 150.00 |
| Overnight camping permit | 6.00 |
| 14-night camping permit | 85.00 |
| Overflow primitive camping permit, per night | 5.00 |

Recreational vehicle long-term camping permit, except for El Dorado, Milford, and Tuttle Creek State Parks (includes utilities)—per month, per unit (annual camping permit and annual vehicle permit required):

| | |
|---|---|
| One utility | 240.00 |
| Two utilities | 300.00 |
| Three utilities | 360.00 |

Recreational vehicle long-term camping permit for El Dorado, Milford, and Tuttle Creek State Parks (includes utilities)—per month, per unit (annual camping permit and annual vehicle permit required):

| | |
|---|---|
| One utility | 280.00 |
| Two utilities | 340.00 |
| Three utilities | 400.00 |
| Recreational vehicle short-term parking—per month | 125.00 |

Utilities—electricity, water, and sewer hookup per night, per unit:

| | |
|---|---|
| One utility | 7.50 |
| Two utilities | 9.50 |
| Three utilities | 10.50 |
| Youth group camping permit in designated areas, per camping unit—per night | 2.50 |
| Group camping permit in designated areas, per person—per night | 1.50 |
| Reservation fee, per reservation (camping, special use, or day use) | 10.00 |
| Rent-a-camp: equipment rental per camping unit—per night | 15.00 |
| Duplicate permit | 10.00 |
| Special event permit negotiated based on event type, required services, and lost revenue—maximum | 200.00 |

This regulation shall be effective on and after January 1, 2012. (Authorized by and implementing K.S.A. 32-807 and K.S.A. 2010 Supp. 32-988; effective Jan. 22, 1990; amended Jan. 28, 1991; amended June 8, 1992; amended Oct. 12, 1992; amended Aug. 21, 1995; amended Sept. 19, 1997; amended Jan. 1, 1999; amended Jan. 1, 2001; amended Jan. 1, 2003; amended Jan. 1, 2005; amended Jan. 1, 2009; amended Jan. 1, 2011; amended April 8, 2011; amended Jan. 1, 2012.)

**115-2-3a.** This regulation shall be revoked on and after September 15, 2011. (Authorized by and implementing K.S.A. 32-807 and K.S.A. 2009 Supp. 32-988; effective Jan. 1, 2005; amended Jan. 1, 2007; amended July 25, 2007; amended Jan. 1, 2008; amended May 16, 2008; amended Dec. 1, 2008; amended Nov. 20, 2009; amended Jan. 1, 2011; revoked Sept. 15, 2011.)

## Article 4.—BIG GAME

**115-4-2. Big game and wild turkey; general provisions.** (a) Possession.

(1) Each permittee shall sign, record the county, the date, and the time of kill, and attach the carcass tag to the carcass immediately following the kill and before moving the carcass from the site of the kill. Except for a wild turkey or big game animal taken with an "either sex" permit, the beard of the wild turkey or the head of the big game animal shall remain naturally attached to the carcass while in transit from the site of the kill to the permittee's residence or to a place of processing or preservation, unless the carcass has been tagged with a department check station tag or the permittee has obtained a transportation confirmation number after electronically registering the permittee's deer on the department's electronic registration site. "Electronically registering" shall mean submitting any necessary and relevant information and digital photographs of the deer head and of the completed carcass tag of sufficient clarity to display the species and antler class of the deer and the transaction number and signature on a completed carcass tag. The carcass tag shall remain attached to the carcass until the animal is processed for consumption. The permittee shall

retain the carcass tag until the animal is consumed, given to another, or otherwise disposed of.

(2) Any legally acquired big game or wild turkey meat may be given to and possessed by another, if a dated written notice that includes the donor's printed name, signature, address, and permit number accompanies the meat. The person receiving the meat shall retain the notice until the meat is consumed, given to another, or otherwise disposed of.

(3) Any person may possess a salvaged big game or wild turkey carcass if a department salvage tag issued to the person obtaining the carcass is affixed to the carcass. The salvage tag shall be retained as provided in paragraph (a)(1). Big game or wild turkey meat may be donated as specified in paragraph (a)(2) using the salvage tag number. Each salvage tag report prepared by the department agent issuing the tag shall be signed by the individual receiving the salvaged big game or wild turkey carcass. Each salvage tag shall include the following information:

(A) The name and address of the person to whom the tag is issued;

(B) the salvage tag number;

(C) the species and sex of each animal for which the tag is issued;

(D) the location and the date, time, and cause of death of each animal; and

(E) the date of issuance and the signature of the department agent issuing the salvage tag.

(b) Big game and wild turkey permits and game tags.

(1) A permit or game tag purchased during the open season shall not be valid until the next calendar day.

(2) Big game and wild turkey permits and game tags shall not be transferred to another person, unless otherwise authorized by law or regulation.

(3) Removal of the carcass tag from the permit or game tag shall invalidate the permit or game tag for hunting, unless otherwise authorized by law or regulation.

(4) In addition to other penalties prescribed by law, each big game and wild turkey permit or game tag shall be invalid from the date of issuance if obtained by an individual under any of these conditions:

(A) Through false representation;

(B) through misrepresentation; or

(C) in excess of the number of permits or game tags authorized by regulations for that big game species or wild turkey.

(c) Hunting assistance. Subject to the hunting license requirements of K.S.A. 32-919 and amendments thereto, the license requirements of the implementing regulations, and the provisions of paragraphs (c)(1), (c)(2), and (c)(3), any individual may assist any holder of a big game or wild turkey permit or game tag during the permittee's big game or wild turkey hunting activity. This assistance may include herding or driving.

(1) An individual assisting the holder of a big game or wild turkey permit or game tag shall not perform the actual shooting of big game or wild turkey for the permittee, unless authorized by K.A.R. 115-18-15. However, a permittee who is, because of disability, unable to pursue a wounded big game animal or wild turkey may designate any individual to assist in pursuing and dispatching a big game animal or wild turkey wounded by the disabled permittee.

(2) The designated individual shall carry the disabled permittee's big game or wild turkey permit or game tag and shall attach the carcass tag to the carcass immediately after the kill and before leaving the site of the kill.

(3) The designated individual shall use only the type of equipment authorized for use by the disabled permittee. (Authorized by K.S.A. 32-807, K.S.A. 2008 Supp. 32-937, K.S.A. 2008 Supp. 32-969; implementing K.S.A. 32-807, K.S.A. 2008 Supp. 32-937, K.S.A. 2008 Supp. 32-969, K.S.A. 2008 Supp. 32-1001, K.S.A. 2008 Supp. 32-1002, and K.S.A. 2008 Supp. 32-1004; effective June 1, 2001; amended April 22, 2005; amended April 16, 2010.)

**115-4-4. Big game; legal equipment and taking methods.** (a) Hunting equipment for the taking of big game during a big game archery season shall consist of the following:

(1) Archery equipment.

(A) Each bow shall be hand-drawn.

(B) No bow shall have a mechanical device that locks the bow at full or partial draw.

(C) Each bow shall be designed to shoot only one arrow at a time.

(D) No bow shall have any electronic device attached to the bow or arrow, with the exception of lighted pin, dot, holographic sights, or illuminated nocks.

(E) Each arrow used for hunting shall be equipped with a broadhead point incapable of passing through a ring with a diameter of three-quarters of an inch when fully expanded. A big

game hunter using archery equipment may possess non-broadhead-tipped arrows while hunting if the arrows are not used to take or attempt to take big game animals.

(F) No bow with less than 50 pounds of draw weight shall be used to archery hunt for elk.

(2) Crossbows and locking draws as authorized under K.A.R. 115-18-7.

(b) Hunting equipment for the taking of big game during a big game muzzleloader-only season shall consist of the following:

(1) Archery equipment as authorized in subsection (a);

(2) muzzleloading rifles and muskets that can be loaded only through the front of the firing chamber with separate components and that fire a bullet of .39 inches in diameter or larger, except for the hunting of elk, which shall require a bullet of .49 inches in diameter or larger; and

(3) single barrel muzzleloading pistols .45 caliber or larger that have a barrel length of 10 inches or greater and can be loaded only through the front of the barrel with separate components, except for the hunting of elk, which shall require a bullet of .49 inches in diameter or larger. Only hard-cast solid lead, conical lead, or saboted bullets shall be used with muzzleloading pistols.

(c) Hunting equipment for the taking of big game during a big game firearm season shall consist of the following:

(1) Archery equipment as authorized in subsection (a);

(2) muzzleloader-only season equipment as authorized in subsection (b);

(3) centerfire rifles and handguns that are not fully automatic, that fire a bullet larger than .23 inches in diameter, and that use a cartridge case that is 1.280 inches or more in length, while using only hard-cast solid lead, soft point, hollow point, or other expanding bullets, except for the hunting of elk, which shall require a bullet larger than .25 inches in diameter and a cartridge case that is 1.75 inches or more in length;

(4) shotguns using only slugs of 20 gauge or larger, except that the hunting of elk shall require a slug of 12 gauge or larger; and

(5) crossbows of not less than 125 pounds of draw weight, using arrows not less than 16 inches in length that are equipped with broadhead points incapable of passing through a ring with a diameter of three-quarters of an inch when fully expanded. A big game hunter using archery equipment may possess non-broadhead-tipped arrows while hunting if the arrows are not used to take or attempt to take big game animals.

(d) Accessory equipment.

(1) Each individual hunting deer or elk during a firearms deer or elk season and each individual assisting an individual hunting deer or elk as authorized by K.A.R. 115-4-2 or K.A.R. 115-18-15 during a firearms deer or elk season shall wear clothing of a bright orange color having a predominant light wavelength of 595-605 nanometers, commonly referred to as daylight fluorescent orange, hunter orange, blaze orange, or safety orange. This bright orange color shall be worn as follows:

(A) A hat with the exterior of not less than 50 percent of the bright orange color, an equal portion of which is visible from all directions; and

(B) a minimum of 100 square inches of the bright orange color that is on the front of the torso and is visible from the front and a minimum of 100 square inches that is on the rear of the torso and is visible from the rear.

(2) Nonelectric calls, lures, and decoys, except live decoys, shall be legal while hunting big game.

(3) Any individual may use blinds and stands while hunting big game.

(4) Optical scopes or sights that project no visible light toward the target and do not electronically amplify visible or infrared light may be used.

(5) Any range-finding device, if the device does not project visible light toward the target, may be used.

(6) Devices capable of dispensing chemicals to take big game animals shall not be used.

(e) Big game permittees shall possess hunting equipment while hunting only as authorized by this regulation and by the most restrictive big game permit in possession while hunting.

(f) Shooting hours for deer, antelope, and elk during each day of any deer, antelope, or elk hunting season shall be from one-half hour before sunrise to one-half hour after sunset.

(g) Horses and mules may be used while hunting big game, except that horses and mules shall not be used for herding or driving elk. (Authorized by K.S.A. 32-807 and K.S.A. 2009 Supp. 32-937; implementing K.S.A. 32-807, K.S.A. 2009 Supp. 32-937, K.S.A. 2009 Supp. 32-1002, and K.S.A. 32-1015; effective June 1, 2001; amended April 19, 2002; amended April 22, 2005; amended June 2, 2006; amended April 13, 2007; amended April 11, 2008; amended May 21, 2010.)

**115-4-4a. Wild turkey; legal equipment and taking methods.** (a) Hunting equipment for the taking of wild turkey during a wild turkey archery season shall consist of the following:

(1) Archery equipment.

(A) Each bow shall be hand-drawn.

(B) No bow shall have a mechanical device that locks the bow at full or partial draw.

(C) Each bow shall be designed to shoot only one arrow at a time.

(D) No bow shall have any electronic device attached to the bow or arrow, with the exception of lighted pin, dot, holographic sights, or illuminated nocks.

(E) Each arrow used for hunting shall be equipped with a broadhead point incapable of passing through a ring with a diameter of three-quarters of an inch when fully expanded. A wild turkey hunter using archery equipment may possess non-broadhead-tipped arrows while hunting if the arrows are not used to take or attempt to take wild turkeys.

(2) Crossbows and locking draws as authorized under K.A.R. 115-18-7.

(b) Hunting equipment for the taking of wild turkey during a wild turkey firearm season shall consist of the following:

(1) Archery equipment as authorized in subsection (a);

(2) shotguns and muzzleloading shotguns not less than 20 gauge and using only size two shot through size nine shot; and

(3) only during the spring wild turkey firearm season, crossbows of not less than 125 pounds of draw weight, using arrows not less than 16 inches in length that are equipped with broadhead points incapable of passing through a ring with a diameter of three-quarters of an inch when fully expanded. A wild turkey hunter using crossbow equipment may possess non-broadhead-tipped arrows while hunting if the arrows are not used to take or attempt to take wild turkeys.

(c) Legal accessory equipment for the taking of wild turkey during any wild turkey season shall consist of the following:

(1) Nonelectric calls, lures, and decoys, except live decoys;

(2) blinds and stands;

(3) range-finding devices, if the devices do not project visible light toward the target; and

(4) optical scopes or sights that project no visible light toward the target and do not electronically amplify visible or infrared light.

(d) Each wild turkey permittee shall possess hunting equipment while hunting only as authorized by this regulation and by the most restrictive wild turkey permit or game tag in possession while hunting.

(e) Shooting hours for wild turkey during each day of any turkey hunting season shall be from one-half hour before sunrise to sunset.

(f) Each individual hunting turkey shall shoot or attempt to shoot a turkey only while the turkey is on the ground or in flight.

(g) Dogs may be used while hunting turkey, but only during the fall turkey season. (Authorized by K.S.A. 32-807 and K.S.A. 2009 Supp. 32-969; implementing K.S.A. 32-807, K.S.A. 2009 Supp. 32-969, and K.S.A. 2009 Supp. 32-1002; effective April 22, 2005; amended April 13, 2007; amended April 11, 2008; amended May 21, 2010.)

**115-4-6. Deer; management units.** Each of the following subsections shall designate a deer management unit: (a) High Plains; unit 1: that part of Kansas bounded by a line from the Nebraska-Kansas state line south on federal highway US-283 to its junction with interstate highway I-70, then west on interstate highway I-70 to the Colorado-Kansas state line, then north along the Colorado-Kansas state line to its junction with the Nebraska-Kansas state line, then east along the Nebraska-Kansas state line to its junction with federal highway US-283, except federal and state sanctuaries.

(b) Smoky Hill; unit 2: that part of Kansas bounded by a line from the Colorado-Kansas state line east on interstate highway I-70 to its junction with state highway K-147, then south on state highway K-147 to its junction with state highway K-4, then west on state highway K-4 to its junction with federal highway US-83, then south on federal highway US-83 to its junction with state highway K-96, then west on state highway K-96 to its junction with the Colorado-Kansas state line, then north along the Colorado-Kansas state line to its junction with interstate highway I-70, except federal and state sanctuaries.

(c) Kirwin-Webster; unit 3: that part of Kansas bounded by a line from the Nebraska-Kansas state line south on state highway K-8 to its junction with federal highway US-36, then east on federal highway US-36 to its junction with federal highway US-281, then south on federal highway US-281 to its junction with interstate highway I-70, then west on interstate highway I-70 to its junction with

federal highway US-283, then north on federal highway US-283 to its junction with the Nebraska-Kansas state line, then east along the Nebraska-Kansas state line to its junction with state highway K-8, except federal and state sanctuaries.

(d) Kanopolis; unit 4: that part of Kansas bounded by a line from the interstate highway I-70 and state highway K-147 junction, then east on interstate highway I-70 to its junction with federal highway US-81, then south on federal highway US-81 to its junction with state highway K-4, then west on state highway K-4 to its junction with state highway K-147, then north on state highway K-147 to its junction with interstate highway I-70, except federal and state sanctuaries.

Smoky Hill Air National Guard Range; subunit 4a. The following described area shall be designated a subunit of unit 4, and, with approval of air national guard command, the area shall be open for the taking of deer during the firearm season: United States government land lying entirely within the boundaries of the Smoky Hill Air National Guard Range. Each person hunting in this subunit during the firearm deer season shall be in possession of any permits and licenses required by the air national guard.

(e) Pawnee; unit 5: that part of Kansas bounded by a line from the state highway K-4 and state highway K-14 junction, then south on state highway K-14 to its junction with federal highway US-50, then west on federal highway US-50 to its junction with federal highway US-183, then northeast and north on federal highway US-183 to its junction with federal highway US-156, then west on federal highway US-156 to its junction with federal highway US-283, then north on federal highway US-283 to its junction with state highway K-4, then east on state highway K-4 to its junction with state highway K-14, except federal and state sanctuaries.

(f) Middle Arkansas; unit 6: that part of Kansas bounded by a line from the state highway K-4 and federal highway US-77 junction, then south on federal highway US-77 to its junction with federal highway US-50, then west on federal highway US-50 to its junction with state highway K-14, then north on state highway K-14 to its junction with state highway K-4, then east on state highway K-4 to its junction with federal highway US-77, except federal and state sanctuaries.

(g) Solomon; unit 7: that part of Kansas bounded by a line from the Nebraska-Kansas state line south on federal highway US-81 to its junction with interstate highway I-70, then west on interstate highway I-70 to its junction with federal highway US-281, then north on federal highway US-281 to its junction with federal highway US-36, then west on federal highway US-36 to its junction with state highway K-8, then north on state highway K-8 to its junction with the Nebraska-Kansas state line, then east along the Nebraska-Kansas state line to its junction with federal highway US-81, except federal and state sanctuaries.

(h) Republican; unit 8: that part of Kansas bounded by a line from the Nebraska-Kansas state line south on federal highway US-77 to its junction with federal highway US-24, then south on federal highway US-24 to its junction with state highway K-177, then south on state highway K-177 to its junction with interstate highway I-70, then west on interstate highway I-70 to its junction with federal highway US-77, then south on federal highway US-77 to its junction with state highway K-4, then west on state highway K-4 to its junction with federal highway US-81, then north on federal highway US-81 to its junction with the Nebraska-Kansas state line, then east along the Nebraska-Kansas state line to its junction with federal highway US-77, except federal and state sanctuaries.

Fort Riley; subunit 8a. The following described area shall be designated a subunit of unit 8, and, with approval of Fort Riley command, the area shall be open for the taking of deer during the firearm deer season: United States government land lying entirely within the boundaries of the Fort Riley military reservation. Each person hunting in this subunit during the firearm deer season shall be in possession of any permits and licenses required by Fort Riley.

(i) Tuttle Creek; unit 9: that part of Kansas bounded by a line from the Nebraska-Kansas state line, south on federal highway US-75 to its junction with interstate highway I-70, then west on interstate highway I-70 to its junction with state highway K-177, then north on state highway K-177 to its junction with federal highway US-24, then north on federal highway US-24 to its junction with federal highway US-77, then north on federal highway US-77 to its junction with the Nebraska-Kansas state line, then east along the Nebraska-Kansas state line to its junction with federal highway US-75, except federal and state sanctuaries.

(j) Kaw; unit 10: that part of Kansas bounded

by a line from the Nebraska-Kansas state line south on federal highway US-75 to its junction with interstate highway I-35, then northeast on interstate highway I-35 to its junction with state highway K-150, then east on state highway K-150 to the Missouri-Kansas state line, then north along the Missouri-Kansas state line to its junction with the Nebraska-Kansas state line, then west along the Nebraska-Kansas state line to its junction with federal highway US-75, except federal and state sanctuaries.

Fort Leavenworth urban; subunit 10a. The following described area shall be designated a subunit of unit 10, and, with approval of Fort Leavenworth command, the area shall be open for the taking of deer during the firearm deer season: United States government land lying entirely within the boundaries of the Fort Leavenworth military reservation. Each person hunting in this subunit during the firearm deer season shall be in possession of any permits and licenses required by Fort Leavenworth.

(k) Osage Prairie; unit 11: that part of Kansas bounded by a line from the Oklahoma-Kansas state line north on federal highway US-169 to its junction with state highway K-47, then west on state highway K-47 to its junction with federal highway US-75, then north on federal highway US-75 to its junction with interstate highway I-35, then northeast on interstate highway I-35 to its junction with state highway K-150, then east on state highway K-150 to its junction with the Missouri-Kansas state line, then south along the Missouri-Kansas state line to its junction with the Oklahoma-Kansas state line, then west along the Oklahoma-Kansas state line to its junction with federal highway US-169, except federal and state sanctuaries.

(l) Chautauqua Hills; unit 12: that part of Kansas bounded by a line from the Oklahoma-Kansas state line north on federal highway US-169 to its junction with state highway K-47, then west on state highway K-47 to its junction with federal highway US-75, then north on federal highway US-75 to its junction with federal highway US-54, then west on federal highway US-54 to its junction with state highway K-99, then south on state highway K-99 to its junction with federal highway US-160, then west on federal highway US-160 to its junction with state highway K-15, then east and south on state highway K-15 to its junction with the Oklahoma-Kansas state line, then east along the Oklahoma-Kansas state line to its junction with federal highway US-169, except federal and state sanctuaries.

(m) Lower Arkansas; unit 13: that part of Kansas bounded by a line from the Oklahoma-Kansas state line north on federal highway US-81 to its junction with state highway K-53, then east on state highway K-53 to its junction with state highway K-15, then southeasterly on state highway K-15 to its junction with the Oklahoma-Kansas state line, then west along the Oklahoma-Kansas state line to its junction with federal highway US-81, except federal and state sanctuaries.

(n) Flint Hills; unit 14: that part of Kansas bounded by a line from the junction of interstate highway I-70 and federal highway US-75, then south on federal highway US-75 to its junction with federal highway US-54, then west on federal highway US-54 to its junction with state highway K-99, then south on state highway K-99 to its junction with federal highway US-160, then west on federal highway US-160 to its junction with federal highway US-77, then north on federal highway US-77 to its junction with interstate highway I-70, then east on interstate highway I-70 to its junction with federal highway US-75, except federal and state sanctuaries.

(o) Ninnescah; unit 15: that part of Kansas bounded by a line from the Oklahoma-Kansas state line north on state highway K-179 to its junction with state highway K-14, then continuing north on state highway K-14 to its junction with state highway K-42, then west on state highway K-42 to its junction with federal highway US-281, then north on federal highway US-281 to its junction with federal highway US-50, then east on federal highway US-50 to its junction with federal highway US-77, then south on federal highway US-77 to its junction with state highway K-15, then west and northwest on state highway K-15 to its junction with state highway K-53, then west on state highway K-53 to its junction with federal highway US-81, then south on federal highway US-81 to the Oklahoma-Kansas state line, then west along the Oklahoma-Kansas state line to its junction with state highway K-179, except federal and state sanctuaries.

(p) Red Hills; unit 16: that part of Kansas bounded by a line from the Oklahoma-Kansas state line north on federal highway US-283 to its junction with federal highway US-54, then east on federal highway US-54 to its junction with federal highway US-183, then north on federal highway US-183 to its junction with federal highway US-

50, then east on federal highway US-50 to its junction with federal highway US-281, then south on federal highway US-281 to its junction with state highway K-42, then east on state highway K-42 to its junction with state highway K-14, then south on state highway K-14 to its junction with state highway K-179, then south on state highway K-179 to the Oklahoma-Kansas state line, then west along the Oklahoma-Kansas state line to its junction with federal highway US-283, except federal and state sanctuaries.

(q) West Arkansas; unit 17: that part of Kansas bounded by a line from the Colorado-Kansas state line east on state highway K-96 to its junction with federal highway US-83, then north on federal highway US-83 to its junction with state highway K-4, then east on state highway K-4 to its junction with federal highway US-283, then south on federal highway US-283 to its junction with federal highway US-156, then east on federal highway US-156 to its junction with federal highway US-183, then south on federal highway US-183 to its junction with federal highway US-54, then southwest on federal highway US-54 to its junction with federal highway US-283, then north on federal highway US-283 to its junction with federal highway US-56, then southwest on federal highway US-56 to its junction with state highway K-144, then west on state highway K-144 to its junction with federal highway US-160, then continuing west on federal highway US-160 to the Colorado-Kansas state line, then north along the Colorado-Kansas state line to its junction with state highway K-96, except federal and state sanctuaries.

(r) Cimarron; unit 18: that part of Kansas bounded by a line from the Colorado-Kansas state line east on federal highway US-160 to its junction with state highway K-144, then east on state highway K-144 to its junction with federal highway US-56, then east on federal highway US-56 to its junction with federal highway US-283, then south on federal highway US-283 to its junction with the Oklahoma-Kansas state line, then west along the Oklahoma-Kansas state line to its junction with the Colorado-Kansas state line, then north along the Colorado-Kansas state line to its junction with federal highway US-160, except federal and state sanctuaries.

(s) Kansas City urban; unit 19: that part of Kansas bounded by a line from the Missouri-Kansas state line west on Johnson County 199 Street to its junction with federal highway US-56, then west on federal highway US-56 to its junction with South Topeka Boulevard, then north on South Topeka Boulevard to its junction with Shawnee County SW 93 Road, then west on Shawnee County SW 93 Road to its junction with Shawnee County SW Auburn Road, then north on Shawnee County SW Auburn Road to its junction with interstate highway I-70, then west on interstate highway I-70 to its junction with Carlson-Rossville Road, then north on Carlson-Rossville Road to its junction with federal highway US-24, then southeast on federal highway US-24 to its junction with Shawnee County NW Humphrey Road, then north on Shawnee County NW Humphrey Road to its junction with Shawnee County NW 46 Street, then east on Shawnee County NW 46 Street to its junction with Shawnee County NW Landon Road, then north on Shawnee County NW Landon Road to its junction with Shawnee County NW 62 Street, then east on Shawnee County NW 62 Street to its junction with Jefferson County Clark Road, then south on Jefferson County Clark Road to its junction with Jefferson County 50 Road, then east on Jefferson County 50 Road to state highway K-237, then south on state highway K-237 to its junction with federal highway US-24, then east on federal highway US-24 to its junction with Tonganoxie Drive, then northeast on Tonganoxie Drive to its junction with Leavenworth County 187 Street, then north on Leavenworth County 187 Street to its junction with state highway K-92, then west on state highway K-92 to its junction with Leavenworth County 207 Street, then north on Leavenworth County 207 Street to its junction with state highway K-192, then northeast on state highway K-192 to its junction with federal highway US-73, then east on federal highway US-73 to the Missouri-Kansas state line, then south on the Missouri-Kansas state line to Johnson County 199 Street, except federal and state sanctuaries and department-owned or -managed properties. (Authorized by K.S.A. 32-807; implementing K.S.A. 32-807 and K.S.A. 2008 Supp. 32-937; effective April 30, 1990; amended June 8, 1992; amended June 1, 1993; amended June 13, 1994; amended May 30, 1995; amended June 6, 1997; amended July 21, 2000; amended April 18, 2003; amended July 25, 2003; amended Feb. 18, 2005; amended April 14, 2006; amended Feb. 8, 2008; amended April 16, 2010.)

**115-4-6b. Elk; management units.** Each of the following subsections shall designate an elk management unit: (a) Cimarron; unit 1: that part

of Kansas bounded by a line from the Oklahoma-Kansas state line north on county road CR-24 to its junction with state highway K-51, then north on state highway K-51 to its junction with road U, then west on state highway K-51 to its junction with road 9, then north on road 9 to its junction with road V, then west on road V to its junction with the Colorado-Kansas state line, then south along the Colorado-Kansas border to its junction with the Oklahoma-Kansas border, and then east along the Oklahoma-Kansas border to its junction with county road CR-24, except federal and state sanctuaries.

(b) Republican-Tuttle; unit 2: That part of Kansas bounded by a line from the federal highway US-77 and interstate highway I-70 junction, then northeast along interstate highway I-70 to its junction with state highway K-177, then north on state highway K-177 to its junction with state highway K-13, then northeast on state highway K-13 to its junction with the Pottowatomie-Riley county line, then north along the Pottawatomie-Riley county line to its junction with state highway K-16, then west on state highway K-16 to its junction with 22nd road, then west along 22nd road to its junction with state highway 15, then south along state highway K-15 to its junction with state highway K-18, then east on state highway K-18 to its junction with state highway K-77, and then south along state highway K-77 to its junction with interstate highway I-70, except federal and state sanctuaries.

Fort Riley; subunit 2a: The following described area shall be designated a subunit of unit 2, and, with approval of Fort Riley command, the area shall be open for the taking of elk during the elk season: United States government land lying entirely within the boundaries of the Fort Riley military reservation. Each person hunting in this subunit shall be in possession of any permits and licenses required by Fort Riley.

(c) Kansas; unit 3: statewide except for the areas described in units 1 and 2. (Authorized by K.S.A. 32-807; implementing K.S.A. 32-807 and K.S.A. 2010 Supp. 32-937; effective April 8, 2011.)

**115-4-11. Big game and wild turkey permit applications.** (a) General application provisions.

(1) Unless otherwise authorized by law or regulation, an individual shall not apply for or obtain more than one antlered or horned big game or wild turkey permit for each big game species or wild turkey, except when the individual is unsuccessful in a limited quota drawing and alternative permits for the species are available at the time of subsequent application or when the individual is the final recipient of a commission permit.

(2) Unless otherwise authorized by law or regulation, each big game or wild turkey permit application shall be signed by the individual applying for the permit.

(3) Subject to any priority draw system established by this regulation, if the number of permit applications of a specific species and type received by the designated application deadline exceeds the number of available permits of that species and type, a random drawing to issue permits of that species and type shall be conducted by the secretary.

(4) A hunt-on-your-own-land permit shall not be tabulated in a priority draw system if the permit would otherwise reduce the applicant's odds of receiving a big game permit through that draw system.

(b) Deer permit applications.

(1) Subject to any priority draw system established by this subsection, in awarding deer permits in units having a limited number of permits, the first priority shall be given to those applicants who did not receive, in the previous year, a deer permit that allowed the taking of an antlered deer. All other deer permit applicants shall be given equal priority.

(2) In awarding a limited number of deer permits by a priority draw system, the first priority shall be given to those individuals who have earned the highest number of preference points. Preference points shall be awarded as follows:

(A) One point shall be awarded to an individual for each year the individual is unsuccessful in obtaining, by a priority draw system, a deer permit that allows the taking of an antlered deer.

(B) If the individual fails to make at least one application or purchase one preference point within a period of five consecutive years, all earned points shall be lost.

(C) If an applicant obtains, by a priority draw system, a deer permit that allows the taking of an antlered deer, all earned points shall be lost.

(D) If the number of applicants with the most preference points exceeds the number of permits for specified units or permit types, then a drawing shall be held to determine the successful applicants.

(E) If an individual desires to apply for a pref-

erence point for a deer permit that allows the taking of antlered deer and not receive a permit, the person may apply for and receive a preference point by paying the proper application or preference point fee and making application during the application period specified in K.A.R. 115-25-9. No individual may apply for more than one preference point in the same calendar year, and no individual shall apply for a preference point in the same calendar year as the calendar year in which the individual is applying for a permit.

(3) If an individual is a final recipient of a commission deer permit, the individual shall not possess more than one regular antlered deer permit and one commission deer permit.

(4) Applications for nonresident limited-quota antlered deer permits shall be accepted in the Pratt office from the earliest date that applications are available through the last Friday of April each year. Any nonresident applicant may select, at the time of application, one deer management unit and up to one adjacent management unit where that permit shall be valid.

(5) Applications for resident firearms either-species, either-sex permits shall be accepted at designated locations from the earliest date that applications are available through the second Friday of July.

(6) Applications for resident any-season white-tailed either-sex deer permits, resident archery deer permits, resident muzzleloader either-species either-sex permits, and hunt-on-your-own-land deer permits shall be accepted at designated locations from the earliest date that applications are available through December 30.

(7) Each resident applicant for either-species, either-sex muzzleloader or firearm deer permits shall select, at the time of application, the unit where the permit shall be valid. The west unit permit shall be valid in units 1, 2, 17, and 18. The east unit permit shall be valid in units 3, 4, 5, 7, and 16.

(8) Applications for antlerless white-tailed deer permits shall be accepted at designated locations from the earliest date that applications are available through January 30 of the following year.

(c) Firearm antelope permit applications. In awarding firearm antelope permits, the first priority shall be given to those individuals who have earned the highest number of preference points. Preference points shall be awarded as follows:

(1) One point shall be awarded to an individual for each year the individual is unsuccessful in obtaining a firearm antelope permit.

(2) If the individual fails to make at least one application or purchase one preference point within a period of five consecutive years, all earned points shall be lost.

(3) If an applicant obtains a firearm permit by a priority draw system, all earned points shall be lost.

(4) If the number of applicants with the most preference points exceeds the number of permits for specified units or permit types, then a drawing shall be held to determine the successful applicants.

(5) If an individual desires to apply for a preference point for an antelope firearms permit that allows the taking of an antelope and not receive a permit, the person may apply for and receive a preference point by paying the preference point fee and making application during the application period specified in K.A.R. 115-25-7. No individual may apply for more than one preference point in the same calendar year, and no individual shall apply for a preference point in the same calendar year as the calendar year in which the individual is applying for a permit.

(6) Applications for resident firearm and muzzleloader permits shall be accepted in the Pratt office from the earliest date that applications are available through the second Friday of June.

(7) Applications for resident and nonresident archery permits shall be accepted at designated locations from the earliest date that applications are available through October 30.

(8) If there are any unfilled permits after all timely applications have been considered, the application period may be extended by the secretary.

(9) Any applicant unsuccessful in obtaining a permit through a drawing may apply for any permit made available during an extended application period, or any other permit that is available on an unlimited basis.

(d) Elk permit applications.

(1) An individual receiving a limited-quota elk permit shall not be eligible to apply for or receive an elk permit in subsequent seasons, with the following exceptions:

(A) An individual receiving an any-elk or a bull-only elk permit may apply for and receive an antlerless-only elk permit in subsequent seasons.

(B) An individual receiving a limited-quota, antlerless-only elk hunting permit shall not be eligible to apply for or receive a limited-quota, antler-

less-only elk permit for a five-year period thereafter. Subject to this subsection, however, this individual may apply for and receive an any-elk or bull-only elk permit without a waiting period.

(C) When a limited number of elk permits are awarded by a random draw system, each individual shall have an additional opportunity of drawing for each bonus point earned by the individual in addition to the current application. Bonus points shall be awarded as follows:

(i) One bonus point shall be awarded to an individual for each year the individual is unsuccessful in obtaining, by a random draw system, an elk permit that allows the taking of an elk.

(ii) If an individual fails to make at least one application or purchase one bonus point within a period of five consecutive years, all earned bonus points shall be lost.

(iii) If an applicant obtains, by a random draw system, an elk permit that allows the taking of an elk, all earned points shall be lost.

(iv) If an individual desires to apply for a bonus point for an elk permit that allows the taking of elk and not receive a permit, the person may apply for and receive a bonus point by paying the proper application or bonus point fee and making application during the application period specified in K.A.R. 115-25-8. No individual may apply for more than one bonus point in the same calendar year, and no individual shall apply for a bonus point in the same calendar year as the calendar year in which the individual is applying for a permit.

(D) Each individual who is the final recipient of a commission elk permit shall be eligible for a limited-quota elk permit, subject to the provisions of this subsection.

(E) Limited-quota antlerless-only elk permits and limited-quota either-sex elk permits shall be awarded from a pool of applicants who are Fort Riley military personnel and applicants who are not Fort Riley military personnel.

(2) Applications for hunt-on-your-own-land and unlimited over-the-counter elk permits shall be accepted at designated locations from the earliest date that applications are available through March 14 of the following year.

(3) Applications for limited-quota antlerless-only elk permits and limited-quota either-sex elk permits shall be accepted at designated locations from the earliest date that applications are available through the second Friday in July.

(4) If there are leftover limited-quota antlerless-only elk permits or limited-quota either-sex permits after all timely applications have been considered, the application periods for those permits may be reopened by the secretary. Leftover permits shall be drawn and issued on a daily basis for those application periods reopened by the secretary. Any applicant unsuccessful in obtaining a permit through a drawing may apply for any leftover permit or any other permit that is available on an unlimited basis.

(5) Any individual may apply for or obtain no more than one permit that allows the taking of an elk, unless the individual is unsuccessful in a limited-quota drawing and alternative permits for elk are available at the time of subsequent application or the individual obtains a commission permit pursuant to this subsection.

(e) Wild turkey permit applications.

(1) When awarding wild turkey permits in units having a limited number of permits, the first priority shall be given to those individuals who did not receive a permit in a limited wild turkey unit during the previous year. All other applicants shall be given equal priority.

(2) In awarding a limited number of wild turkey permits by a priority draw system, the first priority shall be given to those individuals who have earned the highest number of preference points. Preference points shall be awarded as follows:

(A) One point shall be awarded to an individual for each year the individual is unsuccessful in obtaining, by a priority draw system, a wild turkey permit.

(B) If the individual fails to make at least one application or purchase one preference point within a period of five consecutive years, all earned points shall be lost.

(C) If an applicant obtains, by a priority draw system, a wild turkey permit, all earned points shall be lost.

(D) If the number of applicants with the most preference points exceeds the number of permits for specified units or permit types, then a drawing shall be held to determine the successful applicants.

(E) If an individual desires to apply for a preference point for a wild turkey permit and not receive a permit, the person may apply for and receive a preference point by paying the preference point fee and making application during the application period specified in K.A.R. 115-25-6. No individual may apply for more than one prefer-

ence point in the same calendar year, and no individual shall apply for a preference point in the same calendar year as the calendar year in which the individual is applying for a permit.

(3) Fall wild turkey permits for unit 1, unit 2, and unit 3 and game tags for unit 2 may be purchased over the counter at designated locations, from the earliest date in the year that applications are available through 5:00 p.m. on January 30 of the following year.

(4) Applications for spring wild turkey permits in unit 4 shall be accepted by the department from the earliest date that applications are available until midnight on the second Friday of February. If there are turkey permits left over after all timely applications have been considered, the application period may be reopened by the secretary. Leftover turkey permits shall be issued on a daily competitive basis until the day before the last day of the turkey season or until all turkey permits are issued.

(5) Spring wild turkey permits in unit 1, unit 2, and unit 3, youth turkey permits, and second turkey game tags in unit 2 and unit 3 may be purchased over the counter at designated locations from the earliest date that applications are available until midnight on the day before the closing date for the season. (Authorized by K.S.A. 32-807, K.S.A. 2010 Supp. 32-937, K.S.A. 2010 Supp. 32-969, and K.S.A. 2010 Supp. 32-970; implementing K.S.A. 2010 Supp. 32-937, K.S.A. 2010 Supp. 32-969, and K.S.A. 2010 Supp. 32-970; effective Sept. 10, 1990; amended May 27, 1991; amended June 1, 2001; amended April 18, 2003; amended Feb. 18, 2005; amended May 15, 2009; amended Feb. 5, 2010; amended April 8, 2011.)

## Article 5.—FURBEARERS

**115-5-1. Furbearers and coyotes; legal equipment, taking methods, and general provisions.** (a) Hunting equipment permitted during furbearer hunting seasons and during coyote hunting seasons shall consist of the following:

(1) Firearms, except fully automatic firearms;

(2) archery equipment;

(3) crossbows; and

(4) optical scopes or sights that project no visible light toward the target and do not electronically amplify visible or infrared light.

(b) Trapping equipment permitted during furbearer and coyote trapping seasons shall consist of the following:

(1) Smooth-jawed foothold traps;

(2) body-gripping traps;

(3) box traps;

(4) cage traps;

(5) colony traps;

(6) snares; and

(7) deadfalls.

(c) The following general provisions shall apply to the taking of furbearers and coyotes:

(1) Calls may be used in the taking of furbearers and coyotes.

(2) Handheld, battery-powered flashlights, hat lamps, and handheld lanterns may be used while trapping furbearers or coyotes or while running furbearers.

(3) Any .22 or .17 caliber rimfire rifle or handgun may be used to take trapped furbearers or trapped coyotes when using a light to check traps.

(4) Any .22 or .17 caliber rimfire rifle or handgun may be used while using a handheld, battery-powered flashlight, hat lamp, or handheld lantern to take furbearers treed with the aid of dogs.

(5) Lures, baits, and decoys may be used in the taking of furbearers and coyotes.

(6) The use of horses and mules shall be permitted while hunting, trapping, or running furbearers and coyotes.

(7) The use of motor vehicles for taking coyotes shall be permitted while hunting coyotes.

(8) The use of radios in land or water vehicles shall be permitted for the taking of coyotes.

(9) The use of dogs for hunting and during running seasons shall be permitted.

(10) Each conibear-type, body-gripping trap with a jawspread of eight inches or greater shall be used only in a water set.

(11) Only landowners or tenants of land immediately adjacent to the right-of-way of a public road, or their immediate family members or authorized agents, may set slide-locking wire or snare-type cable traps as dryland sets within five feet of a fence bordering a public road or within 50 feet of the outside edge of the surface of a public road. Only these landowners or tenants, or their immediate family members or authorized agents, may possess the fur, pelt, skin, or carcass of any furbearer or coyote removed from these devices located within these specified limits.

(12) A person shall not have in possession any equipment specified in subsection (a) while pursuing or chasing furbearers with hounds during the running season.

(13) All trapping devices included in subsection

(b) shall be tagged with either the user's name and address or the user's department-issued identification number and shall be tended and inspected at least once every calendar day.

(14) Each foothold trap that has an outside jawspread greater than seven inches shall be used only in a water set. (Authorized by K.S.A. 32-807; implementing K.S.A. 32-807, K.S.A. 2010 Supp. 32-1002, and K.S.A. 2010 Supp. 32-1003; effective March 19, 1990; amended Nov. 15, 1993; amended July 19, 2002; amended Feb. 18, 2005; amended Sept. 4, 2009; amended July 22, 2011.)

**115-5-2. Furbearers and coyotes; possession, disposal, and general provisions.** (a) Legally taken raw furs, pelts, skins, carcasses, or meat of furbearers may be possessed without limit in time.

(b) Live furbearers legally taken during a furbearer season may be possessed only through the last day of the season in which taken.

(c) Legally acquired skinned carcasses and meat of furbearers may be sold or given to and possessed by another, and legally acquired raw furs, pelts, and skins of furbearers may be given to and possessed by another, if a written notice that includes the seller's or donor's name, address, and furharvester license number accompanies the carcass, pelt, or meat. A bobcat, otter, or swift fox tag as described in subsection (f) shall meet the requirements of written notice.

(d) Legally taken raw furs, pelts, skins, or carcasses of coyotes or legally taken live coyotes may be possessed without limit in time.

(e) Any person in lawful possession of raw furbearer or coyote furs, pelts, skins, or carcasses may sell or ship or offer for sale or shipment the same to licensed fur dealers or any person legally authorized to purchase raw furbearer or coyote furs, pelts, skins, or carcasses.

(f) Any bobcat, otter, or swift fox pelt legally taken in Kansas may be sold to any fur dealer or shipped from the state for the purpose of selling if an export tag provided by the department has been affixed to the pelt.

(1) The pelt of any bobcat or swift fox taken in Kansas shall be presented to the department for tagging within seven days following closure of the bobcat or swift fox hunting and trapping season.

(2) The pelt and skinned carcass of any otter taken in Kansas shall be presented to the department for tagging within four days following the harvest of the otter. The skinned carcass of the otter shall be permanently surrendered to the department at the time of presentation.

(3) Each pelt presented for tagging shall be accompanied by the furharvester license number under which the pelt was taken.

(g) Properly licensed persons may legally salvage furbearers and coyotes found dead during the established open seasons for hunting or trapping of furbearers or coyotes. Salvaged furbearers and coyotes may be possessed or disposed of as authorized by this regulation. (Authorized by K.S.A. 32-807 and K.S.A. 32-942; implementing K.S.A. 32-807, K.S.A. 32-942, and K.S.A. 2010 Supp. 32-1002; effective March 19, 1990; amended Oct. 17, 1994; amended Nov. 29, 1999; amended July 19, 2002; amended Sept. 4, 2009; amended July 22, 2011.)

## Article 6.—FUR DEALERS

**115-6-1. Fur dealer license; application, authority, possession of furs, records, and revocation.** (a) Each application shall be submitted on a form provided by the department. Each applicant shall provide the following information:

(1) Name of applicant;

(2) residential address;

(3) the address of each business location;

(4) an inventory of raw furs, pelts, skins, and carcasses of furbearing animals and coyotes on hand at time of application; and

(5) any other relevant information as required by the secretary.

(b) Each fur dealer license shall expire on June 30 following the date of issuance.

(c) Each fur dealer shall deal only with properly licensed persons and only at authorized fur dealer business locations.

(d) Any fur dealer may buy, purchase, or trade in the furs, pelts, skins, or carcasses of coyotes.

(e) Any fur dealer may possess legally acquired furs, pelts, skins, or carcasses of furbearing animals for no more than 30 days after the expiration date of the fur dealer's license. Coyote furs, pelts, skins, or carcasses may be possessed without limit in time.

(f) Each fur dealer shall purchase or acquire only those bobcat and swift fox pelts that have been tagged with a department export tag or with the official export tag provided by the wildlife agency of another state.

(g) Each fur dealer shall maintain a furharvester record book and a fur dealer book provided by the

department. Entries shall be made in the appropriate record book whenever receiving, shipping, or otherwise disposing of furs, pelts, skins, or carcasses of furbearing animals or coyotes. Each record book, all receipts, and all furs, pelts, skins, and carcasses in the fur dealer's possession shall be subject to inspection upon demand by any conservation officer. Each record book and all receipts shall be subject to copying upon demand by any conservation officer. Each fur dealer shall forward all record books to the department annually on or before April 1.

(1) The furharvester record book shall include the following information:

(A) The name of fur dealer;

(B) residential address;

(C) fur dealer license number;

(D) the date of each receipt of furs, pelts, skins, or carcasses;

(E) name, address, and license number of each person from whom furs, pelts, skins, or carcasses were acquired;

(F) name of the state where the furs, pelts, skins, or carcasses were harvested;

(G) number of each species of furs, pelts, skins, or carcasses acquired; and

(H) any other relevant information as required by the secretary.

(2) The fur dealer record book shall include the following information:

(A) The name of fur dealer;

(B) residential address;

(C) fur dealer license number;

(D) date of each receipt or disposal of furs, pelts, skins, or carcasses;

(E) name, address, and fur dealer license number of each fur dealer from which furs, pelts, skins, or carcasses are acquired or to which they are sold;

(F) number and species of furs, pelts, skins, or carcasses acquired or sold; and

(G) any other relevant information as required by the secretary.

(h) In addition to other penalties prescribed by law, a fur dealer's license may be refused issuance or revoked by the secretary under any of the following circumstances:

(1) The application is incomplete or contains false information.

(2) The fur dealer fails to meet reporting requirements.

(3) The fur dealer violates license conditions. (Authorized by K.S.A. 32-807 and K.S.A 32-942; implementing K.S.A. 32-807 and K.S.A. 32-942; effective March 19, 1990; amended Sept. 4, 2009.)

## Article 7.—FISH AND FROGS

**115-7-1. Fishing; legal equipment, methods of taking, and other provisions.** (a) Legal equipment and methods for taking sport fish shall be the following:

(1) Fishing lines with not more than two baited hooks or artificial lures per line;

(2) trotlines;

(3) setlines;

(4) tip-ups;

(5) using a person's hand or hands for flathead catfish in waters designated as open to hand fishing, subject to the following requirements:

(A) An individual hand fishing shall not use hooks, snorkeling or scuba gear, or other man-made devices while engaged in hand fishing;

(B) an individual hand fishing shall not possess fishing equipment, other than a stringer, while engaged in hand fishing and while on designated waters or adjacent banks;

(C) stringers shall not be used as an aid for hand fishing and shall not be used until the fish is in possession at or above the surface of the water;

(D) each individual hand fishing shall take fish only from natural objects or natural cavities;

(E) an individual hand fishing shall not take fish from any man-made object, unless the object is a bridge, dock, boat ramp, or riprap, or other similar structure or feature;

(F) no part of any object shall be disturbed or altered to facilitate the harvest of fish for hand fishing; and

(G) an individual hand fishing shall not take fish within 150 yards of any dam;

(6) snagging for paddlefish in waters posted or designated by the department as open to the snagging of paddlefish, subject to the following requirements:

(A) Each individual with a filled creel limit shall cease all snagging activity in the paddlefish snagging area until the next calendar day; and

(B) each individual taking paddlefish to be included in the creel and possession limit during the snagging season shall sign the carcass tag, record the county, the date, and the time of harvest on the carcass tag, and attach the carcass tag to the lower jaw of the carcass immediately following the harvest and before moving the carcass from the site of the harvest;

(7) floatlines in waters posted or designated by the department as open to floatline fishing, which shall be subject to the following requirements:

(A) All floatlines shall be under the immediate supervision of the angler setting the floats. "Immediate supervision" shall mean that the angler has visual contact with the floatlines set while the angler is on the water body where the floatlines are located;

(B) all floatlines shall be removed when float fishing ceases;

(C) floatlines shall not contain more than one line per float, with not more than two baited hooks per line;

(D) all float material shall be constructed only from plastic, wood, or foam and shall be a closed-cell construction. A "closed-cell" construction shall mean a solid body incapable of containing water;

(8) bow and arrow with a barbed head and a line attached from bow to arrow; and

(9) crossbow and arrow with a barbed head and a line attached from arrow to crossbow.

(b) Legal equipment and methods for taking non-sport fish shall be the following:

(1) Fishing lines with not more than two baited hooks or artificial lures per line;

(2) trotlines;

(3) setlines;

(4) tip-ups;

(5) bow and arrow with a barbed head and a line attached from bow to arrow;

(6) crossbow and arrow with a barbed head and a line attached from arrow to crossbow;

(7) spear gun, without explosive charge, while skin or scuba diving. The spear, without explosive charge, shall be attached to the speargun or person by a line;

(8) gigging;

(9) snagging in waters posted by the department as open to snagging; and

(10) floatlines in waters posted or designated by the department as open to floatline fishing, which shall be subject to the requirements specified in paragraphs (a)(7)(A) through (D).

(c) Dip nets and gaffs may be used to land any legally caught or hooked fish.

(d) Fish may be taken by any method designated by the secretary when a fish salvage order has been issued by the secretary through public notice or posting the area open to fish salvage.

(e) Fish may be taken with the aid of boats, depth finders, artificial lights, sound attracters, and scents.

(f) Fish may be taken by legal means from vehicles.

(g) The following additional requirements shall apply in the flowing portions and backwaters of the Missouri river and in any oxbow lake through which the Kansas-Missouri boundary passes:

(1) Each individual shall place all legally caught fish on a stringer, cord, cable, or chain, or in a basket, sack, cage, or other holding device, separate from those fish caught by any other individual.

(2) The equipment and methods specified in paragraphs (b)(5) and (b)(6) shall be legal only from sunrise to midnight.

(3) The equipment and method specified in paragraphs (a)(7), (b)(9), and (b)(10) shall be legal only from sunrise to sunset.

(h) The equipment and method specified in paragraphs (a)(8) and (a)(9) shall be legal only for the following species of sport fish where no size limit exists for any of these species of fish:

(1) Blue catfish;

(2) channel catfish; and

(3) flathead catfish.

(i) Optical scopes or sights that project no visible light toward the target and do not electronically amplify visible or infrared light shall be valid for use on bows and crossbows. (Authorized by K.S.A. 32-807; implementing K.S.A. 32-807 and K.S.A. 2009 Supp. 32-1002; effective Dec. 26, 1989; amended Feb. 10, 1992; amended Oct. 1, 1999; amended Dec. 8, 2000; amended Sept. 27, 2002; amended Nov. 29, 2004; amended Nov. 27, 2006; amended Nov. 16, 2007; amended Dec. 1, 2008; amended Nov. 20, 2009; amended April 16, 2010; amended Nov. 19, 2010.)

**115-7-3. Fish; taking and use of bait fish or minnows.** (a) Bait fish may be taken for non-commercial purposes by any of the following means:

(1) A seine not longer than 15 feet and four feet deep with mesh not larger than ¼ inch;

(2) a fish trap with mesh not larger than ¼ inch and a throat not larger than one inch in diameter;

(3) a dip or cast net with mesh not larger than ⅜ inch; or

(4) a fishing line.

(b) Each fish trap shall be tagged with the operator's name and address when the fish trap is in use.

(c) Bait fish taken, except gizzard shad, shall not exceed 12 inches in total length.

(d) The possession limit shall be 500 bait fish.

(e) Wild-caught bait fish may be used as live bait only within the pool of a lake or impoundment where taken. If taken on a flowing stream or river, the wild-caught bait fish shall be used on that flowing stream or river and shall not be transported upstream across any dam or natural barrier.

This regulation shall be effective on and after January 1, 2012. (Authorized by and implementing K.S.A. 32-807; effective Sept. 10, 1990; amended Nov. 20, 2009; amended Jan. 1, 2012.)

**115-7-6. Fishing; bait.** (a) The following types of bait may be used for the taking of fish, frogs, or turtles by legal means and methods:

(1) Artificial lures;

(2) bait fish;

(3) prepared bait;

(4) vegetable material;

(5) material or artificial matter attached to a hook; and

(6) other wildlife, except those species specifically prohibited as bait and those species listed in K.A.R. 115-15-1 or K.A.R. 115-15-2.

(b) Animal, vegetable, and other nontoxic material may be used as fish attractants.

This regulation shall be effective on and after January 1, 2012. (Authorized by and implementing K.S.A. 32-807; effective Sept. 10, 1990; amended Jan. 1, 2012.)

**15-7-8.** This regulation shall be revoked on and after January 1, 2011. (Authorized by K.S.A. 32-807; implementing K.S.A. 32-807 and K.S.A. 2006 Supp. 32-1002; effective Nov. 27, 2006; amended Nov. 16, 2007; amended April 11, 2008; revoked Jan. 1, 2011.)

**115-7-9. Weigh-in black bass fishing tournaments.** (a) Each individual or organization conducting a weigh-in black bass fishing tournament shall ensure that all of the following minimum requirements are met when conducting weigh-in procedures:

(1) One individual shall provide work crew support for each 10 registered anglers.

(2) One weigh-in tank filled with an electrolyte chemical-water solution and fitted with recirculation and aeration accessories shall be maintained for each 25 registered anglers.

(3) If the water temperature at the tournament location is 75 degrees Fahrenheit or cooler, the water contained in the weigh-in tank shall be maintained at the same temperature as that of the tournament location water.

(4) If the water temperature at the tournament location is warmer than 75 degrees Fahrenheit, the water in the weigh-in tank shall be maintained at a temperature that is between five and 10 degrees Fahrenheit cooler than the tournament location water but shall not exceed 85 degrees Fahrenheit at any time.

(5) Not more than four anglers shall be in the weigh-in line at any one time.

(6) Each weigh-in bag containing water from the well of the vessel shall be reinforced, reusable, and capable of holding up to 15 pounds of live fish and two gallons of water.

(7) The weigh-in site shall meet the following requirements:

(A) Be located near the vessel mooring site and the release site, vehicle, or vessel; and

(B) be located at all times under a portable awning, in an event tent, or in the shade.

(8) Only fish that meet the special length limit for the specific body of water where the weigh-in tournament is being conducted shall be weighed within the period beginning June 16 and ending August 31.

(b) Each individual or organization conducting the tournament shall ensure that all of the following minimum requirements are met when conducting the release procedures:

(1) The direct release of fish into the tournament location water after the weigh-in shall not be permitted.

(2) If the tournament is conducted with release tubes, vehicles, or vessels, the holding tanks shall contain a one-half percent noniodized salt solution.

(3) If the tournament is conducted without release tubes, vehicles, or vessels, the fish shall be dipped, for a period ranging from 10 seconds to 15 seconds before release, in a three percent noniodized salt solution having the same temperature as that of the water in the weigh-in tank.

(4) The release site shall meet the following conditions:

(A) Be located in water reaching at least three feet in depth with good circulation and a hard bottom; and

(B) be located away from vessel traffic and public-use vessel ramps.

(c) Each tournament participant shall meet the following requirements:

(1) Ensure that each well in the participant's vessel used in the tournament is properly working and contains an electrolyte chemical-water solution; and

(2) ensure that the participant's vessel used in the tournament is cleaned before and after the tournament in compliance with department guidelines regarding the prevention of aquatic nuisance species.

(d) The provisions of paragraph (a)(7)(A) may be waived by the secretary within the period beginning September 1 and extending through June 15 if the proximity proposed to the release site does not pose an inordinate risk to the wildlife resource and all other requirements of this regulation are met. (Authorized by K.S.A. 32-807; implementing K.S.A. 32-807 and K.S.A. 2010 Supp. 32-1002; effective Jan. 1, 2008; amended April 11, 2008; amended Nov. 19, 2010; amended May 20, 2011.)

**115-7-10. Fishing; special provisions.** (a) A person who takes any fish from a body of water shall not tag, mark, brand, clip any fin of, mutilate, or otherwise disfigure any fish in a manner that would prevent species identification, examination of fins, recovery of tags, or determination of sex, age, or length of the fish before releasing the fish back into the body of water, unless a permit authorizing this activity has been issued by the department.

(b) No person may possess any live fish upon departure from any designated aquatic nuisance body of water. Designated aquatic nuisance waters shall be those specified in the department's "Kansas designated aquatic nuisance waters tables," dated August 25, 2011, which is hereby adopted by reference.

This regulation shall be effective on and after January 1, 2012. (Authorized by and implementing K.S.A. 32-807; effective Nov. 20, 2009; amended Jan. 1, 2012.)

## Article 8.—DEPARTMENT LANDS AND WATERS

**115-8-1. Department lands and waters: hunting, furharvesting, and discharge of firearms.** (a) Subject to provisions and restrictions as established by posted notice or as specified in the document adopted by reference in subsection (e), the following activities shall be allowed on department lands and waters:

(1) Hunting during open seasons for hunting on lands and waters designated for public hunting;

(2) furharvesting during open seasons for furharvesting on lands and waters designated for public hunting and other lands and waters as designated by the department;

(3) target practice in areas designated as open for target practice; and

(4) noncommercial training of hunting dogs.

(b) Other than as part of an activity under subsection (a), the discharge of firearms and other sport hunting equipment capable of launching projectiles shall be allowed on department lands and waters only as specifically authorized in writing by the department.

(c) The discharge of fully automatic rifles or fully automatic handguns on department lands and waters shall be prohibited.

(d) Department lands and waters shall be open neither for commercial rabbit and hare furharvesting nor for commercial harvest of amphibians and reptiles.

(e) The department's "KDWPT fisheries and wildlife division public land special use restrictions," dated July 18, 2011, is hereby adopted by reference. (Authorized by K.S.A. 32-807; implementing K.S.A. 32-807; effective Dec. 4, 1989; amended July 13, 2001; amended May 16, 2008; amended May 15, 2009; amended July 23, 2010; amended Nov. 14, 2011.)

**115-8-6. Fishing, fish bait, and seining.** Fishing and the taking of fishing bait shall be allowed on department lands and waters, subject to the following general restrictions:

(a) Fishing shall be prohibited at boat ramps and boat docks closed to fishing by posted notice.

(b) Fishing shall be prohibited at swimming areas and swimming beaches that are posted as swimming areas or swimming beaches and delineated by buoys or other markers.

(c) Minnows, bait fish, and other fishing bait may be taken for use as fishing bait only on a noncommercial basis and may be used only in the department-managed water where taken.

(d) Seining in department-managed waters shall be prohibited.

(e) The cleaning of fish in state parks shall occur only at designated fish-cleaning stations or other locations as established by the department.

(f) The use of trot lines and set lines shall be

prohibited in the waters of Crawford state park, Meade state park, Scott state park, and all department-managed impoundments under 1,201 surface acres in size.

(g) Additional restrictions may be established by posted notice.

This regulation shall be effective on and after January 1, 2012. (Authorized by and implementing K.S.A. 32-807; effective Dec. 4, 1989; amended Dec. 28, 1992; amended Nov. 29, 1999; amended Nov. 20, 2009; amended Jan. 1, 2012.)

**115-8-9. Camping.** (a) Camping shall be allowed only in designated areas on department lands and waters and shall be subject to provisions or restrictions as established by posted notice.

(b) All campers and camping units shall be limited to a stay of not more than 14 consecutive days in a campground unless otherwise established by posted notice or as otherwise authorized by the department.

(c) Upon completing 14 consecutive days in a campground, each person and all property of each person shall be absent from that campground for at least five days.

(d) One extended camping stay of not more than 14 additional consecutive days at the same campground may be granted through a written permit issued by the department if vacant camping sites are available. Upon completing 28 consecutive days at the same campground, each person and all property of each person shall be absent from the department-managed area for at least five days, except as authorized in subsection (e).

(e) Long-term camping in state parks shall be allowed on designated camping sites for six consecutive months through a written permit issued by the department if vacant long-term camping sites are available. Upon completing six consecutive months at the same state park, each person and all property of each person shall be absent from the state park for at least five days.

(f) Unless authorized by the department or located on a prepaid state park campsite reserved through the department's electronic reservation system, camping units shall not be left unoccupied in a campground for more than 24 hours.

(g) Unless authorized by the department or located on a prepaid state park campsite reserved through the department's electronic reservation system, vehicles or other property shall not be left unattended upon department lands or waters for more than 24 hours.

(h) Except as authorized by the department, any property unoccupied or unattended for more than 48 hours, unless the property is on a prepaid state park campsite reserved through the department's electronic reservation system, and any property abandoned upon department lands or waters shall be subject to removal by the department and may be reclaimed by the owner upon contacting the department.

(i) A campsite shall not be left unoccupied in a campground for more than 24 hours, unless the department so authorizes or the campsite is a prepaid state park campsite reserved through the department's electronic reservation system. (Authorized by and implementing K.S.A. 32-807; effective March 19, 1990; amended Feb. 10, 1992; amended Oct. 12, 1992; amended Sept. 12, 2008; amended Nov. 14, 2011.)

**115-8-10. Pets; provisions and restrictions.** (a) Pets shall be allowed but shall not be permitted to enter into any of the following:

(1) Areas that are posted as swimming beaches or swimming areas that are delineated by buoys or other markers;

(2) public buildings, except designated public-use department cabins; or

(3) public structures.

(b) Pets shall be controlled at all times by using any of the following:

(1) Hand-held lead not more than 10 feet in length;

(2) tethered chain or leash not more than 10 feet in length. The pet shall be under the direct observation of and control by the owner; or

(3) confined to a cage, pen, vehicle, trailer, privately owned cabin, or designated public-use department cabin.

(c) The requirements of subsection (b) shall not apply to dogs while being used during and as a part of any of the following acts or activities:

(1) Hunting during open hunting seasons on lands or waters open for hunting;

(2) authorized field trial events;

(3) noncommercial training of hunting dogs subject to any provisions or restrictions as established by posted notice;

(4) special events or activities as authorized by the department; or

(5) working as a "guide dog," "hearing assistance dog," or "service dog," as defined in K.S.A. 39-1113 and amendments thereto.

(d) Guide dogs, hearing assistance dogs, and

service dogs shall not be restricted by the requirements of subsection (a). (Authorized by and implementing K.S.A. 32-807; effective Dec. 4, 1989; amended Sept. 12, 2008; amended Nov. 14, 2011.)

**115-8-12. Stocking or releasing of wildlife.** Wildlife may be stocked or released on department lands or waters, navigable publicly owned rivers, and federal reservoirs only as authorized by any of the following:

(a) A written agreement issued by the department;

(b) a permit issued by the department;

(c) a department-approved management plan;

(d) regulations; or

(e) posted notice.

This regulation shall be effective on and after January 1, 2012. (Authorized by and implementing K.S.A. 32-807; effective Dec. 4, 1989; amended July 13, 2001; amended Jan. 1, 2012.)

**115-8-13. Motorized vehicles and aircraft; authorized operation.** (a) Motorized vehicles shall be operated only on department roads and parking areas, except as otherwise established by this regulation or posted notice or as approved by the secretary.

(b) Motorized vehicles shall be operated at speeds not in excess of 25 miles per hour or as otherwise established by posted notice.

(c) Motorized vehicles shall be operated in accordance with load limits as established by posted notice for roads or bridges.

(d) Motorized aircraft landings and takeoffs shall be allowed in designated areas only or as authorized by the secretary.

(e) Except as otherwise specified in K.A.R. 115-8-1, posted notice, or this regulation, motorized electric or gasoline-powered two-wheeled vehicles, all-terrain vehicles, work-site utility vehicles, golf carts, and snowmobiles may be operated on ice-covered department waters only for the purpose of ice fishing from one-half hour before sunrise to one-half hour after sunset. These vehicles shall enter onto the ice only from boat ramps and points of entry as established by posted notice.

(f) (1) Except as provided in this regulation, each motorized vehicle that meets either of the following conditions shall be prohibited from being operated on all department lands and roads:

(A) Is not registered with one of the following:

(i) The director of vehicles pursuant to K.S.A. 8-127 and amendments thereto; or

(ii) the corresponding authority in another state or country; or

(B) is unlawful to be operated on any interstate highway, federal highway, or state highway pursuant to K.S.A. 8-15,100 and K.S.A. 8-15,109, and amendments thereto.

(2) The term "motorized vehicle" shall include cars, trucks, all-terrain vehicles, work-site utility vehicles, golf carts, go-carts, and electric or gasoline-powered two-wheeled vehicles.

(g) Any person with a disability, as defined by K.S.A. 8-1,124 and amendments thereto, may annually request a permit from the secretary to utilize a motorized vehicle for accessing certain department lands and roads to provide access to recreational opportunities that would otherwise be unavailable to disabled persons. Each written request shall include the following:

(1) The name, address, and telephone number of the applicant;

(2) the nature of the disability;

(3) the name and location of the property to be accessed;

(4) the date or duration of the entry requested; and

(5) documentation of that person's disability in the form of a disabled accessible parking placard, disabled motor vehicle license plate, or disabled identification card issued by the director of vehicles of the department of revenue pursuant to K.S.A. 8-1,125 and amendments thereto, or similar documentation issued by another state.

(h) No person who is in possession of a motorized vehicle and has a permit to operate the motorized vehicle on department lands and roads shall perform either of the following:

(1) Allow another person to operate the vehicle on department lands and roads unless that other person has a permit issued by the department; or

(2) operate the vehicle on department lands and roads unless that person is in possession of a permit issued by the department.

(i) Each permit issued by the department that authorizes the operation of a motorized vehicle on department lands and roads shall expire on the last day of the calendar year in which the permit was issued, unless otherwise specified on the permit.

(j) A permit that authorizes the operation of a motorized vehicle on department lands and roads shall not be issued or shall be revoked by the secretary for any of the following reasons:

(1) The disability does not meet the requirements for the permit.

(2) The application is incomplete or contains false information.

(3) The disability under which the permit was issued no longer exists.

(4) The documentation of disability in the form of a disabled accessible parking placard, disabled motor vehicle license plate, or disabled identification card issued by the director of vehicles of the department of revenue pursuant to K.S.A. 8-1,125 and amendments thereto, or similar documentation issued by another state, has expired.

(5) The permit holder fails to comply with the terms and limitations of the permit or with the requirements specified in this regulation.

(6) The issuance or continuation of the permit would be contrary to the preservation of habitat or species located on or in department lands or waters.

(k) This regulation shall not apply to any motorized vehicle that is owned by the department or a designated agent and is used in the operation and maintenance of department lands and roads. (Authorized by and implementing K.S.A. 32-807; effective Dec. 4, 1989; amended Feb. 8, 2008; amended Sept. 9, 2011.)

## Article 15.—NONGAME, THREATENED AND ENDANGERED SPECIES

**115-15-1. Threatened and endangered species; general provisions.** (a) The following species shall be designated endangered within the boundaries of the state of Kansas.

(1) Invertebrates

Flat floater mussel, *Anodonta suborbiculata* (Say, 1831)

Rabbitsfoot mussel, *Quadrula cylindrica* (Say, 1817)

Western fanshell mussel, *Cyprogenia aberti* (Conrad, 1850)

Neosho mucket mussel, *Lampsilis rafinesqueana* (Frierson, 1927)

Elktoe mussel, *Alasmidonta marginata* (Say, 1818)

Ellipse mussel, *Venustaconcha ellipsiformis* (Conrad, 1836)

Slender walker snail, *Pomatiopsis lapidaria* (Say, 1817)

Scott optioservus riffle beetle, *Optioservus phaeus* (White, 1978)

American burying beetle, *Nicrophorus americanus* (Olivier, 1890)

Mucket, *Actinonaias ligamentina* (Lamarck, 1819)

(2) Fish

Arkansas River shiner, *Notropis girardi* (Hubbs and Ortenburger, 1929)

Pallid sturgeon, *Scaphirhynchus albus* (Forbes and Richardson, 1905)

Sicklefin chub, *Macrhybopsis meeki* (Jordan and Evermann, 1896)

Arkansas River speckled chub, *Macrhybopsis tetranema* (Gilbert, 1886)

Silver chub, *Macrhybopsis storeriana* (Kirtland, 1845)

(3) Amphibians

Cave salamander, *Eurycea lucifuga* (Rafinesque, 1822)

Many-ribbed salamander, *Eurycea multiplicata* (Cope, 1869)

Grotto salamander, *Eurycea spelaea* (Stejneger, 1892)

(4) Birds

Black-capped vireo, *Vireo atricapilla* (Woodhouse, 1852)

Eskimo curlew, *Numenius borealis* (Forster, 1772)

Least tern, *Sterna antillarum* (Lesson, 1847)

Whooping crane, *Grus americana* (Linnaeus, 1758)

(5) Mammals

Black-footed ferret, *Mustela nigripes* (Audubon and Bachman, 1851)

Gray myotis, *Myotis grisescens* (A.H. Howell, 1909)

(b) The following species shall be designated threatened within the boundaries of the state of Kansas.

(1) Invertebrates

Rock pocketbook mussel, *Arcidens confragosus* (Say, 1829)

Flutedshell mussel, *Lasmigona costata* (Rafinesque, 1820)

Butterfly mussel, *Ellipsaria lineolata* (Rafinesque, 1820)

Ouachita kidneyshell mussel, *Ptychobranchus occidentalis* (Conrad, 1836)

Sharp hornsnail, *Pleurocera acuta* (Rafinesque, 1831)

Delta hydrobe, *Probythinella emarginata* (Kuster, 1852)

(2) Fish

Arkansas darter, *Etheostoma cragini* (Gilbert, 1885)

Chestnut lamprey, *Ichthyomyzon castaneus* (Girard, 1858)

Flathead chub, *Platygobio gracilis* (Richardson, 1836)

Hornyhead chub, *Nocomis biguttatus* (Kirtland, 1840)

Neosho madtom, *Noturus placidus* (Taylor, 1969)

Redspot chub, *Nocomis asper* (Lachner and Jenkins, 1971)

Silverband shiner, *Notropis shumardi* (Girard, 1856)

Blackside darter, *Percina maculata* (Girard, 1859)

Sturgeon chub, *Macrhybopsis gelida* (Girard, 1856)

Western silvery minnow, *Hybognathus argyritis* (Girard, 1856)

Topeka shiner, *Notropis topeka* (Gilbert, 1884)

Shoal chub, *Macrhybopsis hyostoma* (Gilbert, 1884)

Plains minnow, *Hybognathus placitus* (Girard, 1856)

(3) Amphibians

Eastern newt, *Notophthalmus viridescens* (Rafinesque, 1820)

Longtail salamander, *Eurycea longicauda* (Green, 1818)

Eastern narrowmouth toad, *Gastrophryne carolinensis* (Holbrook, 1836)

Green frog, *Rana clamitans* (Latreille, 1801)

Spring peeper, *Pseudacris crucifer* (Wied-Neuwied, 1838)

Strecker's chorus frog, *Pseudacris streckeri* (Wright and Wright, 1933)

Green toad, *Bufo debilis* (Girard, 1854)

(4) Reptiles

Broadhead skink, *Eumeces laticeps* (Schneider, 1801)

Checkered garter snake, *Thamnophis marcianus* (Baird and Girard, 1853)

Texas blind snake, *Leptotyphlops dulcis* (Baird and Girard, 1853)

Redbelly snake, *Storeria occipitomaculata* (Storer, 1839)

Longnose snake, *Rhinocheilus lecontei* (Baird and Girard, 1853)

Smooth earth snake, *Virginia valeriae* (Baird and Girard, 1853)

(5) Birds

Piping plover, *Charadrius melodus* (Ord, 1824)

Snowy plover, *Charadrius alexandrinus* (Linnaeus, 1758)

(6) Mammals

Spotted skunk, *Spilogale putorius* (Linnaeus, 1758)

(7) Turtles

Common map turtle, *Graptemys geographica* (Le Sueur, 1817)

(c) A threatened or endangered species taken during established trapping seasons, authorized commercial wildlife operations, fishing by hook and line, bait fish seining, or other lawful activity shall not be unlawfully taken if immediately released.

(d) Any threatened or endangered species in possession before the effective date of this regulation and not prohibited by any previous regulation of the department or national listings may be retained in possession if either of the following conditions is met:

(1) An application of affidavit to that effect has been filed with and approved by the secretary before January 1, 1990 that states the circumstances of how the species came into possession.

(2) Possession of the animal has been previously approved by the department. (Authorized by K.S.A. 32-960 and K.S.A. 32-963; implementing K.S.A. 32-960, K.S.A. 32-961, K.S.A. 32-963, K.S.A. 32-1010, and K.S.A. 32-1011; effective Oct. 30, 1989; amended Aug. 31, 1992; amended Nov. 29, 1999; amended Feb. 18, 2005; amended July 24, 2009.)

**115-15-2. Nongame species; general provisions.** (a) The following species shall be designated nongame species in need of conservation within the boundaries of the state of Kansas.

(1) Invertebrates

Cylindrical papershell mussel, *Anodontoides ferussacianus* (I. Lea, 1834)

Snuffbox mussel, *Epioblasma triquetra* (Rafinesque, 1820)
Wartyback mussel, *Quadrula nodulata* (Rafinesque, 1820)
Spike mussel, *Elliptio dilatata* (Rafinesque, 1820)
Wabash pigtoe mussel, *Fusconaia flava* (Rafinesque, 1820)
Fatmucket mussel, *Lampsilis siliquoidea* (Barnes, 1823)
Yellow sandshell mussel, *Lampsilis teres* (Rafinesque, 1820)
Washboard mussel, *Megalonaias nervosa* (Rafinesque, 1820)
Round pigtoe mussel, *Pleurobema sintoxia* (Conrad, 1834)
Creeper mussel, *Strophitus undulatus* (Say, 1817)
Fawnsfoot mussel, *Truncilla donaciformis* (I. Lea, 1828)
Deertoe mussel, *Truncilla truncata* (Rafinesque, 1820)
Ozark emerald dragonfly, *Somatochlora ozarkensis* (Bird, 1833)
Gray petaltail dragonfly, *Tachopteryx thoreyi* (Hagen in Selys, 1857)
Prairie mole cricket, *Gryllotalpa major* (Saussure, 1874)
Neosho midget crayfish, *Orconectes macrus* (Williams, 1952)

(2) Fish
Banded darter, *Etheostoma zonale* (Cope, 1868)
Banded sculpin, *Cottus carolinae* (Gill, 1861)
Black redhorse, *Moxostoma duquesnei* (Lesueur, 1817)
Blue sucker, *Cycleptus elongatus* (Lesueur, 1817)
Blacknose dace, *Rhinichthys atratulus* (Hermann, 1804)
Bluntnose darter, *Etheostoma chlorosoma* (Hay, 1881)
Brassy minnow, *Hybognathus hankinsoni* (Hubbs, 1929)
Gravel chub, *Erimystax x-punctatus* (Hubbs and Crowe, 1956)
Greenside darter, *Etheostoma blennioides* (Rafinesque, 1819)
Highfin carpsucker, *Carpiodes velifer* (Rafinesque, 1820)
Northern hog sucker, *Hypentelium nigricans* (Lesueur, 1817)
Ozark minnow, *Notropis nubilus* (Forbes, 1878)
River darter, *Percina shumardi* (Girard, 1859)
River redhorse, *Moxostoma carinatum* (Cope, 1870)
River shiner, *Notropis blennius* (Girard, 1856)
Slough darter, *Etheostoma gracile* (Girard, 1859)
Speckled darter, *Etheostoma stigmaeum* (Jordan, 1877)
Spotfin shiner, *Cyprinella spiloptera* (Cope, 1868)
Spotted sucker, *Minytrema melanops* (Rafinesque, 1820)
Stippled darter, *Etheostoma punctulatum* (Agassiz, 1854)
Tadpole madtom, *Noturus gyrinus* (Mitchill, 1817)
Brindled madtom, *Noturus miurus* (Jordan, 1877)
Bigeye shiner, *Notropis boops* (Gilbert, 1884)
Redfin darter, *Etheostoma whipplei* (Girard, 1859)
Lake Sturgeon, *Acipenser fulvescens* (Rafinesque, 1817)
Striped shiner, *Luxilus chrysocephalus* (Rafinesque, 1820)
Common shiner, *Luxilus cornutus* (Mitchill, 1817)
Southern Redbelly Dace, *Phoxinus erythrogaster* (Rafinesque, 1820)
Cardinal Shiner, *Luxilus cardinalis* (Mayden, 1988)
Johnny Darter, *Etheostoma nigrum* (Rafinesque, 1820)

(3) Amphibians
Red-spotted toad, *Bufo punctatus* (Baird and Girard, 1852)
Crawfish frog, *Rana areolata* (Baird and Girard, 1852)

(4) Reptiles
Rough earth snake, *Virginia striatula* (Linnaeus, 1766)
Western hognose snake, *Heterodon nasicus* (Baird and Girard, 1852)
Timber rattlesnake, *Crotalus horridus* (Linnaeus, 1758)
Eastern hognose snake, *Heterodon platirhinos* (Latreille, 1801)

Glossy snake, *Arizona elegans* (Kennicott, 1859)
Chihuahuan night snake, *Hypsiglena jani* (Duges, 1865)

(5) Birds
Bobolink, *Dolichonyx oryzivorus* (Linnaeus, 1758)
Cerulean warbler, *Dendroica cerulea* (Wilson, 1810)
Curve-billed thrasher, *Toxostoma curvirostre* (Swainson, 1827)
Ferruginous hawk, *Buteo regalis* (Gray, 1844)
Golden eagle, *Aquila chrysaetos* (Linnaeus, 1758)
Short-eared owl, *Asio flammeus* (Pontoppidan, 1763)
Henslow's sparrow, *Ammodramus henslowii* (Audubon, 1829)
Ladder-backed woodpecker, *Picoides scalaris* (Wagler, 1829)
Long-billed curlew, *Numenius americanus* (Bechstein, 1812)
Mountain plover, *Charadrius montanus* (Townsend, 1837)
Chihuahuan raven, *Corvus cryptoleucus* (Couch, 1854)
Black tern, *Chlidonias niger* (Linnaeus, 1758)
Black rail, *Laterallus jamaicensis* (Gmelin, 1789)
Whip-poor-will, *Caprimulgus vociferus* (Wilson, 1812)
Yellow-throated warbler, *Dendroica dominica* (Linnaeus, 1776)

(6) Mammals
Franklin's ground squirrel, *Spermophilus franklinii* (Sabine, 1822)
Pallid bat, *Antrozous pallidus* (LeConte, 1856)
Southern bog lemming, *Synaptomys cooperi* (Baird, 1858)
Southern flying squirrel, *Glaucomys volans* (Linnaeus, 1758)
Texas mouse, *Peromyscus attwateri* (J.A. Allen, 1895)
Townsend's big-eared bat, *Corynorhinus townsendii* (Cooper, 1837)

(7) Turtles
Alligator snapping turtle, *Macrochelys temminckii* (Troost, in Harlan, 1835)

(b) Any nongame species in need of conservation taken during established trapping seasons, authorized commercial wildlife operations, fishing by hook and line, bait fish seining, or other lawful activity shall not be unlawfully taken if immediately released.

(c) Any nongame species in need of conservation in possession before the effective date of this regulation and not prohibited by any previous regulation of the department or national listings may be retained in possession if either of the following conditions is met:

(1) An application of affidavit to that effect has been filed with and approved by the secretary before January 1, 1990, that states the circumstances of how the species came into possession.

(2) Possession of the animal has been previously approved by the department. (Authorized by K.S.A. 32-959 and K.S.A. 32-963; implementing K.S.A. 32-959 and K.S.A. 2008 Supp. 32-1009; effective Oct. 30, 1989; amended Aug. 31, 1992; amended Nov. 29, 1999; amended Feb. 18, 2005; amended July 24, 2009.)

## Article 16.—WILDLIFE DAMAGE CONTROL

**115-16-3. Nuisance bird control permit; application, provisions, and requirements.** (a) The term "nuisance birds" shall include those species specified in the department's "Kansas nuisance bird species table," dated May 9, 2011, which is hereby adopted by reference.

(b) Nuisance birds may be controlled when found depredating or about to depredate upon ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance.

(c) A nuisance bird control permit shall be required to use any lethal method of control that involves poisons or chemicals for controlling nuisance birds other than the feral pigeon, English sparrow, or European starling.

(d) Any person may apply to the secretary for a nuisance bird control permit. The application shall be submitted on forms provided by the department. Each applicant shall provide the following information:

(1) The applicant's name;
(2) the applicant's address;
(3) the applicant's telephone number;
(4) the location of the nuisance bird problem;
(5) a description of the problem;

(6) the species of birds involved;

(7) the proposed method of control;

(8) the length of time for which the permit is requested; and

(9) any other relevant information as required by the secretary.

(e) Issuance of a permit may be denied by the secretary if any of the following conditions is met:

(1) The permit application is unclear or incomplete.

(2) The need for nuisance bird control has not been established.

(3) Use of the poison or chemical would pose inordinate risk to the public, non-target wildlife, or the environment.

(f) Each permit shall be valid only for the period specified on the permit, which shall not exceed one year.

(g) A permit may be extended by the secretary upon request and justification by the permittee. However, the combined total of the original and the extended time periods shall not exceed one year.

(h) Each permit shall be valid only for the locations specified in the permit.

(i) In addition to other penalties as prescribed by law, a nuisance bird control permit may be revoked by the secretary if either of the following conditions is met:

(1) The permit was secured through false representation.

(2) The permittee fails to meet permit requirements or violates permit conditions.

(j) A nuisance bird control permit shall not be required to control nuisance bird problems as described in subsection (b) if the control method is nonlethal or if the control method involves use of firearms, air rifles, air pistols, archery equipment, or falconry.

(k) Nuisance birds killed and the plumage of nuisance birds killed during nuisance bird control may be possessed, transported, and otherwise disposed of or utilized, except that nuisance birds killed and the plumage of nuisance birds killed during nuisance bird control shall not be sold or offered for sale.

(l) Nontoxic shot and bullets shall be required for the taking of nuisance birds pursuant to this regulation, except when using an air rifle, air pistol, or .22 caliber rimfire firearm. (Authorized by K.S.A. 32-807 and K.S.A. 32-955; implementing K.S.A. 32-955, K.S.A. 2010 Supp. 32-1002, and K.S.A. 2010 Supp. 32-1003; effective Sept. 10, 1990; amended Aug. 31, 1992; amended Sept. 9, 2011.)

**115-16-5. Wildlife control permit; operational requirements.** (a) Each person holding a valid wildlife control permit issued according to K.A.R. 115-16-6, and each person assisting the permittee while under the constant and direct supervision and in the constant presence of the permittee, shall be authorized to take, transport, release, and euthanize wildlife subject to the restrictions described in this regulation and on the permit.

(b) Wildlife may be taken under the authorization of a wildlife control permit only when one or more of the following circumstances exist:

(1) The wildlife is found in or near buildings.

(2) The wildlife is destroying or about to destroy property.

(3) The wildlife is creating a public health or safety hazard or other nuisance.

(c) Subject to the restrictions described in this regulation and on the permit, a wildlife control permit shall allow the taking of the following species, notwithstanding other season, open unit, or limit restrictions that may be established by the department:

(1) Furbearers;

(2) small game;

(3) reptiles;

(4) amphibians;

(5) coyotes;

(6) nongame mammals, except house mice and Norway rats;

(7) pigeons, English sparrows, and starlings; and

(8) migratory birds and waterfowl, subject to K.S.A. 32-1008, and amendments thereto.

(d) Subject to applicable federal, state, and local laws and regulations, the wildlife listed in subsection (c) may be taken with the following equipment or methods:

(1) Trapping equipment, if each trapping device is equipped with a metal tag with the permittee's name and address and is checked at least once each calendar day, and if snares are not attached to a drag. Trapping equipment shall consist of the following:

(A) Foothold traps;

(B) body-gripping traps;

(C) box traps;

(D) live traps; and

(E) snares;

(2) firearms and accessory equipment, as follows:

(A) Optical scopes or sights; and

(B) sound-suppression devices;

(3) BB guns and pellet guns;

(4) archery equipment;

(5) dogs;

(6) falconry;

(7) toxicants registered by the Kansas department of agriculture, except that such use may be subject to K.A.R. 115-16-1, K.A.R. 115-16-2, or K.A.R. 115-16-3;

(8) habitat modification;

(9) net or seine;

(10) glue board;

(11) hand;

(12) any other methods to exclude or frighten wildlife, including repellents; and

(13) any other method as specified on the permit.

(e) No person shall possess a live species of wildlife taken under the authority of a wildlife control permit beyond the close of the calendar day following capture, unless specifically authorized by the department. Live wildlife shall not be used for display purposes, programs, training dogs, or otherwise kept in captivity, except that pigeons may be used for training dogs.

(f) Subject to applicable federal, state, and local laws and regulations, wildlife taken pursuant to a wildlife control permit shall be disposed of using one or more of the following methods:

(1) Wildlife taken alive may be controlled using lethal methods or equipment including the methods or equipment listed in paragraphs (d)(2), (d)(3), (d)(4), and (d)(7).

(2) Wildlife taken alive may be relocated and released, subject to the following requirements:

(A) Wildlife may be released only in suitable habitat located at least 10 miles from the original capture site and only with the prior written permission of the person in legal possession of the release site.

(B) Wildlife shall not be released in a location so close to human dwellings that the release is likely to result in recurrence of the reason the wildlife was taken.

(C) Wildlife shall not be released within the limits of any municipality without prior written permission from the appropriate municipal authority.

(D) Wildlife may be released on department lands or waters only with the prior written approval of the department.

(E) Wildlife shall not be released if injured or if displaying common symptoms of disease, including any of the following:

(i) Lack of coordination;

(ii) unusual lack of aggressiveness;

(iii) unusual secretions from the eyes, nose, or mouth;

(iv) rapid or uneven respiration;

(v) malnourishment;

(vi) loss of muscle control; or

(vii) loss of large patches of hair.

(F) Wildlife shall not be transported from the state except as authorized by the department.

(3) Wildlife species listed in K.A.R. 115-15-1 or K.A.R. 115-15-2, or other wildlife species designated by the department, shall be released according to paragraph (f)(2) if unharmed. If harmed or injured, these species shall be submitted to either the department or a person holding a valid wildlife rehabilitation permit issued according to K.A.R. 115-18-1.

(4) Wildlife controlled by poison shall be removed immediately, and all dead wildlife shall be disposed of using one of the following methods:

(A) The wildlife may be submitted to a licensed landfill, renderer, or incinerator.

(B) The wildlife may be disposed of on private property with the prior written permission of the person in legal possession of the property, except that the wildlife shall not be disposed of within the limits of any municipality without prior written permission from the appropriate municipal authority.

(C) Any part of the wildlife, excluding the flesh, may be sold, given, purchased, possessed, and used for any purpose, with the following restrictions and exceptions:

(i) The raw fur, pelt, or skin of furbearers may be sold only to a licensed fur dealer.

(ii) The carcass and meat of a furbearer may be sold, given, purchased, possessed, and used for any purpose.

(iii) No part of any migratory bird or waterfowl shall be sold, given, purchased, possessed, or used for any purpose.

(iv) Each person purchasing unprocessed parts of the wildlife shall maintain a bill of sale for at least one calendar year.

(D) Dead wildlife controlled by poison or showing symptoms of disease shall be either buried be-

low ground or disposed of as authorized by paragraph (f)(4)(A).

(g) Each bobcat or swift fox taken under authority of a wildlife control permit shall be subject to the tagging requirements established by K.A.R. 115-5-2. (Authorized by K.S.A. 32-807; implementing K.S.A. 32-807, K.S.A. 32-911, K.S.A. 2009 Supp. 32-919, K.S.A. 2009 Supp. 32-1002, and K.S.A. 2009 Supp. 32-1003; effective July 19, 2002; amended Nov. 27, 2006; amended April 8, 2011.)

## Article 17.—WILDLIFE, COMMERCIAL USES AUTHORIZED

**115-17-1. Commercial harvest of fish bait; legal species, harvest seasons, size restrictions, daily limits, and possession limits.** (a) The following wildlife may be commercially harvested in Kansas for sale as fishing bait:

(1) Crayfish, all species;

(2) annelids; and

(3) insects.

(b) The season for commercial harvest of wildlife listed in subsection (a) shall be year-round.

(c) There shall be no minimum or maximum size restrictions for wildlife listed in subsection (a).

(d) There shall be no maximum daily or possession limits for wildlife listed in subsection (a).

(e) Wildlife listed in K.A.R. 115-15-1 or in K.A.R. 115-15-2 shall not be harvested. This regulation shall be effective on and after January 1, 2012. (Authorized by and implementing K.S.A. 32-807; effective Sept. 10, 1990; amended Nov. 30, 1998; amended Jan. 1, 2012.)

**115-17-2. Commercial sale of fish bait.** (a) The following wildlife may be commercially sold in Kansas for fishing bait:

(1) The following species of fish:

(A) Black bullhead (*Ameiurus melas*);

(B) bluegill (*Lepomis macrochirus*), including hybrids;

(C) common carp (*Cyprinus carpio*), including koi;

(D) fathead minnow (*Pimephales promelas*), including "rosy reds";

(E) golden shiner (*Notemigonus crysoleucas*);

(F) goldfish (*Carassius auratus*), including "black saltys";

(G) green sunfish (*Lepomis cyanellus*), including hybrids; and

(H) yellow bullhead (*Ameiurus natalis*);

(2) only species of annelids native to or naturalized in the continental United States;

(3) the following species of crayfish:

(A) Virile crayfish (*Orconectes virilis*);

(B) calico crayfish (*Orconectes immunes*); and

(C) white river crayfish (*Procambarus acutus*); and

(4) only species of insects native to or naturalized in Kansas.

(b) Wildlife listed in K.A.R. 115-15-1 or in K.A.R. 115-15-2 or prohibited from importation pursuant to K.S.A. 32-956, and amendments thereto, shall not be sold.

(c) Live aquatic bait shall be certified free of the following pathogens before import, according to K.A.R. 115-17-2a:

(1) Spring viremia of carp virus;

(2) infectious pancreatic necrosis virus;

(3) viral hemorrhagic septicemia virus; and

(4) infectious hematopoietic virus.

(d) Each distribution tank and each retail tank shall utilize a source of potable water or well water.

(e) Each sale of fish bait shall be accompanied by a receipt that indicates the date of sale, the number and type of fish sold, and the name, address, phone number, and bait permit number of the vendor. This regulation shall be effective on and after January 1, 2012. (Authorized by and implementing K.S.A. 32-807; effective Sept. 10, 1990; amended Nov. 30, 1998; amended Jan. 1, 2012.)

**115-17-2a. Commercial sale of bait fish; testing procedures.** (a) Live aquatic bait shall be certified free of the following pathogens before import, according to the requirements in this regulation:

(1) Spring viremia of carp virus;

(2) infectious pancreatic necrosis virus;

(3) viral hemorrhagic septicemia virus; and

(4) infectious hematopoietic virus.

(b) On and after January 1, 2014, upon application or renewal, each applicant and each commercial fish bait permittee shall provide documentation of two consecutive years of pathogen-free status from an independent laboratory approved by United States department of agriculture, animal and plant health inspection service, for the pathogens listed in subsection (a) for the source of bait fish being sold. If the facility is new, the applicant shall certify by affidavit that the facility does not meet the requirements in this

regulation and shall provide documentation of pathogen-free status for the current year of operation.

(c) The sample size shall be 150 fish and shall include moribund fish observed in the sampling process. The samples shall be collected twice each year. The samples shall be collected once during the month of October, November, or December and once during the month of March, April, or May.

(d) Collection of each sample shall be overseen by a doctor of veterinary medicine accredited by the United States department of agriculture, animal and plant health inspection service. The collection shall be made under the direct observation of the overseer to the extent that the official can attest to the origin of the fish and that the sampling scheme meets the requirements in this regulation.

(e) Each sample shall include all of the ponds and grow-out tanks. The final species and age composition of each sample shall reflect the overall composition of the certified fish on location. For locations with more than 50 ponds, all species and sizes of fish shall be included in each sample, but the ponds may be sampled in rotation so that all ponds are sampled at least once every two years. This regulation shall be effective on and after January 1, 2012. (Authorized by and implementing K.S.A. 32-807; effective Jan. 1, 2012.)

**115-17-3. Commercial fish bait permit; requirement, application, and general provisions.** (a) A commercial fish bait permit shall be required for the harvest, sale, or purchase for resale of fish bait, except that a commercial fish bait permit shall not be required for the harvest or sale of annelids or insects or for the purchase of annelids or insects for resale.

(b) Any person may apply to the secretary for a commercial fish bait permit. The application shall be submitted on forms provided by the department and completed in full by the applicant. Each incomplete application shall be returned to the applicant.

(c) Each commercial fish bait permit shall be valid for only those wildlife species specified in the permit.

(d) Each commercial fish bait permit shall authorize the permittee to perform any of the following:

(1) Sell fish bait to any person for use as fish bait;

(2) purchase fish bait for resale as fish bait, if the purchase is made from a person who meets at least one of the following requirements:

(A) Possesses a valid commercial fish bait permit;

(B) is a commercial fish grower, as defined by K.S.A. 32-974 and amendments thereto; or

(C) is authorized by another state to export and sell fish bait; or

(3) import fish bait for sale as fish bait.

(e) Each permittee harvesting or purchasing fish bait shall maintain records of the following information and, if requested by the secretary, shall provide a report to the department containing the following information:

(1) The permittee's name;

(2) the permit number;

(3) the number, location, and species of wildlife harvested;

(4) the number and species of wildlife sold;

(5) for each permittee purchasing fish bait, the name, address, and phone number of each individual distributor or producer from whom the permittee purchased; and

(6) for each permittee purchasing fish bait, the delivery date of each purchase.

(f) Each permittee shall make records required under the permit available for inspection by any law enforcement officer or department employee upon demand.

(g) Each permittee shall make the fish and the distribution or retail holding tanks that are subject to sample testing pursuant to K.A.R. 115-17-2a available for inspection by any law enforcement officer or department employee upon demand.

(h) Each permittee shall respond to any survey regarding activities conducted under the permit if requested by the secretary.

(i) In addition to other penalties prescribed by law, a commercial fish bait permit or application may be denied or revoked by the secretary if either of the following conditions is met:

(1) The application is incomplete or contains false information.

(2) The permittee fails to meet permit requirements or violates permit conditions.

(j) Each commercial fish bait permit shall expire on December 31 of the year for which the permit is issued.

(k) A permittee may possess and sell legally acquired wildlife for fish bait for not more than 30 days following expiration of the permit. This regulation shall be effective on and after January 1,

2012. (Authorized by K.S.A. 32-807 and K.S.A. 32-941; implementing K.S.A. 32-807 and K.S.A. 32-941; effective Jan. 1, 1991; amended Jan. 1, 2012.)

**115-17-4. Commercial harvest of fish bait; legal equipment, taking methods, and general provisions.** (a) Legal equipment and taking methods permitted for commercial harvest of wildlife for use as fish bait shall be as follows:

(1) Crayfish may be taken by the following methods and means:

(A) By hand;

(B) by trap with ½-inch or smaller mesh size, using the bar measurement, and with two-inch or smaller entrance openings;

(C) by seine with ½-inch or smaller mesh size, using the bar measurement. The seine may be of any length, height, or twine size;

(D) by lift net with ½-inch or smaller mesh size, using the bar measurement;

(E) by dip net with ½-inch or smaller mesh size, using the bar measurement. The dip net may be of any dimension and have any handle configuration; and

(F) by other methods as approved by the secretary.

(2) Annelids and insects may be taken by any method.

(b) (1) Boats with or without mechanical propulsion may be used.

(2) Depth-recording or fish-locating devices may be used.

(3) Holding baskets, holding cages, and holding bags may be used, if the permittee's name and permit number are attached.

(4) The permittee's name and permit number shall be attached to each trap and seine while the trap or seine is in use. This regulation shall be effective on and after January 1, 2012. (Authorized by and implementing K.S.A. 32-807 and K.S.A. 32-941; effective Sept. 10, 1990; amended Nov. 30, 1998; amended Jan. 1, 2012.)

**115-17-5. Commercial harvest of fish bait; open areas.** The following areas shall be open for the commercial harvest of crayfish, annelids, and insects:

(a) For crayfish, all lands and waters of the state except department lands and waters and federal and state sanctuaries; and

(b) for annelids and insects, all lands and waters of the state except department lands and waters and federal and state sanctuaries. This regulation shall be effective on and after January 1, 2012. (Authorized by and implementing K.S.A. 32-807 and K.S.A. 32-941; effective Sept. 10, 1990; amended Nov. 30, 1998; amended Jan. 1, 2012.)

**115-17-10. Commercial harvest of fish; permit requirement and application, reports, permit revocation.** (a) Except as authorized in K.A.R. 115-17-13, a commercial fishing permit shall be required for the taking of fish for commercial purposes from that portion of the Missouri River bordering on this state.

(b) Each application for a commercial fishing permit shall be submitted on forms provided by the department and completed in full by the applicant. Each incomplete application shall be returned to the applicant.

(c) Any permittee may possess, sell, transport, or trade those species of fish as authorized under K.A.R. 115-17-12.

(d) Each permittee shall maintain a current record of activity and shall submit monthly reports to the department on forms provided by the department. The reports shall be submitted not later than 15 days following the end of the month for which the report is prepared. A permit shall not be renewed until all reports due have been received by the department.

(e) Any permittee may sell fish taken under a commercial fishing permit to any person.

(f) Any person may purchase fish from a commercial fish permittee for commercial purposes or for personal use.

(g) Each person purchasing fish from a commercial fish permittee for resale purposes shall retain a bill of sale in possession while in possession of the fish.

(h) In addition to other penalties prescribed by law, a commercial fishing application or permit may be denied or revoked by the secretary if any of the following conditions is met:

(1) The application is incomplete or contains false information.

(2) The permittee fails to meet permit requirements or violates permit conditions.

(3) The permittee violates any provision of law or regulations related to commercial fishing on the Missouri River.

(i) Each commercial fishing permit shall expire on December 31 of the year for which the permit was issued. This regulation shall be effective on and after January 1, 2012. (Authorized by and im-

plementing K.S.A. 32-807 and K.S.A. 32-941; effective May 27, 1991; amended Jan. 1, 2012.)

**115-17-11. Commercial harvest of fish; legal equipment and taking methods; identification tags and identification tag fee.** (a) The legal equipment and taking methods for the commercial harvest of fish shall be the following:

(1) Hoop net with a mesh size of 2.5 or more inches using the bar measurement and with individual wings and leads not to exceed 12 feet in length. There shall be no limitation on the number, net diameter, net length, twine size, or throat size of hoop nets;

(2) gill net and trammel net with a mesh size of two or more inches, using the bar measurement. There shall be no limitation on the number, net length, height, or twine size of gill or trammel nets; and

(3) seine with a mesh size of two or more inches, using the bar measurement. There shall be no limitation on the height, length, or twine size of seines.

(b) (1) Boats with or without mechanical propulsion may be used.

(2) Depth-recording or fish-locating devices may be used.

(3) Non-toxic baits may be used.

(4) Each gill net or trammel net shall be attended at all times while the gill net or trammel net is in use.

(5) Each hoop net shall be attended at least one time every 24 hours while the hoop net is in use.

(6) Commercial fishing equipment authorized in subsection (a) shall not be used in the following locations, except as authorized by the department:

(A) In any cutoff, chute, bayou, or other backwater of the Missouri river;

(B) within 300 yards of any spillway, lock, dam, or the mouth of any tributary stream or ditch; and

(C) under or through ice or in overflow waters.

(7) Holding baskets and holding cages may be used.

(c) Each net or seine shall have an identification tag supplied by the department and attached as specified by the department during commercial fishing use. Identification tags supplied by the state of Missouri and approved by the department also shall be deemed to meet this requirement.

(d) The fee for identification tags shall be five dollars for each tag. The payment shall be submitted to the department with the initial or renewal application for a commercial fishing permit.

(e) The holding basket and holding cage used to hold fish shall not require an identification tag, but shall be identified by the permittee with the permittee's name and permit number attached. This regulation shall be effective on and after January 1, 2012. (Authorized by and implementing K.S.A. 32-807, K.S.A. 32-941, and K.S.A. 2010 Supp. 32-988; effective May 27, 1991; amended Sept. 27, 2002; amended Jan. 1, 2012.)

**115-17-12. Commercial harvest of fish; legal species, seasons, size restrictions, daily limits, and possession limits.** (a) The legal species of fish that may be taken under a commercial fishing permit shall be the following:

(1) Bowfin;

(2) suckers, including buffalo;

(3) common carp and exotic carp;

(4) freshwater drum;

(5) gar;

(6) shad;

(7) goldeye;

(8) goldfish; and

(9) skipjack herring.

(b) None of the following shall be possessed by a permittee while in possession of commercial fishing gear or while transporting fish taken using commercial fishing gear:

(1) All species of fish excluded from subsection (a); and

(2) any species of fish listed in K.A.R. 115-15-1 or K.A.R. 115-15-2.

The species of fish specified in this subsection shall be immediately returned unharmed to the water from which removed.

(c) There shall be no size restriction on fish taken by a permittee.

(d) There shall be no maximum daily or possession limit on the number of fish taken by a permittee.

(e) No live specimen of bighead carp, silver carp, or black carp may be transported after commercial harvest. This regulation shall be effective on and after January 1, 2012. (Authorized by and implementing K.S.A. 32-807 and K.S.A. 32-941; effective May 27, 1991; amended Sept. 27, 2002; amended Jan. 1, 2012.)

## Article 18.—SPECIAL PERMITS

**115-18-7. Use of crossbows and locking draws for big game and wild turkey hunting by persons with disabilities; application, permit, and general provisions.** (a) Each perma-

nently disabled person qualified to hunt deer, antelope, elk, or wild turkey with a crossbow and desiring to obtain a crossbow and locking draw permit shall apply to the secretary on forms provided by the department. Each applicant shall provide the following information:

(1) Name of applicant;

(2) address;

(3) a physician's signed report, on forms provided by the department, describing the permanent disability and certifying the applicant physically incapable of using a bow; and

(4) other relevant information as required by the secretary.

(b) Each person with a temporary disability who would be qualified to hunt deer, antelope, elk, or wild turkey with a crossbow if the disability were permanent and who desires to obtain a temporary crossbow and locking draw permit shall apply to the secretary on forms provided by the department. Each applicant shall provide the following information:

(1) Name of applicant;

(2) address;

(3) a physician's signed report, on forms provided by the department, describing the disability, certifying the applicant physically incapable of using a bow, and estimating the time period that the person is likely to be subject to the disability; and

(4) other relevant information as required by the secretary.

Each temporary permit shall expire no more than three years from the date of issuance and shall state the expiration date on the face of the permit.

(c) Any applicant may be required by the secretary to obtain, at the department's expense, a report from a second physician chosen by the secretary.

(d) A crossbow and locking draw permit or temporary permit may be refused issuance or may be revoked by the secretary for any of the following reasons:

(1) The disability does not meet qualifications for the permit.

(2) The application is incomplete or contains false information.

(3) The disability under which the permit was issued no longer exists.

(e) A crossbow and locking draw permit or temporary permit shall be valid statewide.

(f) Any crossbow and locking draw permittee may use a crossbow or bow equipped with a locking draw for hunting deer, antelope, elk, or wild turkey during any archery season established by the secretary for the big game species or wild turkey being hunted by the permittee. This provision shall be subject to the applicable regulations governing archery hunting of that big game species or wild turkey, including possession of a valid hunting permit issued by the department for that big game species or wild turkey, if required.

(g) Legal equipment for hunting any big game or wild turkey by crossbow shall consist of the following:

(1) Crossbows of not less than 125 pounds of draw weight;

(2) arrows not less than 16 inches in length, equipped with broadhead points incapable of passing through a ring with a diameter smaller than three-quarters of an inch when fully expanded;

(3) lighted pin, dot, or holographic sights attached to the bow, but no other electronic or chemical device attached to the crossbow or arrow;

(4) optical scopes or sights that project no visible light toward the target and do not electronically amplify visible or infrared light; and

(5) range-finding devices, if the system does not project visible light toward the target.

(h) Legal equipment for hunting any big game or wild turkey using a bow equipped with a locking draw shall consist of legal archery equipment as specified in K.A.R. 115-4-4, except that the bow may have a mechanical device that locks the bow at full or partial draw.

(i) Any person may assist the holder of a crossbow permit or a temporary crossbow permit during the permittee's hunting activity. A person assisting a holder of a permit shall not perform the actual shooting of the crossbow for the permittee.

(j) A big game or wild turkey hunter using crossbow equipment may possess non-broadhead-tipped arrows while hunting if the arrows are not used to take or attempt to take wild turkeys or big game animals. (Authorized by K.S.A. 32-807, K.S.A. 2009 Supp. 32-919, and K.S.A. 2009 Supp. 32-932; implementing K.S.A. 2009 Supp. 32-932; effective Oct. 30, 1989; amended, T-115-9-9-97, Sept. 9, 1997; amended Dec. 29, 1997; amended Oct. 1, 1999; amended April 19, 2002; amended Feb. 18, 2005; amended April 11, 2008; amended May 21, 2010.)

**115-18-20. Tournament black bass**

**pass; requirements, restrictions, and pass duration.** (a) A tournament black bass pass shall be required for each individual who wants to keep up to two black bass in a daily creel limit that meet the minimum statewide length limit but that do not meet the special length limit for the specific body of water, or who wants to cull black bass after the daily creel limit has been met, during a weigh-in bass tournament as established in K.A.R. 115-7-9.

(b) Each tournament black bass pass shall be valid statewide through December 31 of the year in which the bass pass is issued.

(c) Each tournament black bass pass shall be validated by the signature of the pass holder written across the face of the pass. A tournament black bass pass shall not be transferable. (Authorized by K.S.A. 32-807; implementing K.S.A. 32-807, K.S.A. 2009 Supp. 32-1001, and K.S.A. 2009 Supp. 32-1002; effective Nov. 27, 2006; amended Nov. 16, 2007; amended Nov. 19, 2010.)

## Article 20.—MISCELLANEOUS REGULATIONS

**115-20-7. Doves; legal equipment, taking methods, and possession.** (a) Legal hunting equipment for doves shall consist of the following:

(1) Shotguns that are not larger than 10 gauge, use shot ammunition, and are incapable of holding more than three shells in total capacity;

(2) pellet and BB guns;

(3) archery equipment;

(4) crossbows;

(5) falconry equipment;

(6) optical scopes or sights that project no visible light toward the target and do not electronically amplify visible or infrared light; and

(7) blinds, stands, calls, and decoys, except live decoys.

(b) The use of dogs shall be permitted while hunting.

(c) Any type of apparel may be worn while hunting doves.

(d) Legally taken doves may be possessed without limit in time and may be given to another if accompanied by an attached, dated written notice that includes the donor's printed name, signature, address, the total number of birds, the dates the birds were killed, and permit or license number. The person receiving the meat shall retain the notice until the meat is consumed, given to another, or otherwise disposed of. (Authorized by K.S.A. 32-807; implementing K.S.A. 32-807 and K.S.A. 2008 Supp. 32-1002; effective Nov. 20, 2009.)

## Article 30.—BOATING

**115-30-13. Removal of vessels from waters of the state.** The livewells and bilges shall be drained and the drain plugs removed from all vessels being removed from the waters of the state before transport on any public highway of the state.

This regulation shall be effective on and after January 1, 2012. (Authorized by and implementing K.S.A. 32-807; effective Jan. 1, 2012.)

# Agency 117

# Real Estate Appraisal Board

**Editor's Note:**
The Real Estate Appraisal Board was established on April 19, 1990. See K.S.A. 58-4104.

*Articles*


117-1. Definitions.
117-2. Qualifications Criteria—Residential Real Estate Appraiser Classification.
117-3. Qualifications Criteria—General Real Estate Appraiser Classification.
117-4. Qualifications Criteria—Certified Residential Real Property Appraiser Classification.
117-5. Provisional Classification.
117-6. Continuing Education.
117-7. Fees.
117-8. Uniform Standards of Professional Appraisal Practice.
117-10. Inactive Status.


## Article 1.—DEFINITIONS

**117-1-1. Definitions.** (a) "Act" means the state certified and licensed real property appraisers act.

(b) "Appraisal foundation" means the appraisal foundation established on November 30, 1987 as a not-for-profit corporation under the laws of Illinois.

(c) "Appraiser" means a state licensed or certified appraiser.

(d) "Board" means the real estate appraisal board.

(e) "Classroom hour" means 50 minutes within a 60-minute segment. This definition reflects the traditional educational practice of having 50 minutes of instruction and 10 minutes of break time for each scheduled hour of instruction. The prescribed number of classroom hours shall include time devoted to examinations, which are considered to be part of the course.

(f) "Course" means any educational offering.

(g) "Distance education" means any type of education during which the student and instructor are geographically separated.

(h) "General classification" means the certified general real property appraiser classification.

(i) "Good standing" shall mean that both of the following conditions are met:

(1) The appraiser is not currently subject to a consent agreement or other comparable document by an appraisal regulatory agency in this or any other jurisdiction.

(2) The appraiser is not currently subject to a summary order or final order by an appraisal regulatory agency in this or any other jurisdiction.

(j) "Licensed classification" means the state licensed real property appraiser classification.

(k) "National uniform standards of professional appraisal practice course" means the uniform standards of professional appraisal practice course developed by the appraisal foundation.

(l) "Provisional classification" means the state provisional licensed real property appraiser classification.

(m) "Residential classification" means the certified residential real property appraiser classification.

(n) "Sponsor" means any of the following entities, which may request course approval from the board or offer a course approved by the board for credit toward any education requirement of the act:

(1) Colleges or universities;

(2) community or junior colleges;

(3) real estate appraisal or real estate-related organizations;

(4) state or federal agencies or commissions;

(5) proprietary schools;

(6) other providers approved by the board; and

(7) the appraisal foundation or its board. (Authorized by and implementing K.S.A. 2008 Supp. 58-4105; effective Jan. 21, 1991; amended, T-117-6-10-91, June 10, 1991; amended Aug. 5, 1991; amended May 24, 1993; amended Aug. 15, 1994; amended May 3, 1996; amended May 23, 2003; amended Jan. 1, 2008; amended April 17, 2009.)

## Article 2.—QUALIFICATIONS CRITERIA—RESIDENTIAL REAL ESTATE APPRAISER CLASSIFICATION

**117-2-1. Licensed classification; education requirements.** (a) In order to sit for the licensed classification examination, each applicant shall meet the following requirements:

(1) Have received credit for 150 classroom hours in the following subjects, as specified:

(A) 30 classroom hours in basic appraisal principles;

(B) 30 classroom hours in basic appraisal procedures;

(C) 15 classroom hours in the national uniform standards of professional appraisal practice course or its equivalent;

(D) 15 classroom hours in market analysis and highest and best use;

(E) 15 classroom hours in residential appraisal site valuation and cost approach;

(F) 30 classroom hours in residential sales comparison and income approaches; and

(G) 15 classroom hours in residential report writing and case studies; and

(2) provide evidence, satisfactory to the board, of one of the following:

(A) Successful completion of courses approved by the board as specified in paragraph (a)(1); or

(B) successful completion of courses not approved by the board, with evidence that the education covered all of the requirements specified in paragraph (a)(1).

(b) Classroom hours may be obtained only if both of the following conditions are met:

(1) The minimum length of the educational offering is at least 15 classroom hours.

(2) The applicant successfully completes an approved closed-book examination pertinent to that educational offering.

(c) A distance education course may be deemed to meet the classroom hour requirement specified in paragraph (a)(1) if all of the following conditions are met:

(1) The course provides an environment in which the student has verbal or written communication with the instructor.

(2) The sponsor obtains course content approval from any of the following:

(A) The appraiser qualifications board;

(B) an appraiser licensing or certifying agency in this or any other state; or

(C) an accredited college, community college, or university that offers distance education programs and is approved or accredited by the commission on colleges, a regional or national accreditation association, or an accrediting agency that is recognized by the U.S. secretary of education. Each non-academic credit college course provided by a college shall be approved by the appraiser qualifications board or the appraiser licensing or certifying agency in this or any other state.

(3) The course design and delivery are approved by one of the following sources:

(A) An appraiser qualifications board-approved organization;

(B) a college that qualifies for course content approval as specified in paragraph (c)(2)(C) that awards academic credit for the distance education course; or

(C) a college that qualifies for course content approval as specified in paragraph (c)(2)(C) with a distance education delivery program that approves the course design and that includes a delivery system incorporating interactivity.

(d) Each distance education course intended for use as qualifying education shall include a written examination proctored by an official approved by the college or university or by the sponsor.

(e) Any applicant who has completed two or more courses generally comparable in content, meaning topics covered, may receive credit only for the longest of the comparable courses completed. The national uniform standards of professional appraisal practice course (USPAP) taken in different years shall not be considered repetitive. (Authorized by and implementing K.S.A. 58-4109; effective Jan. 21, 1991; amended, T-117-6-10-91, June 10, 1991; amended Aug. 5, 1991; amended May 24, 1993; amended Jan. 9, 1998; amended March 26, 1999; amended May 23, 2003; amended Jan. 1, 2008; amended April 16, 2010.)

**117-2-2. Licensed classification; ap-**

**praisal experience requirement.** (a) (1) Each applicant for the licensed classification shall have 2,000 hours of appraisal experience obtained in no fewer than 12 months.

(2) A minimum of six hours of real property appraisal experience shall be on an improved property.

(3) Acceptable appraisal experience shall include a minimum of 1,500 hours of real property appraisal experience.

(4) Acceptable appraisal experience may include an aggregate maximum of 25% of the total number of experience hours in the following appraisal categories:

(A) Mass appraisal;

(B) real estate consulting;

(C) review appraisal;

(D) highest and best use analysis;

(E) feasibility analysis study;

(F) drive-by appraisals; and

(G) restricted appraisal reports.

(5) Experience hours may be granted for appraisals performed without a traditional client. However, appraisal experience gained from work without a traditional client shall not exceed 50% of the total appraisal experience requirement. Practicum courses that are approved by the appraiser qualifications board's course-approval program or by a state appraiser regulatory agency may also be used to meet the requirement for nontraditional client experience. Each practicum course shall include the generally applicable methods of appraisal practice for the state licensed classification. The course content shall include the following:

(A) Requiring the student to produce credible appraisals that utilize an actual subject property;

(B) performing market research containing sales analysis; and

(C) applying and reporting the applicable appraisal approaches in conformity with the uniform standards of professional appraisal practice.

Each assignment shall require problem-solving skills for a variety of property types for the state licensed classification. Experience credit shall be granted for the actual number of classroom hours of instruction and hours of documented research and analysis as awarded from the practicum course approval process.

(6) For the purposes of this regulation, "traditional client" shall mean a client who hires an appraiser for a business purpose.

(b) All appraisal experience shall be in compliance with the uniform standards of professional appraisal practice (USPAP), as adopted in K.A.R. 117-8-1. Each applicant's experience shall be appraisal work conforming to standards 1, 2, 3, 5, and 6, in which the applicant demonstrates proficiency in the appraisal principles, methodology, procedures, and reporting conclusions.

(c) The real property appraisal experience requirement specified in paragraph (a)(3) shall be met by time involved in the appraisal process. The appraisal process shall consist of the following:

(1) Analyzing factors that affect value;

(2) defining the problem;

(3) gathering and analyzing data;

(4) applying the appropriate analysis and methodology; and

(5) arriving at an opinion and correctly reporting the opinion in compliance with the national uniform standards of professional appraisal practice.

(d)(1) In order for the board to determine whether or not the experience requirements have been satisfied, each applicant shall submit appraisal experience log sheets, in a format prescribed by the board, listing the appraisal reports completed by the applicant within the five-year period preceding the date of application. Each appraisal report shall be signed by the applicant or the preparer of the report who supervised the applicant. If the applicant does not sign the appraisal report, the preparer shall indicate whether or not the applicant provided significant professional assistance in the appraisal process.

(2) If an applicant has not maintained a record of the actual number of hours involved in completing an appraisal, the applicant may estimate the number of hours as follows:

(A) Residential appraisal. To estimate the number of hours for each residential appraisal, the following calculation shall be used:

(i) Multiply the number of approaches taken by two; and

(ii) to the figure computed in paragraph (d)(2)(A)(i), add one of the following numbers according to the type of appraisal report generated: six for self-contained, four for summary, or zero for restricted use.

(B) Commercial or agricultural appraisal. To estimate the number of hours for each commercial or agricultural appraisal, the following calculation shall be used:

(i) Multiply the number of approaches taken by eight; and

(ii) to the figure computed in paragraph (d)(2)(B)(i), add one of the following numbers according to the type of appraisal report generated: 16 for self-contained, eight for summary, or zero for restricted use.

(e) Upon request of the board, each applicant shall submit a minimum of three appraisal reports selected by the board from the applicant's log sheet and one appraisal report selected by the applicant from the log sheet. The selected appraisal reports shall be reviewed in accordance with standard rule 3 by the board or the board's designee for competency, within the scope of practice of the appraisal work authorized for the licensed classification, by using the criteria specified in K.S.A. 58-4109(d) and amendments thereto and, in particular, standards 1 and 2 of the edition of the uniform standards of professional appraisal practice (USPAP) in effect when the appraisal was performed. Approval of an applicant's experience hours shall be subject to board approval of the requisite number of experience hours and board approval of the selected appraisal reports. (Authorized by and implementing K.S.A. 58-4109; effective Jan. 21, 1991; amended, T-117-6-10-91, June 10, 1991; amended Aug. 5, 1991; amended July 25, 1994; amended June 5, 1995; amended March 7, 1997; amended March 26, 1999; amended Oct. 8, 2004; amended Sept. 1, 2006; amended Jan. 1, 2008; amended April 16, 2010.)

**117-2-2a. Licensed classification; experience supervision requirements.** (a) In order for an applicant's experience to be approved by the board when the applicant is applying for the licensed classification, the experience shall have been supervised by an appraiser according to all of the following conditions:

(1) The supervising appraiser was a certified appraiser in good standing during the period of supervision.

(2) The supervising appraiser was licensed or certified as an appraiser for a minimum of two years immediately preceding the date on which the supervision began.

(3) The supervising appraiser did not supervise more than three applicants or provisional licensed appraisers, or any combination of these, at the same time.

(4) The supervising appraiser maintained responsibility for supervision of the applicant by meeting both of the following requirements:

(A) Before signing the certification section or addendum, the supervisor reviewed each appraisal report that the applicant prepared or provided assistance in developing, preparing, or communicating.

(B) The supervisor met the following requirements:

(i) Ensured that, at a minimum, the first 25 properties for which the applicant provided assistance in developing, preparing, or communicating an appraisal report were personally inspected by a supervisor; and

(ii) continued to personally inspect each property for which the applicant provided assistance in developing, preparing, or communicating an appraisal report until the supervisor was satisfied that the applicant was competent to appraise the property type, in accordance with the competency provision of the uniform standards of professional appraisal practice (USPAP), as adopted in K.A.R. 117-8-1.

(b) Each applicant shall be permitted to have more than one supervising appraiser.

(c) The supervising appraiser shall supervise the work of an applicant on appraisal reports performed on properties only if both of the following conditions are met:

(1) The supervising appraiser is permitted by the supervising appraiser's current credential to appraise the properties.

(2) The supervising appraiser is competent to appraise the properties. (Authorized by and implementing K.S.A. 58-4109; effective July 1, 2007; amended Jan. 18, 2008; amended April 17, 2009.)

## Article 3.—QUALIFICATIONS CRITERIA—GENERAL REAL ESTATE APPRAISER CLASSIFICATION

**117-3-1. General classification; education requirements.** (a) Except as provided in subsection (e), in order to sit for the general classification examination, each applicant shall meet the following requirements:

(1)(A) Have a bachelor's degree or higher from an accredited college or university; or

(B) have passed all of the following types of courses from an accredited college, junior college, community college, or university for a total of 30 semester credit hours, except as specified in subsection (b):

(i) English composition;

(ii) microeconomics;

(iii) macroeconomics;

(iv) finance;

(v) algebra, geometry, or higher mathematics;

(vi) statistics;

(vii) computers, word processing, or spreadsheets;

(viii) business or real estate law; and

(ix) two elective courses in accounting, geography, agricultural economics, business management, or real estate;

(2) have received credit for 300 classroom hours in the following subjects, as specified:

(A) 30 classroom hours in basic appraisal principles;

(B) 30 classroom hours in basic appraisal procedures;

(C) 15 classroom hours in the national uniform standards of professional appraisal practice course or its equivalent;

(D) 30 classroom hours in general appraisal market analysis and highest and best use;

(E) 15 classroom hours in statistics, modeling, and finance;

(F) 30 classroom hours in the general appraisal sales comparison approach;

(G) 30 classroom hours in the general appraisal site valuation and cost approach;

(H) 60 classroom hours in the general appraisal income approach;

(I) 30 classroom hours in general appraisal report writing and case studies; and

(J) 30 classroom hours in appraisal subject matter electives, which may include hours over the minimum specified in paragraphs (a)(2)(A) through (I); and

(3) provide evidence, satisfactory to the board, of one of the following:

(A) Successful completion of courses approved by the board as specified in paragraph (a)(2); or

(B) successful completion of courses not approved by the board, with evidence that the education covered all of the requirements specified in paragraph (a)(2).

(b) If an accredited college or university accepts the college-level examination program (CLEP) examination and issues a transcript for an exam showing its approval, the examination shall be considered as credit for the corresponding college course.

(c) Classroom hours may be obtained only if both of the following conditions are met:

(1) The length of the educational offering is at least 15 classroom hours.

(2) The applicant successfully completes an approved closed-book examination pertinent to that educational offering.

(d) The 300 classroom hours specified in paragraph (a)(2) may include a portion of the 150 classroom hours required for the licensed classification or the 200 classroom hours required for the residential classification.

(e) (1) Any appraiser holding a valid state license as a real property appraiser may meet the educational requirements for the general classification by performing the following:

(A) Satisfying the college level educational requirements as specified in paragraph (a)(1); and

(B) completing an additional 150 educational hours in the following subjects:

(i) 15 hours of general appraiser market analysis and highest and best use;

(ii) 15 hours of statistics, modeling and finance;

(iii) 15 hours of general appraiser sales comparison approach;

(iv) 15 hours of general appraiser site valuation and cost approach;

(v) 45 hours of general appraiser income approach;

(vi) 15 hours of general appraiser report writing and case studies; and

(vii) 30 hours of appraisal subject matter electives.

(2) Any appraiser holding a valid residential real property appraiser credential may meet the educational requirements for the general classification by performing the following:

(A) Satisfying the college level educational requirements as specified in paragraph (a)(1); and

(B) completing an additional 100 educational hours in the following subjects:

(i) 15 hours of general appraiser market analysis and highest and best use;

(ii) 15 hours of general appraiser sales comparison approach;

(iii) 15 hours of general appraiser site valuation and cost approach;

(iv) 45 hours of general appraiser income approach; and

(v) 10 hours of general appraiser report writing and case studies.

(f) A distance education course may be deemed to meet the classroom hour requirement specified in paragraph (a)(2) if all of the following conditions are met:

(1) The course provides an environment in which the student has verbal or written communication with the instructor.

(2) The sponsor obtains course content approval from any of the following:

(A) The appraiser qualifications board;

(B) an appraiser licensing or certifying agency in this or any other state; or

(C) an accredited college, community college, or university that offers distance education programs and is approved or accredited by the commission on colleges, a regional or national accreditation association, or an accrediting agency that is recognized by the U.S. secretary of education. Each non-academic credit college course provided by a college shall be approved by the appraiser qualifications board or the appraiser licensing or certifying agency in this or any other state.

(3) The course design and delivery are approved by one of the following sources:

(A) An appraiser qualifications board-approved organization;

(B) a college that qualifies for course content approval as specified in paragraph (f)(2)(C) that awards academic credit for the distance education course; or

(C) a college that qualifies for course content approval as specified in paragraph (f)(2)(C) with a distance education delivery program that approves the course design and that includes a delivery system incorporating interactivity.

(g) Each distance education course intended for use as qualifying education shall include a written examination proctored by an official approved by the college or university or by the sponsor.

(h) Any applicant who has completed two or more courses generally comparable in content, meaning topics covered, may receive credit only for the longest of the comparable courses completed. The national uniform standards of professional appraisal practice course (USPAP) taken in different years shall not be considered repetitive. (Authorized by and implementing K.S.A. 58-4109; effective Jan. 21, 1991; amended, T-117-6-10-91, June 10, 1991; amended Aug. 5, 1991; amended May 24, 1993; amended Jan. 9, 1998; amended March 26, 1999; amended May 23, 2003; amended Jan. 1, 2008; amended July 10, 2009; amended April 16, 2010.)

**117-3-2. General classification; appraisal experience requirement.** (a)(1) Each applicant for the general classification shall have 3,000 hours of appraisal experience obtained over a period of no fewer than 30 months.

(2) A minimum of six hours of real property appraisal experience shall be on an improved property.

(3) At least 1,500 hours of appraisal experience shall have been nonresidential appraisal work. For purposes of this regulation, "residential" shall be defined as residential units for one to four families.

(4) Acceptable appraisal experience shall include a minimum of 2,250 experience hours of real property appraisal experience.

(5) Acceptable appraisal experience may include an aggregate maximum of 25% of the total number of experience hours in the following appraisal categories:

(A) Mass appraisal;

(B) review appraisal;

(C) highest and best use analysis;

(D) feasibility analysis study;

(E) drive-by appraisals; and

(F) restricted appraisal reports.

(6) Experience hours may be granted for appraisals performed without a traditional client. However, appraisal experience gained from work without a traditional client shall not exceed 50% of the total appraisal experience requirement. Practicum courses that are approved by the appraiser qualifications board's course-approval program or by a state appraiser regulatory agency may also be used to meet the requirement for nontraditional client experience. Each practicum course shall include the generally applicable methods of appraisal practice for the general classification. The course content shall include the following:

(A) Requiring the student to produce credible appraisals that utilize an actual subject property;

(B) performing market research containing sales analysis; and

(C) applying and reporting the applicable appraisal approaches in conformity with the uniform standards of professional appraisal practice.

Each practicum course assignment shall require problem-solving skills for a variety of property types for the general classification. Experience credit shall be granted for the actual number of classroom hours of instruction and hours of documented research and analysis as awarded from the practicum course approval process.

(7) For the purposes of this regulation, "traditional client" shall mean a client who hires an appraiser for a business purpose.

(b) All appraisal experience shall be in compli-

ance with the uniform standards of professional appraisal practice (USPAP), as adopted in K.A.R. 117-8-1. Each applicant's experience shall be appraisal work conforming to standards 1, 2, 3, 5 and 6, in which the applicant demonstrates proficiency in the appraisal principles, methodology, procedures, and report conclusions.

(c) The real property appraisal experience requirement specified in paragraph (a)(4) shall be met by time involved in the appraisal process. The appraisal process shall consist of the following:

(1) Analyzing factors that affect value;

(2) defining the problem;

(3) gathering and analyzing data;

(4) applying the appropriate analysis and methodology; and

(5) arriving at an opinion and correctly reporting the opinion in compliance with the national uniform standards of professional appraisal practice.

(d)(1) In order for the board to determine whether or not the experience requirements have been satisfied, each applicant shall submit appraisal experience log sheets, in a format prescribed by the board, listing the appraisal reports completed by the applicant within the five-year period preceding the date of application. Each appraisal report shall be signed by the applicant or the preparer of the report who supervised the applicant. If the applicant does not sign the appraisal report, the preparer shall indicate whether or not the applicant provided significant professional assistance in the appraisal process.

(2) If an applicant has not maintained a record of the actual number of hours involved in completing an appraisal, the applicant may estimate the number of hours as follows:

(A) Residential appraisal. To estimate the number of hours for each residential appraisal, the following calculation shall be used:

(i) Multiply the number of approaches taken by two; and

(ii) to the figure computed in paragraph (d)(2)(A)(i), add one of the following numbers according to the type of appraisal report generated: six for self-contained, four for summary, or zero for restricted use.

(B) Commercial or agricultural appraisal. To estimate the number of hours for each commercial or agricultural appraisal, the following calculation shall be used:

(i) Multiply the number of approaches taken by eight; and

(ii) to the figure computed in paragraph (d)(2)(B)(i), add one of the following numbers according to the type of appraisal report generated: 16 for self-contained, eight for summary, or zero for restricted use.

(e) Upon request of the board, each applicant shall submit a minimum of three appraisal reports selected by the board from the applicant's log sheet and one appraisal report selected by the applicant from the log sheet. The selected appraisal reports shall be reviewed by the board or the board's designee, in accordance with standard rule 3, for competency within the scope of practice of the appraisal work authorized for the general classification, by using the criteria specified in K.S.A. 58-4109(d) and amendments thereto and, in particular, standard rules 1 and 2 of the edition of the uniform standards of professional appraisal practice (USPAP) in effect when the appraisal was performed. Approval of an applicant's experience hours shall be subject to board approval of the requisite number of experience hours and board approval of the selected appraisal reports. (Authorized by and implementing K.S.A. 58-4109; effective Jan. 21, 1991; amended, T-117-6-10-91, June 10, 1991; amended Aug. 5, 1991; amended July 25, 1994; amended June 5, 1995; amended March 7, 1997; amended Jan. 9, 1998; amended March 26, 1999; amended Oct. 8, 2004; amended Sept. 1, 2006; amended Jan. 1, 2008; amended April 16, 2010.)

**117-3-2a. General classification; experience supervision requirements.** (a) In order for an applicant's experience to be approved by the board when the applicant is applying for the general classification, all experience attained by an unlicensed or uncertified individual or by a licensed or certified appraiser whose experience is outside that appraiser's scope of practice shall have been supervised by an appraiser according to the following terms and conditions:

(1) The supervising appraiser was a certified appraiser in good standing during the period of supervision.

(2) The supervising appraiser was licensed or certified as an appraiser for a minimum of two years immediately preceding the date on which the supervision began.

(3) The supervising appraiser did not supervise more than three applicants or provisional licensed appraisers, or any combination of these, at the same time.

(4) The supervising appraiser maintained responsibility for supervision of the applicant by meeting both of the following requirements:

(A) Before signing the certification section or addendum, the supervisor reviewed each appraisal report that the applicant prepared or provided assistance in developing, preparing, or communicating.

(B) The supervisor met the following requirements:

(i) Ensured that, at a minimum, the first 25 properties for which the applicant provided assistance in developing, preparing, or communicating an appraisal report were personally inspected by a supervisor; and

(ii) continued to personally inspect each property for which the applicant provided assistance in developing, preparing, or communicating an appraisal report until the supervisor was satisfied that the applicant was competent to appraise the property type, in accordance with the competency provision of the uniform standards of professional appraisal practice (USPAP), as adopted in K.A.R. 117-8-1.

(b) Each applicant shall be permitted to have more than one supervising appraiser.

(c) The supervising appraiser shall supervise the work of an applicant on appraisal reports performed on properties only if both of the following conditions are met:

(1) The supervising appraiser is permitted by the supervising appraiser's current credential to appraise the properties.

(2) The supervising appraiser is competent to appraise the properties. (Authorized by and implementing K.S.A. 58-4109; effective July 1, 2007; amended July 1, 2007; amended Jan. 18, 2008; amended April 17, 2009.)

## Article 4.—QUALIFICATIONS CRITERIA—CERTIFIED RESIDENTIAL REAL PROPERTY APPRAISER CLASSIFICATION

**117-4-1. Residential classification; education requirements.** (a) Except as provided in subsection (d), in order to sit for the residential classification examination, each applicant shall meet the following requirements:

(1)(A) Have an associate's degree or higher from an accredited college, junior college, community college, or university; or

(B) have passed all of the following types of courses from an accredited college, junior college, community college, or university for a total of 21 semester credit hours, except as specified in subsection (b):

(i) English composition;

(ii) principles of economics, either microeconomics or macroeconomics;

(iii) finance;

(iv) algebra, geometry, or higher mathematics;

(v) statistics;

(vi) computers, word processing, or spreadsheets; and

(vii) business or real estate law;

(2) have received credit for 200 classroom hours in the following subjects, as specified:

(A) 30 classroom hours in basic appraisal principles;

(B) 30 classroom hours in basic appraisal procedures;

(C) 15 classroom hours in the national uniform standards of professional appraisal practice course or its equivalent;

(D) 15 classroom hours in residential market analysis and highest and best use;

(E) 15 classroom hours in the residential appraiser site valuation and cost approach;

(F) 30 classroom hours in residential sales comparison and income approaches;

(G) 15 classroom hours in residential report writing and case studies;

(H) 15 classroom hours in statistics, modeling, and finance;

(I) 15 classroom hours in advanced residential applications and case studies; and

(J) 20 classroom hours in appraisal subject matter electives, which may include hours over the minimum specified in paragraphs (a)(2)(A) through (I); and

(3) provide evidence, satisfactory to the board, of one of the following:

(A) Successful completion of courses approved by the board as specified in paragraph (a)(2); or

(B) successful completion of courses not approved by the board, with evidence that the education covered all of the requirements specified in paragraph (a)(2).

(b) If an accredited college or university accepts the college-level examination program (CLEP) examination and issues a transcript for an exam showing its approval, the examination shall be considered as credit for the corresponding college course.

(c) Classroom hours may be obtained only if both of the following conditions are met:

(1) The length of the educational offering is at least 15 classroom hours.

(2) The applicant successfully completes an approved closed-book examination pertinent to that educational offering.

(d) Any appraiser holding a valid state license as a real property appraiser may meet the educational requirements for residential classification by performing the following:

(1) Satisfying the college level educational requirements as specified in paragraph (a)(1); and

(2) completing an additional 50 educational hours in the following subjects:

(A) 15 hours of statistics, modeling, and finance;

(B) 15 hours of advanced residential applications and case studies; and

(C) 20 hours of appraisal subject matter electives.

(e) The 200 classroom hours specified in paragraph (a)(2) may include a portion of the 150 classroom hours required for the licensed classification.

(f) A distance education course may be deemed to meet the classroom hour requirement specified in paragraph (a)(2) if all of the following conditions are met:

(1) The course provides an environment in which the student has verbal or written communication with the instructor.

(2) The sponsor obtains course content approval from any of the following:

(A) The appraiser qualifications board;

(B) an appraiser licensing or certifying agency in this or any other state; or

(C) an accredited college, community college, or university that offers distance education programs and is approved or accredited by the commission on colleges, a regional or national accreditation association, or an accrediting agency that is recognized by the U.S. secretary of education. Each non-academic credit college course provided by a college shall be approved by the appraiser qualifications board or the appraiser licensing or certifying agency in this or any other state.

(3) The course design and delivery are approved by one of the following sources:

(A) An appraiser qualifications board-approved organization;

(B) a college that qualifies for course content approval as specified in paragraph (f)(2)(C) that awards academic credit for the distance education course; or

(C) a college that qualifies for course content approval as specified in paragraph (f)(2)(C) with a distance education delivery program that approves the course design and that includes a delivery system incorporating interactivity.

(g) Each distance education course intended for use as qualifying education shall include a written examination proctored by an official approved by the college or university or by the sponsor.

(h) Any applicant who has completed two or more courses generally comparable in content, meaning topics covered, may receive credit only for the longest of the comparable courses completed. The national uniform standards of professional appraisal practice course (USPAP) taken in different years shall not be considered repetitive. (Authorized by and implementing K.S.A. 58-4109; effective Jan. 21, 1991; amended, T-117-6-10-91, June 10, 1991; amended Aug. 5, 1991; amended May 24, 1993; amended Jan. 1, 1994; amended Jan. 9, 1998; amended March 26, 1999; amended May 23, 2003; amended Jan. 1, 2008; amended July 10, 2009; amended April 16, 2010.)

**117-4-2. Residential classification; appraisal experience requirement.** (a)(1) Each applicant for the residential classification shall have 2,500 hours of appraisal experience obtained over a period of no fewer than 24 months.

(2) A minimum of six hours of real property appraisal experience shall be on an improved property.

(3) Acceptable appraisal experience shall include a minimum of 1,875 experience hours of real property appraisal experience.

(4) Acceptable appraisal experience may include an aggregate maximum of 25% of the total number of experience hours in the following appraisal categories:

(A) Mass appraisal;

(B) review appraisal;

(C) highest and best use analysis;

(D) feasibility analysis study;

(E) drive-by appraisals; and

(F) restricted appraisal reports.

(5) Experience hours may be granted for appraisals performed without a traditional client. However, appraisal experience gained from work without a traditional client shall not exceed 50% of the total appraisal experience requirement. Practicum courses that are approved by the ap-

praiser qualifications board's course-approval program or by a state appraiser regulatory agency may also be used to meet the requirement for nontraditional client experience. Each practicum course shall include the generally applicable methods of appraisal practice for the residential classification. The course content shall include the following:

(A) Requiring the student to produce credible appraisals that utilize an actual subject property;

(B) performing market research containing sales analysis; and

(C) applying and reporting the applicable appraisal approaches in conformity with the uniform standards of professional appraisal practice.

Each assignment shall require problem-solving skills for a variety of property types for the residential classification. Experience credit shall be granted for the actual classroom hours of instruction and hours of documented research and analysis as awarded from the practicum course approval process.

(6) For the purposes of this regulation, "traditional client" shall mean a client who hires an appraiser for a business purpose.

(b) All appraisal experience shall be in compliance with the uniform standards of professional appraisal practice (USPAP), as adopted in K.A.R. 117-8-1. Each applicant's experience shall be appraisal work conforming to standards 1, 2, 3, 5 and 6, in which the applicant demonstrates proficiency in the appraisal principles, methodology, procedures, and report conclusions.

(c) The real property appraisal experience requirement specified in paragraph (a)(3) shall be met by time involved in the appraisal process. The appraisal process shall consist of the following:

(1) Analyzing factors that affect value;

(2) defining the problem;

(3) gathering and analyzing data;

(4) applying the appropriate analysis and methodology; and

(5) arriving at an opinion and correctly reporting the opinion in compliance with the national uniform standards of professional appraisal practice.

(d)(1) In order for the board to determine whether or not the experience requirements have been satisfied, each applicant shall submit appraisal experience log sheets, in a format prescribed by the board, listing the appraisal reports completed by the applicant within the five-year period preceding the date of application. Each appraisal report shall be signed by the applicant or the preparer of the report who supervised the applicant. If the applicant does not sign the appraisal report, the preparer shall indicate whether or not the applicant provided significant professional assistance in the appraisal process.

(2) If an applicant has not maintained a record of the actual number of hours involved in completing an appraisal, the applicant may estimate the number of hours as follows:

(A) Residential appraisal. To estimate the number of hours for each residential appraisal, the following calculation shall be used:

(i) Multiply the number of approaches taken by two; and

(ii) to the figure computed in paragraph (d)(2)(A)(i), add one of the following numbers according to the type of appraisal report generated: six for self-contained, four for summary, or zero for restricted use.

(B) Commercial or agricultural appraisal. To estimate the number of hours for each commercial or agricultural appraisal, the following calculation shall be used:

(i) Multiply the number of approaches taken by eight; and

(ii) to the figure computed in paragraph (d)(2)(B)(i), add one of the following numbers according to the type of appraisal report generated: 16 for self-contained, eight for summary, or zero for restricted use.

(e) Upon request of the board, each applicant shall submit a minimum of three appraisal reports selected by the board from the applicant's log sheet and one appraisal report selected by the applicant from the log sheet. The selected appraisal reports shall be reviewed by the board or the board's designee, in accordance with standard rule 3 for competency within the scope of practice of the appraisal work authorized for the residential classification, by using the criteria specified in K.S.A. 58-4109(d) and amendments thereto and, in particular, standard rules 1 and 2 of the edition of the uniform standards of professional appraisal practice (USPAP) in effect when the appraisal was performed. Approval of an applicant's experience hours shall be subject to board approval of the requisite number of experience hours and board approval of the selected appraisal reports. (Authorized by and implementing K.S.A. 58-4109; effective, T-117-6-10-91, June 10, 1991; effective Aug. 5, 1991; amended July 25, 1994; amended June 5, 1995; amended March 7, 1997; amended

Jan. 9, 1998; amended March 26, 1999; amended Oct. 8, 2004; amended Sept. 1, 2006; amended Jan. 1, 2008; amended April 16, 2010.)

**117-4-2a. Residential classification; experience supervision requirements.** (a) In order for an applicant's experience to be approved by the board when the applicant is applying for the residential classification, all experience attained by an unlicensed individual or by a licensed appraiser whose experience is outside that appraiser's scope of practice shall have been supervised by an appraiser according to all of the following conditions:

(1) The supervising appraiser was a certified appraiser in good standing during the period of supervision.

(2) The supervising appraiser was licensed or certified as an appraiser for a minimum of two years immediately preceding the date on which the supervision began.

(3) The supervising appraiser did not supervise more than three applicants or provisional licensed appraisers, or any combination of these, at the same time.

(4) The supervising appraiser maintained responsibility for supervision of the applicant by meeting both of the following requirements:

(A) Before signing the certification section or addendum, the supervisor reviewed each appraisal report that the applicant prepared or provided assistance in developing, preparing, or communicating.

(B) The supervisor met the following requirements:

(i) Ensured that, at a minimum, the first 25 properties for which the applicant provided assistance in developing, preparing, or communicating an appraisal report were personally inspected by a supervisor; and

(ii) continued to personally inspect each property for which the applicant provided assistance in developing, preparing, or communicating an appraisal report until the supervisor was satisfied that the applicant was competent to appraise the property type, in accordance with the competency provision of the uniform standards of professional appraisal practice (USPAP), as adopted in K.A.R. 117-8-1.

(b) Each applicant shall be permitted to have more than one supervising appraiser.

(c) The supervising appraiser shall supervise the work of an applicant on appraisal reports performed on properties only if both of the following conditions are met:

(1) The supervising appraiser is permitted by the supervising appraiser's current credential to appraise the properties.

(2) The supervising appraiser is competent to appraise the properties. (Authorized by and implementing K.S.A. 58-4109; effective July 1, 2007; amended July 1, 2007; amended Jan. 18, 2008; amended April 17, 2009.)

## Article 5.—PROVISIONAL CLASSIFICATION

**117-5-2. Provisional classification; supervised experience requirements.** (a) Each provisional licensed appraiser's work in developing, preparing, or communicating an appraisal report shall be directly supervised by a supervising appraiser as specified in K.A.R. 117-5-2a.

(b) Each appraisal report shall be signed by the provisional licensed appraiser or by the preparer of the report who supervised the provisional licensed appraiser, certifying that the report is in compliance with the uniform standards of professional appraisal practice of the appraisal foundation in effect at the time of the appraisal.

(c) If the provisional licensed appraiser does not sign the appraisal report, the preparer shall describe, in the certification section or in the dated and signed addendum to the certification page of the appraisal report, the extent to which the provisional licensed appraiser provided assistance in developing, preparing, or communicating the appraisal through generally accepted appraisal methods and techniques.

(d) Each provisional licensed appraiser shall be permitted to have more than one supervising appraiser.

(e) Each provisional licensed appraiser shall maintain an appraisal log, in a format prescribed by the board, listing the appraisal reports completed by the applicant within the five-year period preceding the date of application. Each entry on the log shall include the certification number and the signature of the supervising appraiser, which shall serve as verification of the accuracy of the information.

(f) Each provisional licensed appraiser shall maintain a log of appraisals completed with each separate supervising appraiser.

(g) In order to be licensed as a real property appraiser, certified as a general real property ap-

praiser, or certified as a residential real property appraiser, the provisional licensed appraiser shall complete the experience requirements listed in K.A.R. 117-2-2, K.A.R. 117-3-2, or K.A.R. 117-4-2.

(h) The requirements for real property appraisal experience specified in K.A.R. 117-2-2(a)(2), K.A.R. 117-3-2(a)(3), and K.A.R. 117-4-2(a)(2) shall be met by time involved in the appraisal process. The appraisal process shall consist of the following:

(1) Analyzing factors that affect value;

(2) defining the problem;

(3) gathering and analyzing data;

(4) applying the appropriate analysis and methodology; and

(5) arriving at an opinion and correctly reporting the opinion in compliance with the national uniform standards of professional appraisal practice. (Authorized by and implementing K.S.A. 58-4109; effective April 24, 1998; amended Dec. 5, 2003; amended April 17, 2009.)

**117-5-2a. Provisional classification; supervisor requirements.** (a) In order for a provisional licensed appraiser's experience to be approved by the board, that individual's experience shall have been supervised by an appraiser according to all of the following conditions:

(1) The supervising appraiser was a certified appraiser in good standing during the period of supervision.

(2) The supervising appraiser was licensed or certified as an appraiser for a minimum of two years immediately preceding the date on which the supervision began.

(3) The supervising appraiser did not supervise more than three provisional licensed appraisers or applicants, or any combination of these, at the same time.

(4) The supervising appraiser maintained responsibility for supervision of the provisional licensed appraiser by meeting both of the following requirements:

(A) Before signing the certification section or addendum, the supervisor reviewed each appraisal report that the applicant prepared or provided assistance in developing, preparing, or communicating.

(B) The supervisor met the following requirements:

(i) Ensured that at least the first 25 properties for which the applicant provided assistance in developing, preparing, or communicating an appraisal report were personally inspected by a supervisor; and

(ii) continued to personally inspect each property for which the applicant provided assistance in developing, preparing, or communicating an appraisal report until the supervisor was satisfied that the applicant was competent to appraise the property type, in accordance with the competency provision of the uniform standards of professional appraisal practice (USPAP), as adopted in K.A.R. 117-8-1.

(b) The supervising appraiser shall supervise the work of a provisional licensed appraiser on appraisal reports performed on properties only if both of the following conditions are met:

(1) The supervising appraiser is permitted by the supervising appraiser's current credential to appraise the properties.

(2) The supervising appraiser is competent to appraise the properties. (Authorized by and implementing K.S.A. 58-4109; effective July 1, 2007; amended Jan. 18, 2008; amended April 17, 2009.)

## Article 6.—CONTINUING EDUCATION

**117-6-1. Continuing education; renewal requirements.** (a)(1) The continuing education requirement for renewal of any license or certificate for the provisional, licensed, residential, or general classification that has been in force for one year or more shall be a total of 28 hours, which may be averaged over each two-year education cycle as defined in paragraph (a)(5) and as provided in paragraph (a)(6).

(2) The continuing education requirement for renewal of any license or certificate for the provisional, licensed, residential, or general classification that has been in force for less than one year but more than 184 days shall be a total of 14 hours, completed on or after the original date of issuance of the license or certificate.

(3) The continuing education requirement for renewal of any license or certificate for the provisional, licensed, residential, or general classification that has been in force for 184 days or less shall be a total of two hours, completed on or after the original date of issuance of the license or certificate.

(4) Each course for which credit is requested shall have received the approval of the board or approval of the appraisal licensing agency of the state in which the course was held for renewal of

the applicable classification before the completion of the course.

(5) The two-year education cycle shall commence on July 1 of each odd-numbered year and end on June 30 of the next odd-numbered year.

(6) Within every two-year education cycle, each certified or licensed appraiser required to complete 14 or more continuing education hours shall attend a seven-classroom-hour national uniform standards of professional appraisal practice update course, or its equivalent.

(b) An appraiser shall not receive continuing education credit for a course for which the appraiser received credit toward the original classroom-hour requirement specified in K.A.R. 117-2-1, 117-3-1, or 117-4-1, except for the course on the uniform standards of professional appraisal practice and updates of the course. However, if a licensed or certified appraiser receives credit for a course to apply toward a higher classification, the appraiser may also receive continuing education credit for the course if it is approved by the board or by the appraisal licensing agency of the state in which the course was held for continuing education credit.

(c)(1) Up to one-half of an individual's continuing education credit may also be granted for participation, other than as a student, in appraisal educational processes and programs. Activities for which credit may be granted shall include any of the following:

(A) Teaching of appraisal courses. Credit for any course or seminar shall be awarded only once during each two-year continuing education cycle;

(B) program development;

(C) attendance at a state appraiser regulatory agency meeting, according to the following requirements:

(i) Credit shall be granted for attendance at no more than one meeting per education cycle;

(ii) the meeting shall be at least two hours in length; and

(iii) total credit shall not exceed seven hours;

(D) authorship of textbooks; or

(E) similar activities that are determined by the board to be equivalent to obtaining continuing education.

(2) Each appraiser seeking credit for attendance at or participation in an educational activity that was not previously accredited shall submit to the board a request for credit, which shall include the following information:

(A) A description of the activity;

(B) the date or dates of the activity;

(C) the subject or subjects covered;

(D) the name of each instructor and the instructor's qualifications; and

(E) any other relevant information required by the board. Within 30 days after receipt of this request, the appraiser shall be advised by the board in writing whether credit is granted and what amount of continuing education credit will be allowed. Either the sponsor or appraiser shall submit a separate request for approval of each continuing education activity.

(d) It shall be the appraiser's responsibility to keep track of that individual's continuing education credit. At the time of renewal of a license or certificate, the appraiser shall provide verification of completion of continuing education by affidavit to the board.

(1) The affidavit shall contain a statement of continuing education courses completed by the appraiser.

(2) The appraiser shall list all courses completed on the affidavit.

(3) The appraiser shall retain all course completion certificates for five years and shall make the certificates available to the board for review upon request.

(e) If any appraiser requests credit according to subsection (c), the appraiser shall submit a detailed description of the activities with the application for renewal on a form obtained from the board. (Authorized by K.S.A. 2008 Supp. 58-4105(a) and K.S.A. 58-4109; implementing K.S.A. 58-4109, K.S.A. 2008 Supp. 58-4112, and K.S.A. 2008 Supp. 58-4117; effective Jan. 21, 1991; amended, T-117-6-10-91, June 10, 1991; amended Aug. 5, 1991; amended May 24, 1993; amended July 25, 1994; amended Feb. 6, 1995; amended Jan. 9, 1998; amended July 16, 1999; amended May 17, 2002; amended May 23, 2003; amended Sept. 1, 2006; amended Jan. 1, 2008; amended April 4, 2008; amended July 10, 2009; amended May 21, 2010.)

**117-6-3. Education; obtaining course approval.** (a) To request board approval of a course to meet any education requirement of the act or portion of it, for each course the sponsor shall perform the following:

(1) Appoint a coordinator, who shall monitor the course and ensure compliance with the appropriate statutes and regulations;

(2) submit all information, materials, and fees

required by the board for course approval at least 30 days before the first scheduled class session, including the following:

(A) A completed application for course registration on a form prescribed by the board;

(B) the procedure for maintaining attendance records;

(C) the proposed dates and times of the course offering;

(D) the total amount of the attendance fee;

(E) the total number of class sessions and the length of time per session;

(F) the total number of hours in the course and the number of credit hours requested;

(G) if approval of the course is requested according to K.A.R. 117-2-1, 117-3-1, or 117-4-1, the amount of time allotted for the required examination;

(H) a course syllabus, including a detailed course outline and course objectives;

(I) an instructor resume, demonstrating that the instructor meets the qualifications in relation to knowledge of the subject matter and ability to teach;

(J) the methods of instruction or teaching techniques to be used in the course;

(K) a copy of any textbook or manual that will be used;

(L) a copy of all handout materials that will be used; and

(M) the course approval fee prescribed by K.A.R. 117-7-1.

(b) For continuing education purposes, each instructor shall demonstrate knowledge of the subject matter as indicated by either of the following:

(1) A college degree in an academic area related to the course; or

(2) at least three years of experience in a subject area directly related to the course.

(c) For prelicensing education or qualifying education purposes, according to K.A.R. 117-2-1, 117-3-1, and 117-4-1, each instructor shall demonstrate knowledge of the subject matter as indicated by any of the following:

(1) A current appraiser's license or certification pursuant to K.S.A. 58-4109(a)(1), (2), or (3), and amendments thereto;

(2) a current appraiser's license or certification issued by another state;

(3) a college degree in an academic area related to the course; or

(4) (A) Evidence of completion of all the required courses specified in K.A.R. 117-2-1, 117-3-1, or 117-4-1 within the past five years; and

(B) an appraisal log sheet that shows the equivalent of two years of appraisal experience within the past five calendar years in the subject area related to the course. One thousand hours shall constitute one year of appraisal experience.

(d) For purposes of continuing education or prelicensing education on the "uniform standards of professional appraisal practice" (USPAP), the only courses that will be accepted by the board for either prelicensing or continuing education shall be the "national uniform standards of professional appraisal practice" and "national uniform standards of professional appraisal practice update" courses that meet any of the following conditions:

(1) Have been developed by the appraisal foundation;

(2) have been approved by the board as being equivalent to these courses; or

(3) have been approved by the appraisal foundation as being equivalent to these courses, if the requirements of subsections (a), (b), and (c) have been met.

Each instructor shall have a current certified residential or certified general classification in this or any other jurisdiction and be certified as a USPAP instructor by the appraiser qualifications board.

(e) For prelicensing education or qualifying education purposes, according to K.A.R. 117-2-1, 117-3-1, and 117-4-1, the ability to teach effectively shall be demonstrated by one of the following:

(1) Within the preceding two years, completing a board-approved program for instructors that is designed to develop the ability to communicate;

(2) holding a current teaching certificate issued by any state department of education or an equivalent agency;

(3) holding a four-year undergraduate degree in education; or

(4) having experience teaching in schools, seminars, or in an equivalent setting.

(f) Each instructor shall perform the following:

(1) Comply with all laws and regulations pertaining to appraiser continuing education;

(2) provide students with the most current and accurate information;

(3) maintain an atmosphere conducive to learning in a classroom; and

(4) provide assistance to the students and respond to questions relating to course material.

(g) Course approvals shall expire on December 31 of each year. By November 1 a notification that includes the necessary forms shall be sent by the board, informing each sponsor that an application for renewal is necessary. The course renewal applications and necessary forms shall be received by the board before April 1, or the course approvals shall not be renewed. After notice and opportunity for a hearing, course approval or renewal of a course approval may be denied or revoked by the board under either of the following conditions:

(1) The course sponsor procured or attempted to procure course approval by knowingly making a false statement, submitting false information, or refusing to provide complete information in response to a question in an application for course approval or renewal of course approval.

(2) The course sponsor engages in any form of fraud or misrepresentation.

(h) The sponsor shall not advertise a course as approved unless written approval has been granted by the board.

(i) The sponsor shall conduct each course in a classroom or other facility that is adequate to comfortably accommodate the number of students enrolled.

(j) Each sponsor shall maintain, for at least five years, accurate records relating to course offerings, instructors, and student attendance. If a sponsor ceases operations, the coordinator appointed under paragraph (a)(1) shall be responsible for maintaining the records or providing a custodian acceptable to the board.

(k) Each sponsor shall provide each student with a certificate of completion within seven days of the date on which the student completes the course. The sponsor may require payment of course tuition as a condition for completing the course. (Authorized by and implementing K.S.A. 2008 Supp. 58-4105; effective Jan. 21, 1991; amended, T-117-6-10-91, June 10, 1991; amended Aug. 5, 1991; amended May 3, 1996; amended Jan. 9, 1998; amended Nov. 30, 1998; amended April 21, 2000; amended June 15, 2001; amended May 23, 2003; amended Feb. 4, 2005; amended May 21, 2010.)

## Article 7.—FEES

**117-7-1. Fees.** The following fees shall be submitted to the board. (a) For application for certification or licensure, the fee shall be $50.

(b) For original certification or licensure, the fee shall be $275.

(c) For renewal of a certificate or license, the fee shall be $275.

(d) For late renewal of a certificate or license, the fee shall be the amount specified in subsection (c) and an additional $50.

(e) Except as provided in subsection (h), for approval of a course of instruction to meet any portion of the education requirements of K.A.R. 117-2-1, 117-3-1, or 117-4-1, the fee shall be $100.

(f) Except as provided in subsection (h), for approval of a course of instruction to meet the continuing education requirements of K.A.R. 117-6-1, the fee shall be $50.

(g) Except as provided in subsection (h), for renewal of any course of instruction, the fee shall be $25.

(h) For approval or renewal of any course of instruction that is endorsed by the appraiser qualifications board, the fee shall be $10.

(i) For reinstatement of an inactive certificate or license, the fee shall be $50. (Authorized by and implementing K.S.A. 2009 Supp. 58-4107; effective Jan. 21, 1991; amended, T-117-6-10-91, June 10, 1991; amended Aug. 5, 1991; amended, T-117-4-22-92, April 22, 1992; amended June 22, 1992; amended Feb. 6, 1995; amended Jan. 28, 2000; amended June 15, 2001; amended Feb. 4, 2005; amended Jan. 18, 2008; amended April 17, 2009; amended Feb. 18, 2011.)

## Article 8.—UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE

**117-8-1. Uniform standards of professional appraisal practice.** The 2010-2011 edition of the "uniform standards of professional appraisal practice," as promulgated by the appraisal standards board of the appraisal foundation, effective January 1, 2010, is hereby adopted by reference, with the exception of standards 7, 8, 9, and 10. (Authorized by K.S.A. 2008 Supp. 58-4105; implementing K.S.A. 2008 Supp. 58-4105 and K.S.A. 58-4121; effective, T-117-6-10-91, June 10, 1991; effective Aug. 5, 1991; amended May 24, 1993; amended Feb. 6, 1995; amended May 3, 1996; amended Jan. 9, 1998; amended, T-117-3-6-98, March 6, 1998; amended Aug. 14, 1998; amended July 16, 1999; amended April 21, 2000; amended July 6, 2001; amended May 17, 2002; amended May 23, 2003; amended April 2, 2004; amended Feb. 4, 2005; amended July 7,

2006; amended Jan. 18, 2008; amended April 16, 2010.)

### Article 10.—INACTIVE STATUS

**117-10-1. Reinstatement of certificate or license to active status; continuing education.** The holder of a certificate or license that has been on inactive status for less than two years, upon request for reinstatement, shall submit evidence satisfactory to the board of completion of all continuing education requirements as specified in K.A.R. 117-6-1. (Authorized by and implementing K.S.A. 2007 Supp. 58-4112a; effective April 17, 2009.)

## Agency 120

# Health Care Data Governing Board

**Editor's Note:**
The Health Care Data Governing Board was abolished on January 1, 2006. Powers, duties and functions were transferred to the Kansas Health Policy Authority. See L. 2005, Ch. 187.

*Articles*

120-1. Client Assessment, Referral, and Evaluation (CARE) Program.

### Article 1.—CLIENT ASSESSMENT, REFERRAL, AND EVALUATION (CARE) PROGRAM

**120-1-2.** (Authorized by and implementing K.S.A. 39-968 and K.S.A. 65-6804; effective, T-120-8-22-05, Aug. 22, 2005; effective Dec. 2, 2005; revoked Aug. 5, 2011.)

# Agency 121

# Department of Credit Unions

*Articles*

121-9. Foreign Credit Unions.
121-10. Credit Union Annual Audit Requirements.
121-11. Merger of Credit Unions.
121-12. Credit Union Branches.

## Article 9.—FOREIGN CREDIT UNIONS

**121-9-1. Foreign credit union; requirements for approval.** (a) Before doing business in this state, the board of directors of each foreign credit union shall obtain the approval of the administrator of the Kansas department of credit unions.

(b) In order to apply for the administrator's approval of a foreign credit union, the board of directors of the foreign credit union shall meet the following requirements:

(1) Describe on a form provided by the administrator how the proposed field of membership meets the requirements of K.S.A. 17-2205 and amendments thereto;

(2) provide documentation by which the administrator can evaluate the financial safety and soundness of the credit union, including the following:

(A) A statement from the credit union regulator in the state where the foreign credit union is chartered or incorporated that the credit union is in good standing in that state;

(B) a copy of the most current insurance certificate from the national credit union share insurance fund;

(C) a copy of the credit union's most current balance sheet, the year-to-date income statement, and the most recent call report;

(D) a resolution from the foreign credit union's board of directors stating that, for loans originating in Kansas, the foreign credit union will comply with Kansas statutes and regulations;

(E) a copy of the most recent regulatory examination, annual supervisory committee audit report, or equivalent examination or report from the credit union regulator in the state where the foreign credit union is chartered or incorporated; and

(F) a description of the services that the credit union intends to provide to its members; and

(3) if deemed necessary by the administrator to determine the credit union's safety and soundness, undergo an examination by the Kansas department of credit unions.

(c) For purposes of this regulation, "doing business in this state" shall mean that a foreign credit union intends to establish or has a main office or a branch office in Kansas. (Authorized by K.S.A. 17-2260; implementing K.S.A. 17-2223a; effective Dec. 28, 2007; amended May 1, 2009.)

## Article 10.—CREDIT UNION ANNUAL AUDIT REQUIREMENTS

**121-10-1. Definitions.** For purposes of this article, the following definitions shall apply:

(a) "Agreed-upon procedures engagement" means an engagement to report on findings based on specific agreed-upon procedures performed by an independent certified public accountant. The nature and extent of the procedures to be performed shall be agreed to and specified in a written agreement between the supervisory committee and the independent certified public accountant.

(b) "Audit" means a review of a credit union's receipts, disbursements, income, assets, and liabilities.

(c) "Financial statement audit" and "opinion audit" mean the examination of a credit union's financial statements performed by an independent certified public accountant for the purpose of expressing an opinion as to whether those financial statements of the credit union present fairly, in all material respects, the financial position and results of operations of the credit union.

(d) "Independent certified public accountant"

means a certified public accountant who meets the following requirements:

(1) Holds a valid permit to practice issued by a state board of accountancy. The independent certified public accountant's firm shall be registered with the Kansas board of accountancy; and

(2) is independent of the credit union as defined by the code of professional conduct issued by the American institute of certified public accountants.

(e) "Supervisory committee annual audit and internal control checklist" means the audit and list of a credit union's work procedures that a credit union submits to the Kansas department of credit unions on a form supplied by the department. (Authorized by and implementing K.S.A. 17-2211; effective Aug. 1, 2008; amended May 28, 2010.)

## Article 11.—MERGER OF CREDIT UNIONS

**121-11-1. Definitions.** For purposes of this article, the following definitions shall apply:

(a) "Continuing credit union" means a credit union that continues in operation after a merger.

(b) "Merging credit union" means a credit union that ceases to exist as an operating credit union at the time of a merger. (Authorized by K.S.A. 17-2260; implementing K.S.A. 2008 Supp. 17-2228; effective May 1, 2009.)

**121-11-2. Process for merger of credit unions.** (a) Either of the following may merge into a single credit union:

(1) Any two credit unions formed under the laws of this state; or

(2) any credit union formed under the laws of this state and any credit union formed under the laws of any other state or of the United States of America that is formed for the same purpose for which a credit union might be formed under the laws of this state.

(b) The two affected credit unions shall notify the administrator in writing of their intent to merge within 14 days after each credit union's board of directors formally agrees in principle to merge by the execution of a corporate resolution by each entity's board of directors.

(c) Upon approval of a proposal for merger by a majority of each board of directors, the credit unions shall jointly prepare a plan for the proposed merger, which shall include the following:

(1) The names of the proposed continuing credit union and the merging credit union;

(2) the terms and conditions of the proposed merger and the mode of carrying out the merger, which shall be referred to as the merger agreement and shall be approved by a corporate resolution of each board of directors;

(3) the manner and basis of converting the membership shares of the merging credit union into the membership shares of the continuing credit union;

(4) a statement of any changes in the articles of incorporation or bylaws of the continuing credit union effected by the proposed merger, including any proposed change in the field of membership;

(5) documentation that any proposed change in the field of membership will meet the statutory requirements for field of membership specified in K.S.A. 17-2205, and amendments thereto;

(6) the current financial reports of each credit union, as follows:

(A) The current financial statements for each credit union;

(B) the current delinquent loan summaries and analyses of the adequacy of the allowance for loan and lease losses account;

(C) consolidated financial statements, including an assessment of the net worth of each credit union before the merger and the anticipated net worth of the proposed continuing credit union;

(D) an analysis of the asset-to-share ratio for the proposed merging credit union and the proposed continuing credit union;

(E) an explanation of proposed share adjustments, if any;

(F) an explanation of provisions for reserves, undivided earnings, or dividends;

(G) provisions with respect to the notification and payment of creditors; and

(H) an explanation of any changes relative to any type of insurance provided in conjunction with member accounts;

(7) disclosure of any financial benefit that is to be received by the officers, senior management, and directors but is not available to ordinary members;

(8) a summary of the products and services proposed to be available to the members of the continuing credit union that could differ from those available at the merging credit union, with an explanation of the effects of any changes from the current products and services provided to the members of the merging credit union;

(9) a summary of the advantages and disadvantages of the merger; and

(10) any other information deemed critical to the merger agreement by both boards of directors.

(d) An application for approval of the merger shall be complete when the following information is submitted to the administrator:

(1) The merger plan as described in subsection (c);

(2) a copy of the corporate resolution of each board of directors, formally agreeing in principle to merge pursuant to subsection (b);

(3) a copy of the corporate resolution of each board of directors, formally approving the merger agreement pursuant to subsection (c);

(4) (A) The proposed notice of special meeting of the members; or

(B) a copy of the ballot form to be sent to the members if the credit union decides to hold the vote without a meeting of the members; and

(5) a written explanation of the voting procedures.

(e) If the proposed continuing credit union is organized under the laws of another state or of the United States, an application to merge that is prescribed by the state or federal supervisory authority of the proposed continuing credit union may be accepted by the administrator. Additional information to determine whether to deny or approve the merger may be required by the administrator.

(f) Preliminary approval of an application for merger, conditioned upon meeting specific requirements, may be granted by the administrator. However, final approval shall not be granted unless all of the following conditions are met:

(1) The requirements have been met within the time frame, if any, specified in the preliminary approval granted by the administrator.

(2) National credit union share insurance fund approval has been granted by the national credit union administration for the proposed continuing credit union.

(3) Verification of continuance of a surety bond for the proposed continuing credit union has been provided to the administrator.

(g) An application for merger may be denied by the administrator if the administrator finds any of the following:

(1) The financial condition of the proposed merging credit union before the merger would substantially impair the financial stability of the proposed continuing credit union or negatively impact the financial interests of the members or creditors of either credit union.

(2) The plan includes a change in the products or services available to members of the proposed merging credit union that substantially harms the financial interests of the members or creditors of the proposed merging credit union.

(3) The officers, directors, or senior management are to receive undue financial benefits not ordinarily received by similar credit unions and not available to ordinary members.

(4) The credit unions do not furnish to the administrator all information material to the application that is requested by the administrator.

(5) The field of membership that would result from the proposed merger would not meet the statutory requirements of K.S.A. 17-2205, and amendments thereto.

(6) The merger would be contrary to law or regulation.

(h) Upon approval of the plan of merger, the board of directors of each credit union shall direct, by resolution, that the plan be submitted to a vote at a special meeting to be called within 60 days of the preliminary approval by the administrator. Advance notice of the meeting shall be given by sending a letter addressed to each member at the last known address currently reflected on the books of the credit union or electronically at the member's last known electronic mail address. Additionally, the board of directors of each credit union may post the notice on the credit union's bulletin board or web site, or both. This notice shall be sent no more than 30 days and no less than 14 days before the meeting at which the merger will be voted on. The notice shall meet the following requirements:

(1) Specify the purpose, date, time, and place of the meeting;

(2) contain a summary of the merger plan and directions specifying how a member can obtain a copy of the complete merger plan;

(3) state the reasons for the proposed merger;

(4) provide the name and location, including the location of each branch, of the proposed continuing credit union;

(5) inform the members that they have the right to vote on the merger proposal in person at the meeting or by written ballot to be received no later than the date and time announced for the meeting called for that purpose; and

(6) be accompanied by a ballot for merger pro-

posal and instructions on how to vote by written ballot by mail.

(i) The approval of a proposal to merge a credit union into another credit union shall require the affirmative vote of a majority of the members of each credit union who participate in the vote to merge, either by presence at the special meeting or by participation by written ballot before the meeting.

(j) With the prior approval of the administrator, a credit union may accept member votes by an alternative method that is reasonably calculated to ensure that each member has an opportunity to vote on the merger.

(k) The board of directors of the proposed merging credit union shall appoint or hire an independent teller or tellers to ensure the accuracy and integrity of the vote.

(l) Upon approval of the merger plan by the membership, the secretary of the proposed continuing credit union shall submit in triplicate the completed and signed certificate of merger in compliance with K.S.A. 17-2228, and amendments thereto, along with any necessary amendments to the continuing credit union's articles of incorporation and bylaws, to the administrator. The final approval of the merger shall be forwarded by the administrator to the national credit union administration for share insurance approval. Upon final approval by the national credit union administration of share insurance for the proposed continuing credit union, a certified copy of the certificate of merger shall be issued by the administrator, and approval of any necessary amendments to the continuing credit union's articles of incorporation and bylaws shall be granted by the administrator to the continuing credit union.

(m) Upon receipt of a certified copy of the certificate of merger issued by the administrator and the national credit union administration's approval, the records of the merging credit union and the continuing credit union shall be combined on the effective date of the merger. The board of directors of the continuing credit union shall certify the completion of the merger to the administrator within 30 days after the effective date of the merger.

(n) Upon receipt by the administrator of the completion of the merger certification, the following shall be performed by the administrator:

(1) Sending a copy of the merger certification to the national credit union administration;

(2) approving any bylaw amendments; and

(3) canceling the charter of the merging credit union.

(o) For good cause shown, any time frame or deadline specified in this regulation may be extended by the administrator. (Authorized by K.S.A. 17-2260; implementing K.S.A. 2008 Supp. 17-2228; effective May 1, 2009.)

## Article 12.—CREDIT UNION BRANCHES

**121-12-1. Definition.** For purposes of K.S.A. 17-2221a (c) (2) and amendments thereto, "branch" shall not include any automated teller machine, remote service unit, or similar device. (Authorized by K.S.A. 17-2260 and K.S.A. 2008 Supp. 17-2221a; implementing K.S.A. 2008 Supp. 17-2221a; effective May 1, 2009.)

# Agency 123

# Juvenile Justice Authority

*Articles*

123-2. FACILITIES MANAGEMENT.

## Article 2.—FACILITIES MANAGEMENT

**123-2-111. Trafficking in contraband.** (a) No person shall engage in any of the following without the prior consent of the superintendent:

(1) Introducing or attempting to introduce any item into or upon the grounds of a juvenile correctional facility or institution;

(2) taking, sending, or attempting to take or send any item from any juvenile correctional facility or institution;

(3) possessing any item while in any juvenile correctional facility or institution; or

(4) distributing any item within a juvenile correctional facility or institution.

(b) The phrase "any item," as used in subsection (a), shall include the following:

(1) Guns, firearms of any type, and the components, diagrams, and plans thereof, except as authorized by K.S.A. 75-7c10(b)(1) and amendments thereto;

(2) ammunition, explosives, and the diagrams, formulas, and plans thereof;

(3) knives, tools, and materials including sandpaper, whetstones, and any similar items used to make knives and tools;

(4) hazardous or poisonous chemicals, flammable liquids and gases, and formulas thereof;

(5) escape paraphernalia, including ropes, grappling hooks, hacksaw blades, jeweler's wire, bar spreaders, maps, lock picks, handcuff keys, wire cutters, and any similar devices that could be used in an escape;

(6) identification documents and individual photographs of the juvenile offender of the style suitable for the production of identification documents;

(7) documents, plans, diagrams, and schematics that refer to electrical systems, escape alarms, overhead lighting, facility power supply, gate operations, body alarms, radio communications, and any similar systems;

(8) narcotics and any other controlled substances, including any synthetic narcotic, drug, stimulant, sleeping pill, barbiturate, and medicine, prescription or nonprescription, that was not dispensed or approved by the facility health authority. Medicines dispensed or approved by the health authority shall be considered contraband if not consumed or utilized in the manner prescribed;

(9) intoxicants, including liquor and alcoholic beverages;

(10) currency, in the form of paper, checks, money orders, coins, stamps, and any similar instruments with monetary value;

(11) hypodermic needles, hypodermic syringes, nasal inhalers, any other similar devices, and any component that could be used to inject or spray substances into the body;

(12) food items;

(13) cameras, recording devices, one-way or two-way transmitting devices, and any similar devices and components thereof, including tapes, batteries, memory cards, and film;

(14) letters, notes, books, and any other forms of written communication;

(15) portable electronic devices used, in any combination, for storing music, video, or data or for mobile telecommunications, telephone calls, text messaging, or data transmission over a cellular network and their accessories, and any similar devices and the components of these devices;

(16) tobacco, including cigars, cigarillos, cigarettes, smokeless or electronic cigarettes, chewing tobacco, snuff, and any other tobacco products; and

(17) matches and any other portable devices used to create a flame. (Authorized by and implementing K.S.A. 2009 Supp. 21-3826, as amended by L. 2010, ch. 147, sec. 4, K.S.A. 2009 Supp. 75-7024, and K.S.A. 2009 Supp. 76-3203; effective, T-123-7-1-10, July 1, 2010; effective Oct. 15, 2010.)

## Agency 127

# Kansas Housing Resources Corporation

*Articles*

127-2. KANSAS MANUFACTURED HOUSING INSTALLATION.

### Article 2.—KANSAS MANUFACTURED HOUSING INSTALLATION

**127-2-1. Definitions.** As used in K.S.A. 58-4219(a) and amendments thereto, the following phrases shall have the meanings specified in this regulation:

(a) "Installation of heating and air conditioning systems" shall mean the installation of the heating system, the air conditioning unit, and the electrical branch circuit for that air conditioning unit.

(b) The phrase "the hookup of electric, gas and water utilities" shall mean the following:

(1) The installation of the electrical service line from the main service-disconnecting means to the manufactured home;

(2) the installation of a service line from the natural gas meter or the propane fuel tank to the manufactured home; and

(3) the installation of service lines from the water meter to the manufactured home and from the sewer riser to the manufactured home. (Authorized by K.S.A. 58-4225; implementing K.S.A. 58-4219; effective March 6, 2009.)

**127-2-2. Installation standards.** (a) Except as provided in this regulation, the words and terms defined in K.S.A. 58-4202, and amendments thereto, shall have the meanings specified in that statute.

(b) The definition of "manufactured home" in 24 CFR 3280.2, as promulgated by the U.S. department of housing and urban development and in effect on February 8, 2008, is hereby adopted by reference.

(c) The following federal regulations promulgated by the U.S. department of housing and urban development, as in effect on October 20, 2008, are hereby adopted by reference:

(1) The following provisions of 24 CFR Part 3280:

(A) In 24 CFR 3280.302, the definitions of "anchor assembly," "anchoring equipment," "anchoring system," "diagonal tie," "foundation system," "ground anchor," "stabilizing devices," and "support system"; and

(B) 24 CFR 3280.306(b)(2)(iii) and (iv); and

(2) the following provisions of 24 CFR Part 3285:

(A) The following sections of subpart A:

(i) 24 CFR 3285.2(c) and (d);

(ii) 24 CFR 3285.4(b), (c), (d), (e), (f), (g), (h)(2) and (3), (i), and (j);

(iii) 24 CFR 3285.5; and

(iv) 24 CFR 3285.6;

(B) the following sections or portions of sections of subpart B:

(i) The first sentence of 24 CFR 3285.101;

(ii) 24 CFR 3285.102; and

(iii) 24 CFR 3285.103;

(C) subpart C, except that registered manufacturer's installation instructions may be substituted for 24 CFR 3285.204;

(D) subpart D, except that 24 CFR 3285.302 shall not be adopted and except that registered manufacturer's installation instructions may be substituted for the following:

(i) 24 CFR 3285.301;

(ii) the first sentence of 24 CFR 3285.302;

(iii) tables 1 and 2 to 24 CFR 3285.303;

(iv) figure A, "typical mate-line column pier and mating wall support when frame only blocking is required," to 24 CFR 3285.310;

(v) figure B, "typical mate-line column pier and mating wall support when perimeter blocking is required," to 24 CFR 3285.310(b);

(vi) 24 CFR 3285.312(b); and

(vii) figure A, "typical blocking diagrams for single section homes," and figure B, "typical blocking diagram for multi-section home," to 24 CFR 3285.312;

(E) subpart E, except that registered manufacturer's installation instructions may be substituted for 24 CFR 3285.404;

(F) subpart F;

(G) subpart G;

(H) subpart H; and

(I) subpart I, except that registered manufacturer's installation instructions may be substituted for 24 CFR 3285.802.

(d) Any manufacturer's installation designs and instructions that have been approved by the secretary of the U.S. department of housing and urban development or by a design approval primary inspection agency (DAPIA), as provided in 24 CFR 3285.2, may be filed with the corporation. On and after the date on which designs and instructions are filed, they shall be considered "registered manufacturer's installation instructions" for purposes of subsection (c).

(e)(1) Each addition, modification, replacement, or removal of any equipment that affects the installation of a manufactured home and that is made by the installer before completion of the installation of the home shall meet or exceed the protections and requirements of the installation standards specified in this regulation.

(2) An alteration specified in paragraph (e)(1) shall not affect the applicability of the manufactured home construction and safety standards. An alteration specified in paragraph (e)(1) shall not impose additional loads on the manufactured home or its foundation, unless the alteration meets the following requirements:

(A)(i) Is included in the manufacturer's DAPIA-approved designs and installation instructions; or

(ii) is designed by a registered professional engineer or architect and is consistent with the manufacturer's design; and

(B) conforms to the requirements of the manufactured home construction and safety standards. (Authorized by K.S.A. 58-4218 and 58-4225; implementing K.S.A. 58-4217 and 58-4218; effective March 6, 2009.)

**127-2-3. Liability insurance requirement.** Each applicant for a manufactured home installer's license shall demonstrate that the applicant carries liability insurance of at least $200,000. (Authorized by K.S.A. 58-4225; implementing K.S.A. 58-4219; effective March 6, 2009.)

# Agency 129
# Kansas Health Policy Authority

**Editor's Note:**
Pursuant to Executive Reorganization Order (ERO) No. 38, the Kansas Health Policy Authority was abolished on July 1, 2011. Powers, duties and functions were transferred to the Kansas Department of Health and Environment (KDHE), Division of Health Care Finance. See L. 2012, Ch. 102.

**Editor's Note:**
K.S.A. 2005 Supp. 75-7401 thru 75-7405 and Section 42 of Chapter 187, 2005 Session Laws of Kansas transferred specific powers, duties, and regulatory authority of the Division of Health Policy and Finance (DHPF) within the Department of Administration to the Kansas Health Policy Authority (KHPA), effective July 1, 2006. The statutes provide that KHPA will be the single state agency for Medicaid, Medikan and Health Wave in Kansas.

**Editor's Note:**
The Division of Health Policy and Finance was established by 2005 Senate Bill 272. K.S.A. 2005 Supp. 75-7413 transferred specific powers, duties, and regulatory authority of the Secretary of Social and Rehabilitation Services on an interim basis to a new Division of Health Policy and Finance (DHPF) within the Department of Administration, created under K.S.A. 2005 Supp. 75-7406, effective July 1, 2005. The statute provides that DHPF will be the single state agency for Medicaid, Medikan and HealthWave in Kansas. The statute also establishes the Kansas Health Policy Authority (HPA) which will eventually assume these programs as well as other medical programs for the State of Kansas.

*Articles*

129-5. Provider Participation, Scope of Services, and Reimbursements for the Medicaid (Medical Assistance) Program.
129-10. Adult Care Home Program.

## Article 5.—PROVIDER PARTICIPATION, SCOPE OF SERVICES, AND REIMBURSEMENTS FOR THE MEDICAID (MEDICAL ASSISTANCE) PROGRAM

**129-5-78. Scope of and reimbursement for home- and community-based services for persons with traumatic brain injury.** (a) The scope of allowable home- and community-based services (HCBS) for persons with traumatic brain injury shall consist of those services authorized by the applicable federally approved waiver to the Kansas medicaid state plan. Recipients of services provided pursuant to this waiver shall be required to show the capacity to make progress in their rehabilitation and independent living skills.

(b) The need for HCBS shall be determined by an individualized assessment of the prospective recipient by a provider enrolled in the program. HCBS shall be provided only in accordance with a plan of care written by a case manager.

(c) HCBS, which shall require prior authorization by the Kansas medicaid HCBS program manager, may include one or more of the following:

(1) Rehabilitation therapies, which may consist of any of the following:

(A) Occupational therapy;

(B) physical therapy;

(C) speech-language therapy;

(D) cognitive rehabilitation; or

(E) behavioral therapy;

(2) personal services;

(3) medical equipment, supplies, and home modification not otherwise covered under the Kansas medicaid state plan;

(4) sleep-cycle support services;

(5) a personal emergency response system and its installation; or

(6) provision of or education on transitional living skills.

(d) Case management services up to a maximum of 160 hours each calendar year, which may be exceeded only with prior authorization by the Kansas medicaid HCBS program manager, shall

be provided to all HCBS recipients under the traumatic brain injury program.

(e) The fee allowed for home- and community-based services for persons with traumatic brain injury shall be the provider's usual and customary charges, except that no fee shall be paid in excess of the waiver's range maximum. (Authorized by K.S.A. 2008 Supp. 75-7403 and 75-7412; implementing K.S.A. 2008 Supp. 75-7405 and 75-7408; effective July 18, 2008; amended Oct. 16, 2009.)

**129-5-118. Scope of federally qualified health center services.** For purposes of this regulation, a federally qualified health center shall mean a community health center, federally qualified health center (FQHC) look-alike, or an urban Indian organization receiving funds under the Indian health care improvement act that is accepted by the centers for medicare and medicaid to furnish federally qualified health center services for participation under medicare and medicaid. An FQHC look-alike shall mean an organization that meets all of the eligibility requirements of an organization that receives a public health service (PHS) section 330 grant but does not receive grant funding. (a) The services provided by the following health care professionals shall be billable as federally qualified health center services:

(1) Physician and physician assistant pursuant to K.A.R. 129-5-88;

(2) advanced registered nurse practitioner pursuant to K.A.R. 30-5-113;

(3) dentist and dental hygienist pursuant to K.A.R. 30-5-100;

(4) licensed mental health practitioner pursuant to K.A.R. 30-5-104;

(5) clinical social worker pursuant to K.A.R. 30-5-86;

(6) visiting nurse pursuant to K.A.R. 30-5-89; and

(7) for kan be healthy nursing assessments only, registered nurse pursuant to K.A.R. 30-5-87.

(b) Covered services of federally qualified health centers shall include the following:

(1) The services and supplies furnished as an incident to the professional services provided by the health care professionals specified in subsection (a); and

(2) other ambulatory services covered under the medicaid state plan, if provided by the federally qualified health center.

(c) (1) Preventive primary services shall be furnished by or under the direct supervision of any of the following:

(A) Physician;

(B) nurse practitioner;

(C) physician assistant;

(D) nurse midwife;

(E) licensed mental health practitioner;

(F) clinical social worker; or

(G) either a member of the center's health care staff who is an employee of the center or a physician under arrangements with the center.

(2) Preventive primary services shall include only drugs and biologicals that cannot be self-administered, unless §1861(s) of the social security act provides for coverage of the drug regardless of whether the drug is self-administered.

(d) The following preventive primary services may be covered when provided by federally qualified health centers to medicaid beneficiaries:

(1) Medical social services;

(2) nutritional assessment and referral;

(3) preventive health education;

(4) children's eye and ear examinations;

(5) prenatal and postpartum care;

(6) prenatal services;

(7) well child care, including periodic screening;

(8) providing immunizations, including tetanus-diphtheria booster and influenza vaccine;

(9) voluntary family planning services;

(10) taking patient history;

(11) blood pressure measurement;

(12) weight measurement;

(13) physical examination targeted to risk;

(14) visual acuity screening;

(15) hearing screening;

(16) cholesterol screening;

(17) stool testing for occult blood;

(18) dipstick urinalysis;

(19) risk assessment and initial counseling regarding risks; and

(20) the following services, for women only:

(A) Clinical breast exam;

(B) referral for mammography; and

(C) thyroid function test.

(3) Preventive primary services shall not include group or mass information programs, health education classes, and group education activities, which may include media productions and publication and services for eyeglasses and hearing aids.

(e) "Visiting nurse" shall include a registered nurse or licensed practical nurse who provides

part-time or intermittent nursing care to a patient at the beneficiary's place of residence under a written plan of treatment prepared by a physician. The place of residence shall not include a hospital or long-term care facility. This nursing care shall be covered only if there is no home health agency in the area.

(f) Federally qualified health center services provided at a location other than a federally qualified health center shall meet the following conditions:

(1) No services are provided at an inpatient hospital, outpatient hospital, or hospital emergency room.

(2) The services provided are listed in subsection (b).

(3) The services are provided to a patient of a federally qualified health center.

(4) The health professional providing the services is an employee of a federally qualified health center or under contract with a federally qualified health center and is required to seek compensation for that person's services from the federally qualified health center. (Authorized by K.S.A. 2008 Supp. 75-7403 and 75-7412; implementing K.S.A. 2008 Supp. 75-7405 and 75-7408; effective June 2, 2006; amended March 19, 2010.)

**129-5-118a. Reimbursement for federally qualified health center services.** Reimbursement shall not exceed the reasonable cost of federally qualified health center services and other ambulatory services covered under the Kansas medical assistance program. "Reasonable cost" shall consist of the necessary and proper cost incurred by the provider in furnishing covered services to program beneficiaries, subject to the cost principles and limits specified in K.A.R. 129-5-118a (c)(1) and K.A.R. 129-5-118b. (a) Reimbursement method. An interim per visit rate shall be paid to each federally qualified health center provider, with a retroactive cost settlement for each facility fiscal year.

(1) Interim reimbursement rate. The source and the method of determination of interim rate shall depend on whether the federally qualified health center is a new enrollee of the Kansas medical assistance program or is a previously enrolled provider. Under special circumstances, the interim rate may be negotiated between the agency and the provider.

(A) Newly enrolled facility. If the facility is an already-established federally qualified health center with an available medicare cost report, an all-inclusive rate derived from the cost report may be used for setting the initial medicaid interim payment rate. If the facility is an already-established federally qualified health center opening a new service location, then the rate from the already-established federally qualified health center shall be used for the new service location. If the facility converted from a rural health clinic to a federally qualified health center, then the rate from the rural health clinic shall be used for the new federally qualified health center. For all other circumstances, the initial payment rate shall be based on the average of the current reimbursement rates for previously enrolled federally qualified health center providers.

(B) Previously enrolled facility. After the facility submits a federally qualified health center cost report, the agency shall determine the maximum allowable medicaid rate per visit as specified in subsection (c). If a significant change of scope of services or a significant capital project has been implemented, the federally qualified health center shall submit an interim cost report if the center wants a change to the existing rate. The agency and the federally qualified health center shall use the interim cost report to negotiate a new interim rate.

(2) Visit. A "visit" shall mean face-to-face encounter between a center patient and a center health care professional as defined in K.A.R. 129-5-118. Encounters with more than one health professional or multiple encounters with the same health professional that take place on the same day shall constitute a single visit, except under either of the following circumstances:

(A) The patient suffers an illness or injury requiring additional diagnosis or treatment after the first encounter.

(B) The patient has a different type of visit on the same day, which may consist of a dental, medical, or mental health visit.

(3) Retroactive cost settlement. For each reporting period, the agency shall compare the total maximum allowable medicaid cost with the total payments to determine the program overpayment or underpayment. Total payments shall include interim payments, third-party liability, and any other payments for covered federally qualified health center services. The cost report and supplemental data submitted by the provider, the medicare cost report, and the medicaid-paid

claims data obtained from the program's fiscal agent shall be used for these calculations.

(b) Cost reporting. Each federally qualified health center shall submit a completed cost report. The form used for cost reporting shall be the most current version of the medicare financial and statistical report form for independent rural health clinics and freestanding federally qualified health centers with adjustments made, as necessary, to report the cost and number of visits for medicaid-covered services pursuant to K.A.R. 129-5-118.

(1) Filing requirements. Each provider shall be required to file annual cost reports on a fiscal year basis.

(A) Cost reports shall be received no later than five months after the end of the facility's fiscal year. An extension in due date may be granted by the agency upon request, if necessary due to circumstances beyond the control of the federally qualified health center.

(B) Each provider filing a cost report after the due date without a preapproved extension shall be subject to the following penalties:

(i) If the cost report has not been received by the agency by the close of business on the due date, all further payments to the provider may be withheld and suspended until the complete financial and statistical report has been received.

(ii) Failure to submit the completed financial and statistical report within one year after the end of the cost report period may be cause for termination from the Kansas medical assistance program.

(2) Fiscal and statistical data. The preparation of the cost report shall be based upon the financial and statistical records of the facility and shall use the accrual basis of accounting. The reported data shall be accurate and adequately supported to facilitate verification and analysis for the determination of allowable costs.

(3) Supplemental data. The following additional information shall be submitted to support reported data and to facilitate cost report review, verifications, and other analysis.

(A) A working trial balance. This balance shall contain account numbers, descriptions of the accounts, the amount of each account, the cost report expense line on which the account was reported, and fiscal year-end adjusting entries to facilitate reconciliation between the working trial balance and the cost report. The facility shall bear the burden of proof that the reported data accurately represents the cost and revenue as recorded in the accounting records. All unexplained differences shall be used to reduce the allowable cost.

(B) Financial statements and management letter. These documents shall be prepared by the facility's independent auditors and shall reconcile with the cost report.

(C) Depreciation schedule. This schedule shall support the depreciation expense reported on the cost report.

(D) Other data. Data deemed necessary by the agency for verification and rate determination shall also be submitted.

(c) Determination of reimbursable medicaid rate per visit.

(1) Allowable facility costs. This term shall mean costs derived from reported expenses after making adjustments resulting from cost report review and application of the cost reimbursement principles specified in K.A.R. 129-5-118b.

(2) Allocation of overhead costs.

(A) Total allowable administrative and facility costs shall be distributed to the following cost centers:

(i) Federally qualified health center costs;

(ii) non-federally qualified health center costs; and

(iii) nonreimbursable costs, excluding bad debt.

(B) Accumulated direct cost in each cost center shall be used as the basis for the overhead cost allocation.

(3) Average allowable cost per visit. The total allowable facility costs shall be divided by the total number of visits.

(4) Reimbursable medicaid rate. The reimbursable medicaid rate per visit shall not be more than 100 percent of the reasonable and related cost of furnishing federally qualified health center services covered in K.A.R. 129-5-118b.

(d) Fiscal and statistical records and audits.

(1) Recordkeeping. Each provider shall maintain sufficient financial records and statistical data for accurate determination of reasonable costs. Standardized definitions and reporting practices widely accepted among federally qualified health centers and related fields shall be followed, except to the extent that these definitions and practices may conflict with or be superseded by state or federal medicaid requirements.

(2) Audits and reviews.

(A) Each provider shall furnish any information to the agency that may be necessary to meet the following criteria:

(i) Ensure proper payment by the program pursuant to this regulation and K.A.R. 129-5-118b; and

(ii) substantiate claims for program payments.

(B) Each provider shall permit the agency to examine any records and documents necessary to ascertain information for determination of the accurate amount of program payments. These records shall include the following:

(i) Matters of the facility ownership, organization, and operation;

(ii) fiscal, statistical, medical, and other recordkeeping systems;

(iii) federal and state income tax returns and all supporting documents;

(iv) documentation of asset acquisition, lease, sale, or other transaction;

(v) management arrangements;

(vi) matters pertaining to the cost of operation; and

(vii) health center financial statements.

(C) Other records and documents shall be made available to the agency as requested.

(D) All records and documents shall be available in Kansas.

(E) Each provider shall furnish to the agency, upon request, copies of patient service charge schedules and any subsequent changes to these schedules.

(F) The agency shall suspend program payments if it is determined that a provider does not maintain adequate records for the determination of reasonable and adequate rates under the program or if the provider fails to furnish requested records and documents to the agency.

(G) Thirty days before suspending payment to the provider, written notice shall be sent by the agency to the provider of the agency's intent to suspend payment. The notice shall explain the basis for the agency's determination and identify the provider's recordkeeping deficiencies.

(H) All provider records that support reported costs, charges, revenue, and patient statistics shall be subject to audits by the agency, the United States department of health and human services, and the United States general accounting office. These records shall be retained for at least five years after the date of filing the cost report with the agency. (Authorized by K.S.A. 2008 Supp. 75-7403 and 75-7412; implementing K.S.A. 2008 Supp. 75-7405 and 75-7408; effective March 19, 2010.)

**129-5-118b. Cost reimbursement principles for federally qualified health center services and other ambulatory services.** The medicare cost reimbursement principles contained in subparts A and G in 42 C.F.R. part 413, as revised on October 1, 2009 and hereby adopted by reference, and the cost principles specified in this regulation and in K.A.R. 129-5-118a shall be applicable to the financial and statistical data reported by the federally qualified health center for the determination of reasonable cost of providing covered services. (a) Nonreimbursable costs. Each cost that is not related to patient care and is not necessary for the efficient delivery of covered federally qualified health center services and other ambulatory services shall be excluded from the medicaid rate determination. In addition, the following expenses shall be considered nonreimbursable:

(1) Salaries and fees paid to nonworking directors and officers;

(2) uncollectible debts;

(3) donations and contributions;

(4) fund-raising expenses;

(5) taxes including the following:

(A) Those from which the provider is entitled to obtain exemption;

(B) those on property not used in providing covered services; and

(C) those levied against a patient and remitted by the provider;

(6) life insurance premiums for directors, officers, and owners;

(7) the imputed value of in-kind services rendered by nonpaid workers and volunteers;

(8) the cost of social, fraternal, civic, and other organizations associated with activities unrelated to patient care;

(9) all expenses related to vending machines;

(10) board of director costs;

(11) the cost of advertising for promoting the services offered by the facility to attract more patients;

(12) public relations and public information expenses;

(13) penalties, fines, and late charges, including interest paid on state and federal payroll taxes;

(14) the cost of items or services provided only to non-Kansas medical assistance program patients and reimbursed by third-party payers;

(15) all expenses associated with the ownership, lease, or charter of airplanes;

(16) bank overdraft charges and other penalties;

(17) the cost associated with group health education classes, activities, and mass information programs including media productions, brochures, and other publications;

(18) expense items without indication of their nature or purpose including "other" and "miscellaneous," without proper documentation when requested;

(19) non-arm's-length transactions;

(20) legal and other costs associated with litigation between a provider and state or federal agencies, unless litigation is decided in the provider's favor; and

(21) legal expenses not related to patient care.

(b) Costs allowed with limitations and conditions.

(1) Loan acquisition fees and standby fees. These fees shall be amortized over the life of the loan and shall be allowed only if the loan is related to patient care.

(2) Taxes associated with financing the operations. These taxes shall be allowed only as amortized cost.

(3) Special assessments on land for capital improvements. These assessments shall be amortized over the estimated useful life of the improvements and allowed only if related to patient care.

(4) Start-up costs of a new facility.

(A) Start-up costs may include the following:

(i) Staff salaries and consultation fees;

(ii) utilities;

(iii) taxes;

(iv) insurance;

(v) mortgage interest;

(vi) employee training; and

(vii) any other allowable cost incidental to the operation of the facility.

(B) A start-up cost shall be recognized only if it meets the following criteria:

(i) Is incurred before the opening of the facility;

(ii) is related to developing the facility's ability to provide covered services;

(iii) is amortized over a period of 60 months or more; and

(iv) is identified in the cost report as a start-up cost.

(5) Expenses. Each cost that can be identified as an organization expense or capitalized as a construction expense shall be appropriately classified and excluded from start-up costs.

(6) Payments made to related parties for services, facilities, and supplies. These payments shall be allowed at the lower of the actual cost to the related party and the market price.

(7) Premium payments. If a provider chooses to pay in excess of the market price for supplies or services, the agency shall use the market price to determine the allowable cost in the absence of a clear justification for the premium.

(8) Job-related training. The cost of this training shall be the actual amount minus any reimbursement or discount received by the provider.

(9) Lease payments. These payments shall be allowed only if reported in accordance with the generally accepted accounting principles appropriate to the reporting period.

(c) Interest expense. Only necessary and accurate interest on working capital indebtedness shall be an allowable cost.

(1) The interest expense shall be allowed only if it is established with either of the following:

(A) Any lender or lending organization not related to the borrower, or

(B) the central office and other related parties under the following conditions:

(i) The terms and conditions of payment of the loans are on arm's-length basis with a recognized lending institution;

(ii) the provider demonstrates, to the satisfaction of the agency, a primary business purpose for the loan other than increasing the rate of reimbursement; and

(iii) the transaction is recognized and reported by all parties for federal income tax purposes.

(2) Interest expense shall be reduced by investment income from both restricted and unrestricted idle funds and funded reserve accounts, except when the income is from restricted or unrestricted gifts, grants, and endowments held in separate accounts with no commingling with other funds. Income from the provider's qualified pension fund shall not be used to reduce interest expense.

(3) Interest earned on restricted and unrestricted industrial revenue bond reserve accounts and sinking fund accounts shall be offset against interest expense up to and including the amount of the related interest expense.

(4) The interest expense on that portion of the facility acquisition loan attributable to an excess over historic cost or other cost basis recognized for program purposes shall not be considered a reasonable cost.

(d) Central office cost. This subsection shall be applicable in situations in which the federally

qualified health center is one of several programs or departments administered by a central office or organization and the total administrative cost incurred by the central office is allocated to all components.

(1) Allocation of the central office cost shall use a logical and equitable basis and shall conform to generally accepted accounting procedures.

(2) The central office cost allocated to the federally qualified health center shall be allowed only if the amount is reasonable and if the central office provided a service normally available in similar facilities enrolled in the program.

(3) The provider shall bear the burden of furnishing sufficient evidence to establish the reasonability of the level of allocated cost and the nature of services provided by the central office.

(4) All costs incurred by the central office shall be allocated to all components as a central cost pool, and no portion of the central office cost shall be directed to individual facilities operated by the provider or reported on any line of the cost report other than the appropriate line of the central office cost on any other line of the cost report outside of the central office cost allocation plan.

(5) Only patient-related central office costs shall be recognized, which shall include the following:

(A) Cost of ownership or arm's-length rent or lease expense for office space;

(B) utilities, maintenance, housekeeping, property tax, insurance, and other facility costs;

(C) employee salaries and benefits;

(D) office supplies and printing;

(E) management consultant fees;

(F) telephone and other means of communication;

(G) travel and vehicle expenses;

(H) allowable advertising;

(I) licenses and dues;

(J) legal costs;

(K) accounting and data processing; and

(L) interest expense.

(6) The cost principles and limits specified in this regulation shall also apply to central office costs.

(7) Estimates of central office costs shall not be allowed.

(e) Revenue offsets. Revenue items shall be deducted from the appropriate expense item or cost center in accordance with this subsection.

(1) Revenue with insufficient explanation of its nature or purpose shall be offset against operating costs.

(2) Expense recoveries credited to expense accounts shall not be reclassified as revenue. (Authorized by K.S.A. 2008 Supp. 75-7403 and 75-7412; implementing K.S.A. 2008 Supp. 75-7405 and 75-7408; effective June 2, 2006; amended March 19, 2010.)

## Article 10.—ADULT CARE HOME PROGRAM

**129-10-31. Responsibilities of, assessment of, and disbursements for the nursing facility quality care assessment program.** (a) In addition to the terms defined in L. 2010, ch. 159, sec. 1 and amendments thereto, the following terms shall have the meanings specified in this subsection, unless the context requires otherwise.

(1) "Agent" has the meaning specified in L. 2010, ch. 159, sec. 1 and amendments thereto.

(2) "Authority" has the meaning specified in L. 2010, ch. 159, sec. 1 and amendments thereto.

(3) "High medicaid volume skilled nursing care facility" means any facility that provided more than 25,000 days of nursing facility care to medicaid recipients during the most recent calendar year cost reporting period.

(4) "Kansas homes and services for the aging," as used in L. 2010, ch. 159, sec. 1 and amendments thereto, means the Kansas association of homes and services for the aging.

(5) "Nursing facility quality care assessment program" means the determination, imposition, assessment, collection, and management of an annual assessment imposed on each licensed bed in a skilled nursing care facility required by L. 2010, ch. 159, sec. 1 and amendments thereto.

(6) "Skilled nursing care facility that is part of a continuing care retirement facility" means a provider who is certified as such by the Kansas insurance department before the start of the state's fiscal year in which the assessment process is occurring.

(7) "Small skilled nursing care facility" means any facility with fewer than 46 licensed nursing facility beds.

(b) Agreements and arrangements with the Kansas department on aging and other state agencies may be entered into by the authority as needed to operate and manage the nursing facility quality care assessment program.

(c) The assessment shall be based on a state

fiscal year. An annual assessment for each licensed bed in a skilled nursing care facility shall be imposed and collected by the authority.

(1) The assessment amount shall be $250 annually per licensed bed for the following:

(A) Each skilled nursing care facility that is part of a continuing care retirement facility;

(B) each small skilled nursing care facility; and

(C) each high medicaid volume skilled nursing care facility.

(2) The assessment amount for all skilled nursing care facilities other than those identified in paragraphs (c)(1)(A) through (C) shall be $1,500 annually per licensed bed.

(3) The method of payment for each skilled nursing care facility shall be designated by the authority or its agent. Any skilled nursing care facility may be allowed by the authority or its agent to have an extension to complete the payment of the assessment, but no such extension shall exceed 90 days. (Authorized by and implementing L. 2010, ch. 159, sec. 1; effective Feb. 18, 2011.)

## Agency 130

# Kansas Home Inspectors Registration Board

*Articles*

130-1. Registration, Renewal, and Examination.
130-2. Fees.
130-3. Education Programs.
130-4. Code of Ethics and Standards of Practice.
130-5. Continuing Education.

### Article 1.—REGISTRATION, RENEWAL, AND EXAMINATION

**130-1-1. Registration.** Each person applying for registration as a home inspector shall provide the following to the board:

(a) The applicant's full legal name and date of birth;

(b) the applicant's residential, business, and mailing addresses;

(c) the applicant's residential and business telephone numbers;

(d) the applicant's electronic mail address;

(e) complete answers to all questions regarding conduct that might be grounds for denying an application for registration;

(f) (1) Identification of the school district or other entity that granted the applicant a high school diploma or its equivalent; or

(2) documentation that the applicant was engaged in the practice of performing home inspections on July 1, 2009;

(g)(1) Documentation that the applicant has completed an educational program that meets the requirements of K.A.R. 130-3-1; or

(2) documentation that the applicant was engaged in the practice of performing home inspections for at least two years before July 1, 2009 and has completed at least 50 fee-paid home inspections;

(h) documentation from an insurer authorized to do business in Kansas stating that the applicant is insured by a policy of liability insurance in the amount required by K.S.A. 58-4509, and amendments thereto;

(i) documentation from an insurer or financial institution establishing that the applicant is financially responsible as required by K.S.A. 58-4509, and amendments thereto;

(j)(1) Documentation that the applicant has successfully completed the examination required by the board for registration; or

(2) documentation that the applicant was engaged in the practice of performing home inspections for at least two years before July 1, 2009 and has completed at least 50 fee-paid home inspections;

(k) the initial registration fee specified in K.A.R. 130-2-1; and

(l) a declaration signed by the applicant under penalty of perjury under Kansas law stating that all information submitted is true and correct. (Authorized by K.S.A. 2008 Supp. 58-4504, as amended by L. 2009, Ch. 118, § 3; implementing K.S.A. 2008 Supp. 58-4509, as amended by L. 2009, Ch. 118, § 6; effective Jan. 4, 2010.)

**130-1-2. Registration renewal.** Each person applying for annual renewal of registration shall provide the following to the board:

(a) The applicant's full legal name and date of birth;

(b) the applicant's residential, business, and mailing addresses;

(c) the applicant's residential and business telephone numbers;

(d) the applicant's electronic mail address;

(e) proof that the applicant has obtained at least 16 credit hours of approved continuing education;

(f) complete answers to all questions regarding conduct that might be grounds for denying an application for registration or imposing a disciplinary sanction against a registered home inspector;

(g) documentation from an insurer authorized to do business in Kansas stating that the applicant is insured by a policy of liability insurance in the amount required by K.S.A. 58-4509, and amendments thereto;

(h) documentation from an insurer or financial institution establishing that the applicant is financially responsible as required by K.S.A. 58-4509, and amendments thereto;

(i) the renewal fee specified in K.A.R. 130-2-1; and

(j) a declaration signed by the applicant under penalty of perjury under Kansas law stating that all information submitted is true and correct. (Authorized by K.S.A. 2008 Supp. 58-4504, as amended by L. 2009, Ch. 118, §3; implementing K.S.A. 2008 Supp. 58-4509, as amended by L. 2009, Ch. 118, §6; effective, T-130-1-4-10, Jan. 4, 2010; effective May 7, 2010.)

**130-1-3. Examination.** (a) To be approved by the board, each examination required for registration shall meet the following requirements:

(1) Test the applicant's knowledge of and proficiency in methods of inspection, residential building systems, report writing, and professional practices; and

(2) be psychometrically sound as evidenced by documented evaluation of the examination by an independent organization.

(b) Each examination shall be administered at a location that is under the control of either the examination owner or an entity that has agreed by contract to administer the examination. Each examination shall be proctored according to written policies and procedures that ensure the security and integrity of the examination.

(c) Each applicant shall determine, before taking an examination, whether both the examination and the entity proctoring the examination have been approved by the board.

(d) Each applicant shall pay all examination fees directly to the examination owner or administrator.

(e) Successful completion of the examination by an applicant shall mean that the applicant meets either of the following requirements:

(1) Achieved a scaled score of at least 500 on a range of 200 to 800 on the national home inspection exam offered by the examination board of professional home inspectors; or

(2) achieved a raw score of 70% on the examination offered by the national association of home inspectors, inc. (Authorized by K.S.A. 2008 Supp. 58-4504, as amended by L. 2009, Ch. 118, §3; implementing K.S.A. 2008 Supp. 58-4509, as amended by L. 2009, Ch. 118, §6; effective, T-130-1-4-10, Jan. 4, 2010; effective May 7, 2010.)

**130-1-4. Registration expiration; renewal.** Each application for renewal of a registration shall be submitted to the board before the end of each calendar year. Each registration that is not renewed shall expire on December 31 of the year in which the registration was issued. (Authorized by and implementing K.S.A. 2008 Supp. 58-4509(c), as amended by L. 2009, Ch. 118, § 6; effective Jan. 4, 2010; amended May 7, 2010.)

**130-1-5. Reinstatement of registration.** (a) Each person applying for reinstatement of a registration that has been expired for less than one year and that has not been revoked shall provide the following to the board:

(1) The information required for renewal of a registration specified in K.A.R. 130-1-2; and

(2) the fee for reinstatement of an expired registration specified in K.A.R. 130-2-1.

(b) Each person applying for reinstatement of a registration that has been expired for one year or more and that has not been revoked shall provide the following to the board:

(1) The information required for renewal of a registration specified in K.A.R. 130-1-2;

(2) documentation that within the one-year period before the application for reinstatement, the applicant successfully completed the examination required by the board for initial registration; and

(3) the fee for reinstatement of an expired registration specified in K.A.R. 130-2-1.

(c) Each person applying for reinstatement of a registration that has been revoked shall provide the following to the board:

(1) The information required for initial registration specified in K.A.R. 130-1-1;

(2) documentation that the applicant completed 16 credit hours of approved continuing education within the 12-month period before the application for reinstatement;

(3) documentation that within the one-year period before the application for reinstatement, the applicant successfully completed the examination required by the board for initial registration;

(4) evidence that the applicant is sufficiently rehabilitated to warrant the public trust; and

(5) the fee for reinstatement of a revoked registration specified in K.A.R. 130-2-1. (Authorized by and implementing K.S.A. 2008 Supp. 58-4509, as amended by L. 2009, Ch. 118, § 6; effective Jan. 4, 2010.)

## Article 2.—FEES

**130-2-1. Fees.** The registration fees shall be as follows:

(a) Initial registration ..... $200
(b) Annual renewal of registration ..... $200
(c) Additional fee for late renewal ..... $50
(d) Application for inactive status ..... $50
(e) Renewal of registration from inactive to active status ..... $200
(f) Reinstatement of expired registration ..... $250
(g) Reinstatement of revoked registration ..... $300
(h) Duplicate copy of registration ..... $10
(i) Application for approval of education provider ..... $500
(j) Application for approval of continuing education provider ..... $50

(Authorized by K.S.A. 2008 Supp. 58-4506, as amended by L. 2009, Ch. 118, § 5; implementing K.S.A. 2008 Supp. 58-4506, as amended by L. 2009, Ch. 118, § 5, and K.S.A. 2008 Supp. 58-4509, as amended by L. 2009, Ch. 118, § 6; effective Jan. 4, 2010.)

## Article 3.—EDUCATION PROGRAMS

**130-3-1. Approval of education providers.** (a) Each application packet submitted by an education provider shall include a completed application on a form provided by the board, the fee required by K.A.R. 130-2-1, a syllabus describing the course of study and the proposed date the education program is to begin, and sufficient documentation to establish that all of the requirements of this regulation have been met. Each application packet shall be submitted at least 90 days before the proposed date the education is to begin.

(b) The course of study of each educational program shall include at least 80 hours of instruction in the following topics:

(1) Structural systems, including the following:

(A) Foundations, basements, and drainage;

(B) interior walls, windows, doors, stairways, ceilings, and floors;

(C) exterior walls, windows, doors, and stairways;

(D) exterior coatings, claddings, and glazing;

(E) roof structure, coverings, penetration, drainage, and attics;

(F) porches, decks, driveways, and walkways;

(G) railings and assistive devices; and

(H) thermal insulation, air penetration, and moisture barriers;

(2) environmental heating, cooling, and ventilation devices, controls, and distribution systems, including the following:

(A) Solid, liquid, and gas fuel heating systems;

(B) electrical heating and cooling systems; and

(C) chimneys, ductwork, vents, fans, flues, and dryer vents;

(3) plumbing systems, controls, and drain, vent, water, and gas components;

(4) waste and sewage systems, but not including private waste systems;

(5) water supply systems and components, but not including private water supplies;

(6) electrical systems, controls, and components for heating, ventilation, and air conditioning;

(7) electrical systems, controls, and components for lighting and home appliance power;

(8) (A) Primary electrical service from the masthead to the main panel, which is also known as the electrical service entrance; and

(B) electrical panels, branch electrical circuits, connected devices, and fixtures;

(9) the Kansas home inspection laws and regulations;

(10) the Kansas code of ethics specified in K.A.R. 130-4-1 and the standards of practice specified in K.A.R. 130-4-2;

(11) home inspection documents, forms, and contracts; and

(12) report writing and the legal ramifications of report content.

(c) Instruction shall be on-site, except that an educational program may include as many as three field training experiences of no more than four hours each. Field training shall not include distance learning or any other type of instruction in a virtual classroom. The duration of each course shall not exceed six months.

(d) Each instructor shall meet at least one of the following requirements:

(1) Have experience practicing as a home inspector for at least five of the seven years immediately before becoming an instructor;

(2) have experience teaching the subject matter now being taught for at least five of the seven years immediately before becoming an instructor in the program;

(3) have attained at least 12 credit hours in the subject being taught and have practiced in a field related to the subject being taught for at least 12

of the 24 months immediately before becoming an instructor;

(4) have successfully completed a postsecondary educational program in the subject being taught and have practiced in a field related to the subject matter being taught for at least 12 of the 24 months immediately before becoming an instructor; or

(5) have experience working in a field related to the subject being taught at least 1,000 hours each year for at least five of the seven years immediately before becoming an instructor.

(e) Each educational provider shall require 100 percent attendance during the course of study instruction.

(f) Each educational provider shall require successful completion of at least one comprehensive examination on the topics in the course of study.

(g) The provider of each educational program shall furnish a certificate or other official document verifying successful completion of the program to each student who has successfully completed the program.

(h) The provider of each educational program shall maintain a record of each program for at least 36 months following the completion of the program and shall provide a copy of each record to the board within five days following receipt of a request by the board. The record shall include at least the following:

(1) Course materials;

(2) documentation that each instructor who provides instruction in the program meets the requirements of this regulation;

(3) a list of each student enrolled in the program;

(4) for each student enrolled in the program, a record that the student completed the program, failed the program, or withdrew from the program; and

(5) for each field training experience included as part of the program, a statement of the date, number of hours, and location of the field training experience.

(i) Each approved education provider shall notify the board within 10 days that any of the information provided to the board has changed. Approval of an education provider shall be withdrawn if the board determines after notice and an opportunity to be heard that the education provider no longer meets the requirements of this regulation. (Authorized by and implementing K.S.A. 2008 Supp. 58-4504, as amended by L. 2009, Ch. 118, §3; effective, T-130-1-4-10, Jan. 4, 2010; effective May 7, 2010.)

## Article 4.—CODE OF ETHICS AND STANDARDS OF PRACTICE

**130-4-1. Code of ethics.** Each registrant shall conduct each home inspection in accordance with the Kansas home inspectors registration board's "code of ethics," as approved on April 17, 2009 and hereby adopted by reference. (Authorized by and implementing K.S.A. 2009 Supp. 58-4504; effective, T-130-1-4-10, Jan. 4, 2010; effective June 18, 2010.)

**130-4-2. Standards of practice.** Each registrant shall conduct each home inspection in accordance with the Kansas home inspectors registration board's "home inspection standards of practice," as approved on September 17, 2009 and hereby adopted by reference. (Authorized by and implementing K.S.A. 2008 Supp. 58-4504, as amended by L. 2009, Ch. 118, §3; effective June 18, 2010.)

## Article 5.—CONTINUING EDUCATION

**130-5-2. Approval of continuing education providers.** (a) Each continuing education course required by K.A.R. 130-1-2 or K.A.R. 130-1-5 shall meet all of the following requirements:

(1) Each workshop, seminar, or presentation offered shall be conducted by a person having expertise in home inspections through education, training, or experience.

(2) Each registrant attending a continuing education course shall receive written materials suitable for later reference by the registrant.

(3) Each continuing education course shall be publicized with identification and qualifications of the faculty who will present the course, a description of the subject matter, the learning objectives, the cost of attending the program, and the number of continuing education hours to be awarded upon completing the course.

(4) Each continuing education course offered shall be open for attendance by any registrant who pays the fee. No registrant shall be denied admission on the basis of race, gender, age, or any similar factor.

(5) Each continuing education course shall be accessible by a person with a disability.

(6) Each registrant attending a continuing education course shall be given written documen-

tation identifying the course by name, the approved continuing education provider, and the date on which the registrant attended the course and certifying the number of hours awarded to the registrant.

(b) Any continuing education provider that has not previously been approved by the board may submit a written request for approval to the board. Each request for approval shall contain the following:

(1) The name, address, and telephone number of the organization or person requesting approval;

(2) a description of each continuing education course that the provider intends to offer and each date on which the course is intended to be offered;

(3) a copy of the publication materials required by paragraph (a)(3) for each course that is intended to be offered; and

(4) the fee specified in K.A.R. 130-2-1.

(c) Each approved continuing education provider shall maintain records of each continuing education course offered for at least three years from the date the course was offered. These records shall include a copy of all publication materials distributed, identification of each presenter, a description of the qualifications of each presenter, a copy of all written materials distributed to registrants, and a copy of the documentation for each registrant required by paragraph (a)(6).

(d) Each approval of a continuing education provider shall be effective for one year. (Authorized by K.S.A. 2008 Supp. 58-4504, as amended by L. 2009, Ch. 118, §3; implementing K.S.A. 2008 Supp. 58-4504, as amended by L. 2009, Ch. 118, §3, and K.S.A. 2008 Supp. 58-4509, as amended by L. 2009, Ch. 118, §6; effective May 7, 2010.)

## Agency 131

# Committee on Surety Bonds and Insurance

*Articles*

131-1. DEFINITIONS.

### Article 1.—DEFINITIONS

**131-1-1. Definition of purchase.** (a) "Purchase," as used in K.S.A. 75-4101 and amendments thereto, shall not include the purchase of insurance through a lease of real property that meets all of the following conditions:

(1) The state agency is the lessee.

(2) (A) The cost to insure the property is included as a part of the lease payment; or

(B) the lessee is required to reimburse the lessor for the cost of the insurance.

(3) The secretary of administration has approved the lease in accordance with K.S.A. 75-3739, and amendments thereto.

(b) "Purchase," as used in K.S.A. 75-4101 and amendments thereto, shall include the purchase of insurance through a lease of real property if all of the following conditions are met:

(1) The state agency is the lessee.

(2) The lease requires that the property be insured.

(3) The lease requires the lessee to pay the insurance premium to the insurance company. (Authorized by K.S.A. 75-4111; implementing K.S.A. 2010 Supp. 75-4101 and K.S.A. 2010 Supp. 75-4109; effective March 18, 2011.)

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