

2021 Supplement

to the

Kansas

Administrative

Regulations

VOLUMES 1 THROUGH 5
AGENCIES 1 THROUGH 133

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

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

The 2021 Supplement to the Kansas Administrative Regulations contains rules and regulations filed after December 31, 2008 and before January 1, 2021.

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 Scott Schwab, Secretary of State of and for the State of Kansas, pursuant to K.S.A. 77-429 have examined and compared this 2021 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 133 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 November, 2021.



DEREK SCHMIDT,
Attorney General



SCOTT SCHWAB,
Secretary of State

[SEAL]

EXPLANATORY PREFACE

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

ARRANGEMENT OF RULES AND REGULATIONS

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

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

SALES

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SCOTT SCHWAB, *Secretary of State*

COMMENTARY

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

The 2021 Supplement contains rules and regulations filed after December 31, 2008 and before January 1, 2021. Regulations filed before January 1, 2009, are printed in the 2009 Kansas Administrative Regulations, Volumes 1-5. Regulations filed on and after January 1, 2021, may be located by checking the Kansas Register, Kansas' official state newspaper. An index appears at the back of each Kansas Register and lists the volume and page number of the Register issue that contains the most recent version of the regulations filed after December 31, 2020.

To find the most recent version of a regulation:

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

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

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

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

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

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

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

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

SCOTT SCHWAB, *Secretary of State*

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**Editor's note.*

2021 SUPPLEMENT

to the

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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 suffi-

cient 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 high-

way, 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 sec-

retary'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 alterations 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 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.)

28-46-19. 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 well-head 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 imple-

menting 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 dimensions 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 injection 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 lo-

cation 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 department's 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 per-

formed 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 54.—TRAUMA SYSTEM PROGRAM

28-54-1. Definitions. Each of the following terms used in this article shall have the meaning specified in this regulation:

(a) “ACS” means American college of surgeons.

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

(c) “Designation” means a determination by the secretary that a hospital shall provide the trauma care required of a level I trauma center, level II trauma center, level III trauma center, or level IV trauma center.

(d) “Level I trauma center” means a hospital that has the capability to provide the highest level of trauma care for every aspect of injury, from prevention through rehabilitation.

(e) “Level II trauma center” means a hospital that meets the following conditions:

(1) Provides initial trauma care, regardless of the severity of the injury;

(2) is not necessarily able to provide the same comprehensive care as that provided by a level I trauma center; and

(3) does not have trauma research as a primary objective.

(f) “Level III trauma center” means a hospital that provides initial trauma care or arranges for the appropriate transfer of trauma patients to a level I trauma center or a level II trauma center.

(g) “Level IV trauma center” means a hospital that provides urgent care for injured persons and the timely transfer of the seriously injured to a trauma facility capable of providing care necessary for the treatment of the patients’ injuries.

(h)(1) “On-site survey” means the secretary’s evaluation of a hospital’s compliance with the following:

(A) The level IV trauma center type I designation criteria and type II designation criteria identified in the department’s document titled “Kansas level IV criteria quick reference,” dated November 4, 2015, which is hereby adopted by reference; and

(B) all standards specified on pages eight through 31 in the department’s document titled “pre-review questionnaire (PRQ) guidance for Kansas level IV trauma center designation,” dated November 4, 2015. Pages eight through 33 of this document are hereby adopted by reference, excluding all sections titled “reference” or “rationale.”

(2) Each hospital’s successful completion of the on-site survey shall require compliance with the following:

(A) All type I designation criteria;

(B) all type II designation criteria, except that a hospital may have no more than three type II critical deficiencies; and

(C) reporting trauma registry data and information pursuant to K.S.A. 75-5666, and amendments thereto.

(i) “Regional trauma council” means one of the six councils, as defined in K.S.A. 75-5663 and amendments thereto, in the state established to address trauma and emergency medical care issues within a specific geographic area and to coordinate services to meet the needs of trauma patients injured within that area.

(j) “Trauma” means any of the following:

(1) Any injury to a person that results from acute exposure to mechanical, thermal, electrical, or chemical energy;

(2) any injury to a person that is caused by the absence of heat or oxygen and that requires immediate medical intervention; or

(3) any injury to a person that requires surgical intervention or treatment to prevent death or permanent disability.

(k) “Trauma facility” means a hospital distinguished by the availability of surgeons, physician specialists, anesthesiology services, nurses, and resuscitation and life-support equipment on a 24-hour basis to care for persons with trauma. This term shall include the following:

(1) Level I trauma centers;

(2) level II trauma centers;

(3) level III trauma centers; and

(4) level IV trauma centers.

(l) “Trauma registry” means the database maintained and operated by the department to collect and analyze reportable patient data on the incidence, severity, and causes of trauma.

(m) “Verification” means the evaluation and confirmation by the ACS of a hospital’s trauma care capability to operate as a level I trauma center, level II trauma center, or level III trauma center. (Authorized by K.S.A. 2016 Supp. 75-5665; implementing K.S.A. 2016 Supp. 75-5665 and K.S.A. 2016 Supp. 75-5666; effective Nov. 2, 2007; amended March 16, 2012; amended Aug. 25, 2017.)

28-54-2. Standards for designation. The designation of a hospital as a level I trauma center, level II trauma center, level III trauma center, or level IV trauma center shall be made by the secretary based on the following:

(a) For level I trauma centers, level II trauma centers, and level III trauma centers, verification; and

(b) for each level IV trauma center, the success-

ful completion of an on-site survey. (Authorized by and implementing K.S.A. 2016 Supp. 75-5665; effective Nov. 2, 2007; amended March 16, 2012; amended Aug. 25, 2017.)

28-54-3. Application for designation. (a) Each hospital administrator that seeks a certificate of designation for its hospital as a level I trauma care center, level II trauma care center, or level III trauma care center shall submit a designation application on a form provided by the department and the following to the secretary:

(1) A copy of the applicant’s current one-year or three-year verification certificate; and

(2) a nonrefundable application fee of \$500.

(b) Each hospital administrator who seeks a certificate of designation for its hospital as a level IV trauma center shall submit a designation application on a form provided by the department and the following to the secretary:

(1) Documentation of successful completion of an on-site survey that occurred after submission of the application; and

(2) a nonrefundable application fee of \$250.

(c) Each hospital administrator specified in subsection (b) who receives notice that the initial designation as a level IV trauma center is denied shall comply with one of the following before submitting a subsequent application for designation:

(1) Allow at least six months after the date of the notice; or

(2) submit a written request for reevaluation to the advisory committee on trauma that is subsequently approved.

(d) Each certificate of designation shall be valid from the date of issuance and for the period specified on the certificate. (Authorized by and implementing K.S.A. 2016 Supp. 75-5665; effective Nov. 2, 2007; amended March 16, 2012; amended Aug. 25, 2017.)

28-54-4. Application for change of designation. (a) Any administrator of a designated trauma facility may request a change of designation by submitting an application for a change of designation on the form provided by the department and the following to the secretary:

(1) Each applicant seeking a change of designation to a level I trauma center, level II trauma center, or level III trauma center shall submit the following:

(A) A copy of the applicant’s current one-year

or three-year verification certificate for the level of designation sought; and

(B) a nonrefundable fee of \$500.

(2) Each applicant seeking a change of designation to a level IV trauma center shall submit the following:

(A) Documentation of successful completion of an on-site survey that occurred after submission of the application; and

(B) a nonrefundable fee of \$250.

(b) Each change of designation certificate shall be valid from the date of issuance and for the period specified on the certificate. (Authorized by and implementing K.S.A. 2016 Supp. 75-5665; effective Nov. 2, 2007; amended March 16, 2012; amended Aug. 25, 2017.)

28-54-5. Certificate of designation; renewal. (a) Each administrator of a designated trauma facility wanting to renew the trauma facility's certificate of designation shall submit an application for renewal on a form provided by the department and either of the following:

(1) For a level I trauma center, level II trauma center, or level III trauma center, the following:

(A) A copy of the applicant's current one-year or three-year verification certificate; and

(B) a nonrefundable renewal fee of \$500; or

(2) for a level IV trauma center, the following:

(A) A nonrefundable renewal fee of \$250; and

(B) documentation of successful completion of an on-site survey that occurred after submission of the application.

(b) The renewal of a level IV trauma center designation may be denied for willful misrepresentation of information and documentation during the renewal application process.

(c) Each hospital administrator seeking designation as a level IV trauma center who receives notice that the renewal designation is denied shall comply with one of the following before submitting a subsequent application for renewal:

(1) Allow at least six months after the date of the notice; or

(2) submit a written request for reevaluation to the advisory committee on trauma that is subsequently approved.

(d) Each renewed certificate of designation shall be valid from the date of issuance and for the period specified on the certificate. (Authorized by and implementing K.S.A. 2016 Supp. 75-5665; effective Nov. 2, 2007; amended March 16, 2012; amended Aug. 25, 2017.)

Article 55.—PCB FACILITY CONSTRUCTION PERMIT STANDARDS AND REGULATIONS

28-55-1. (Authorized by and implementing K.S.A. 65-3481 as enacted by L. 1986, Ch. 226, Sec. 2; effective, T-87-37, Nov. 19, 1986; effective May 1, 1987; revoked Aug. 30, 2019.)

28-55-2. (Authorized by and implementing K.S.A. 65-3481 as enacted by L. 1986, Ch. 226, Sec. 2; effective, T-87-37, Nov. 19, 1986; effective May 1, 1987; revoked Aug. 30, 2019.)

28-55-3. (Authorized by and implementing K.S.A. 65-3481; effective, T-87-37, Nov. 19, 1986; effective May 1, 1987; amended March 22, 2002; revoked Aug. 30, 2019.)

28-55-4. (Authorized by and implementing K.S.A. 65-3481 as enacted by L. 1986, Ch. 226, Sec. 2; effective, T-87-37, Nov. 19, 1986; effective May 1, 1987; revoked Aug. 30, 2019.)

28-55-5. (Authorized by and implementing K.S.A. 65-3481; effective, T-87-37, Nov. 19, 1986; effective May 1, 1987; amended March 22, 2002; revoked Aug. 30, 2019.)

Article 56.—REPORTING OF INDUCED TERMINATIONS OF PREGNANCY

28-56-1. Definitions. Each of the following terms shall have the meaning assigned in this regulation:

(a) "Abortion" has the meaning specified in K.S.A. 65-6701, and amendments thereto.

(b) "Abortion provider" means a physician that performs an abortion, a clinic comprised of legally or financially affiliated physicians, a hospital, or any other medical care facility where an abortion is performed.

(c) "Abortion report" means the information required to be submitted by an abortion provider to the department either electronically or on a paper form provided by the department.

(d) "Clinical estimate of gestation" means the number of completed weeks of gestation of an unborn child as determined through a sonogram.

(e) "Confidential code number" means a random five-digit identification number, along with subcategory letters, assigned by the department to an abortion provider for the purpose of submitting an abortion report to the department.

(f) “Correction” means the act of providing information to the department to correct errors or provide missing information to an abortion report.

(g) “Department” has the meaning specified in K.S.A. 65-6701, and amendments thereto.

(h) “Electronic abortion reporting system” means the department’s vital events reporting system through which abortion reports are submitted electronically to the department.

(i) “Failed abortion” means an abortion procedure that was initiated but not completed and resulted in a live birth.

(j) “Failed abortion report” means the information on a failed abortion required to be submitted by the abortion provider to the department on a paper form provided by the department.

(k) “Hospital” has the meaning specified in K.S.A. 65-425, and amendments thereto.

(l) “ICD-9-CM” means volumes one and two, office edition, of the 2011 clinical modification of the “international classification of diseases,” ninth revision, sixth edition, published by practice management information corporation, 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. This document, including the appendices, is hereby adopted by reference.

(m) “Late term” means the clinical estimate of gestation of at least 22 completed weeks.

(n) “Late term affidavit” means a department-provided form for each abortion that occurs at a clinical estimate of gestation of at least 22 weeks. The referring physician and the physician performing the abortion shall each submit a separate form, which shall be completed, signed, and notarized and shall meet the requirements of K.A.R. 28-56-6.

(o) “Live birth” has the meaning specified in K.S.A. 65-2401, and amendments thereto.

(p) “Medical basis” means the specific medical signs, symptoms, history, or other information provided by the patient or the results of clinical examinations, procedures, or laboratory tests used to make a medical diagnosis.

(q) “Medical care facility” has the meaning specified in K.S.A. 65-425, and amendments thereto.

(r) “Medical diagnosis” means a specific medical condition or disease as determined by a physician.

(s) “Medical emergency” has the meaning specified in K.S.A. 65-4a01, and amendments thereto.

(t) “Partial birth abortion” has the meaning specified in K.S.A. 65-6721, and amendments thereto.

(u) “Physician” has the meaning specified in K.S.A. 65-6701, and amendments thereto.

(v) “Physician’s report on number of certifications received” means a monthly report that shall be submitted to the department on a form provided by the department specifying the number of voluntary and informed consent forms certified by each patient and received by the physician before the patient is to receive an abortion.

(w) “Referring physician” means a physician who refers a patient to an abortion provider and who is required to provide a late term affidavit.

(x) “Requirements related to reporting abortions” means the department’s handbook containing instructions describing how abortions shall be reported to the department, either on a paper form or electronically, and copies of applicable state statutes and regulations.

(y) “Unborn child” means a living individual organism of the species *Homo sapiens*, in utero, at any stage of gestation from fertilization to birth.

(z) “User agreement” means the required document that entitles each abortion provider or the designee to access the department’s electronic abortion reporting system.

(aa) “Viable” has the meaning specified in K.S.A. 65-6701, and amendments thereto.

(bb) “Voluntary and informed consent form” means the form provided by the department that is signed by the patient authorizing an abortion provider to perform an abortion. (Authorized by K.S.A. 2011 Supp. 65-445, 65-6701, and 65-6724; implementing K.S.A. 2011 Supp. 65-445 and 65-6703; effective June 15, 2012.)

28-56-2. General requirements for abortion reports. (a) Each abortion provider, before performing an abortion and before using the electronic abortion reporting system, shall obtain the following:

(1) A confidential code number from the department; and

(2) a copy of the requirements related to reporting abortions.

(b) Each abortion provider performing less than five abortions annually may use the paper form abortion report.

(c) Each abortion provider performing five or more abortions annually shall use the electronic abortion reporting system to file each abortion report and shall meet the following requirements:

(1) Submit an executed user agreement; and

(2) ensure that each individual authorized by the abortion provider to enter abortion data into the electronic abortion reporting system has a separate user account to access the electronic abortion reporting system.

(d) An abortion report shall be filed for each abortion performed. Each abortion report shall contain the following information:

(1) The confidential code number of the abortion provider filing the abortion report;

(2) the patient's unique identification number as maintained in the abortion provider's medical record. The patient's name and street address shall not be submitted;

(3) the patient's age in years on the patient's last birthday;

(4) the patient's marital status at the time of the abortion;

(5) the month, day, and year the abortion was performed;

(6) the state or United States territory of residence of the patient or, if the patient is not a resident of the United States, the patient's country of residence;

(7) the patient's county of residence if the patient is a resident of a state or territory of the United States or, if the patient is a resident of Canada, the province;

(8) the patient's city or town of residence;

(9) specification of whether the patient resided within the city limits of the city or town of residence;

(10) the hispanic origin of the patient, if applicable;

(11) the patient's ancestry;

(12) the patient's race;

(13) the highest level of education completed by the patient;

(14) the date when the patient's last normal menses began, including the month, day, and year as reported by the patient;

(15) clinical estimate of gestation;

(16) number of previous pregnancies, in the following categories:

(A) Children born live and now living;

(B) children born live and now dead;

(C) previous induced abortions; and

(D) previous spontaneous terminations, including miscarriages, or stillbirths;

(17) the primary abortion procedure used in terminating the pregnancy, including one of the following abortion procedures:

(A) Suction curettage;

(B) sharp curettage;

(C) dilation and evacuation;

(D) administration of mifepristone;

(E) administration of methotrexate;

(F) prostaglandins delivered by intrauterine instillation or other methods;

(G) hysterotomy;

(H) hysterectomy;

(I) digoxin induction;

(J) partial birth abortion; or

(K) other procedure, which shall be specified;

(18) if applicable, all secondary abortion procedures used in terminating the pregnancy, including any of the following procedures that apply:

(A) Suction curettage;

(B) sharp curettage;

(C) dilation and evacuation;

(D) administration of mifepristone;

(E) administration of methotrexate;

(F) prostaglandins delivered by intrauterine instillation or other methods;

(G) hysterotomy;

(H) hysterectomy;

(I) digoxin induction;

(J) partial birth abortion; or

(K) other procedure, which shall be specified;

(19) specification of the medical factors and methods used to determine the clinical estimate of gestation; and

(20) specification of whether there was a report of physical, mental, or emotional abuse or neglect filed pursuant to K.S.A. 38-2223, and amendments thereto. (Authorized by K.S.A. 2011 Supp. 65-445 and 65-6703; implementing K.S.A. 2011 Supp. 65-6703; effective June 15, 2012; amended Jan. 4, 2013.)

28-56-3. Reporting requirements for abortions performed at clinical estimate of gestation of at least 22 weeks. When performing an abortion at clinical estimate of gestation of 22 or more weeks, in addition to the requirements specified in K.A.R. 28-56-2, each abortion report shall contain the following information:

(a) Specification of whether the unborn child was viable;

(b) a detailed, case-specific description that includes the medical diagnosis and medical basis of the patient and unborn child if the unborn child was viable;

(c) specification of whether continuation of the pregnancy would cause a substantial and irreversible impairment of a major bodily function or the death of the patient;

(d) a detailed, case-specific description that includes the medical diagnosis and medical basis for the determination that the abortion was necessary to prevent the patient's death or irreversible impairment of a major bodily function; and

(e) a medical determination that includes all applicable medical diagnosis codes from the ICD-9-CM. (Authorized by K.S.A. 2011 Supp. 65-6703 and 65-6724; implementing K.S.A. 2011 Supp. 65-6703; effective June 15, 2012.)

28-56-4. Reporting requirements for partial birth abortions. For each procedure performed involving a partial birth abortion, in addition to the requirements specified in K.A.R. 28-56-2 and 28-56-3, each abortion report for a partial birth abortion shall contain the following information:

(a) Specification of whether the unborn child was viable;

(b) a detailed, case-specific description that includes the medical diagnosis, medical basis, and description of the medical conditions of the patient and unborn child if the unborn child was viable;

(c) specification of whether continuation of the pregnancy would cause a substantial and irreversible impairment of a major bodily function or the death of the patient;

(d) a detailed, case-specific medical diagnosis and medical basis for the determination that the abortion was necessary to prevent the patient's death or irreversible impairment of a major bodily function; and

(e) a medical determination that includes all applicable medical diagnosis codes from the ICD-9-CM. (Authorized by K.S.A. 2011 Supp. 65-445, 65-6703, and 65-6721; implementing K.S.A. 2011 Supp. 65-6721; effective June 15, 2012.)

28-56-5. Requirements for reporting failed abortions. If an abortion attempt fails and results in a live birth, each abortion provider shall complete and file the following information:

(a) A certificate of live birth pursuant to K.S.A. 65-2409a, and amendments thereto; and

(b) a failed abortion report meeting the following requirements:

(1) Meeting the requirements specified in K.A.R. 28-56-2; and

(2) specifying the medical basis and medical diagnosis for the reason the abortion was not completed. (Authorized by and implementing K.S.A. 2011 Supp. 65-445; effective June 15, 2012.)

28-56-6. Reporting requirements for abortions performed on minors in the case of a medical emergency. (a) Each abortion provider shall file an abortion report as specified in K.A.R. 28-56-2 and, if applicable, K.A.R. 28-56-3.

(b) Each abortion report for an abortion performed on a minor during a medical emergency shall contain the following information:

(1) If applicable, the information specified in K.A.R. 28-56-4 and K.A.R. 28-56-5;

(2) the medical basis for determining that a medical emergency exists;

(3) the medical methods used in determining the medical emergency;

(4) the patient identification number obtained from the patient's medical records where the abortion was performed; and

(5) the date on which the abortion was performed. (Authorized by K.S.A. 2011 Supp. 65-445, 65-6703, 65-6705 and 65-6721; implementing K.S.A. 2011 Supp. 65-6705; effective June 15, 2012.)

28-56-7. Physician's report on number of certifications received. (a) Each physician performing an abortion shall submit to the department the number of patient-completed voluntary and informed consent forms as specified in K.S.A. 65-6709, and amendments thereto. The report shall be submitted within five business days after the end of each month.

(b) Each physician's report on number of certifications received shall be submitted by United States mail or facsimile transmission. The report shall contain the following information:

(1) The physician's confidential code number;

(2) the date the report was submitted; and

(3) the number of voluntary and informed consent forms as specified in K.S.A. 65-6709, and amendments thereto, received during the previous calendar month, including any voluntary and informed consent form that was not followed by an abortion.

(c) Each correction to the physician's report on the number of certifications received shall be made within 15 business days of discovery of the error or omission. (Authorized by K.S.A. 2011 Supp. 65-445 and 65-6709; implementing K.S.A. 2011 Supp. 65-6709; effective June 15, 2012.)

28-56-8. Late term affidavits. (a) The referring physician and the physician performing

an abortion shall each submit a late term affidavit to the department within 15 business days of the completion of the abortion procedure.

(b) The late term affidavit completed by the referring physician shall contain the following information:

- (1) Name of the referring physician;
- (2) the patient's identification number obtained from the patient's medical records where the abortion was performed;
- (3) a statement that the referring physician and the physician performing the abortion have no legal or financial affiliation with each other as specified in K.S.A. 65-6703, and amendments thereto; and
- (4) the date the late term affidavit was signed and notarized.

(c) The late term affidavit completed by the physician performing an abortion shall contain the information required in subsection (b). (Authorized by K.S.A. 2011 Supp. 65-445, 65-6703, and 65-6724; implementing K.S.A. 2011 Supp. 65-445 and 65-6703; effective June 15, 2012.)

28-56-9. Correction in an abortion report. (a) In case of an error or missing information in an abortion report, each abortion provider shall report in writing to the department within 15 business days of discovery the specific information that needs to be corrected or provided.

(b) Each abortion provider shall review all relevant medical records after being advised by the department of an error or missing information on the abortion report and shall provide any correction or updated information on the abortion report within 15 business days of discovery of the error or omission.

(c) An abortion provider shall not make corrections or additions to an abortion report within the electronic abortion reporting system or create a new record to replace the incorrect or incomplete abortion report. (Authorized by and implementing K.S.A. 2011 Supp. 65-445; effective June 15, 2012.)

28-56-10. Medical information retained on each abortion performed. (a) Each abortion provider shall retain the following information in each patient's medical record for at least 10 years:

- (1) A copy of the abortion report and any subsequent corrections;
- (2) a copy of the voluntary and informed consent form;

(3) a copy of the late term affidavit of the physician who performed the abortion;

(4) a copy of a court-ordered bypass of parental consent as specified in K.S.A. 65-6705, and amendments thereto, or consent of both parents or the legal guardian if the minor is not emancipated;

(5) the physical or mental medical history of the patient;

(6) all sonogram results;

(7) a copy of the medical basis and reasons related to partial birth abortion, late term abortion, or emergency abortion procedure on a minor;

(8) a copy of the patient-specific counseling information provided in addition to state-required material;

(9) a copy of the postabortion instructions;

(10) a record and description of any complications;

(11) the type and amount of anesthesia used;

(12) any report of physical, mental, or emotional abuse or neglect of a minor pursuant to K.S.A. 38-2223, and amendments thereto;

(13) a list of all medical tests performed and the results of each test;

(14) a record of any return visit by patient, if indicated by the physician;

(15) emergency contact information for the patient;

(16) a copy of the medical referral from the referring physician; and

(17) if known, the name, address, and telephone number of the father of the unborn child if the patient is less than 16 years old.

(b) Each referring physician shall retain a copy of that physician's late term affidavits for at least 10 years. (Authorized by K.S.A. 2011 Supp. 65-445, 65-6703, and 65-6724; implementing K.S.A. 2011 Supp. 65-445 and 65-6703; effective June 15, 2012.)

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 pursuant 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 sec-

retary 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 main-

tain 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**28-70-2. Reporting requirements.** (a)(1)

Each administrator of a hospital, an ambulatory surgery center, a radiology oncology center, or a pathology laboratory shall, within six months of the date of diagnosis, report to the registry each case of cancer diagnosed or treated, unless exempted under subsection (d).

(2) Each report shall provide all required information available in the medical or administrative records that are under the direct control of the reporting administrator. No administrator shall be required to contact the patient, the patient's family, or another health care provider to obtain additional information not contained in the medical or administrative records.

(b) Each person who is either licensed to practice medicine and surgery or licensed to practice dentistry and who practices in a clinic or physician's office and each administrator of a hospice or adult care home shall provide the following to the registry:

(1) If used to confirm each cancer diagnosis, a list of in-state and out-of-state pathologists, or pathology laboratories and dermatopathologists; and

(2) for each patient for whom a cancer diagnosis has been confirmed pathologically or clinically, a list that includes the name, social security number, date of birth, and cancer site. The social security number shall be used only for confirmation of patient identity.

(c) Upon receipt of any written request for information from the registry regarding a patient, each reporting party specified in subsection (a) or (b) shall provide the requested information that is contained in medical or administrative records under the direct control of the reporting party. The requested information may consist of either of the following:

(1) Any information specified in subsection (e), even if the patient's cancer has not been diagnosed or treated by the hospice or adult care home or by the health care provider or licensee specified in subsection (a) or (b); or

(2) annual follow-up information, including tumor recurrence and follow-up treatment.

(d) The reports specified in this regulation shall not be required for the following types of cancer:

(1) Squamous cell carcinoma of the skin, unless located on a lip of the face or in the genital area or unless spread beyond local tissues at the time of diagnosis;

(2) basal cell carcinoma of the skin, unless located on a lip of the face or in the genital areas or

unless spread beyond local tissues at the time of diagnosis; and

(3) carcinoma in situ of the uterine cervix.

(e) Each report from any reporting party specified in subsection (a) or (b) shall include the following information, if available:

(1) Patient identifiers and demographics;

(2) cancer screening history;

(3) cancer diagnosis, including the cancer site and histology;

(4) personal and family history;

(5) vital status, including the date of death and cause of death, if applicable;

(6) cancer-related treatment information;

(7) follow-up information, including the date of last contact with the patient;

(8) third-party payer information; and

(9) risk factors for cancer.

(f) Each report to the registry shall be submitted in one of the following formats:

(1) American standard code for information interchange (ASCII) file in the North American association of central cancer registries (NAACCR) format;

(2) electronic or paper forms provided by the registry;

(3) any other format equivalent to any format specified in this subsection that is acceptable to the cancer registry director.

(g) All data transferred to the registry shall be secure and confidential.

(1) All paper data transferred to the registry shall be sealed in an envelope marked "CONFIDENTIAL" and addressed to the cancer registry director.

(2) Electronic data transfer shall be made by a secured electronic transmission, according to prior instructions from the cancer registry director. (Authorized by and implementing K.S.A. 65-1,169; effective Feb. 27, 1998; amended Aug. 5, 2005; amended Dec. 7, 2018.)

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 cancer 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 71.—VOLUNTARY CLEANUP AND PROPERTY REDEVELOPMENT PROGRAM

28-71-1. Definitions. In addition to the terms defined in K.S.A. 65-34,162 and amend-

ments thereto, each of the following terms, as used in this article of the department's regulations, shall have the meaning specified in this regulation:

(a) "Anthropogenic levels" means concentrations of chemicals or substances that are present in the environment due to human activity.

(b) "Class one contamination" and "class I" mean that suspected or confirmed contamination exists on the property described in the application, but the property is not a source of the contamination.

(c) "Class two contamination" and "class II" mean that suspected or confirmed soil or ground-water contamination, or both, resulting from operations that have occurred on the property is suspected or exists on or off the property described in the application, or both.

(d) "Days" means calendar days unless otherwise specified. Documents due on the weekend or a holiday shall be submitted on the first working day after the weekend or holiday.

(e) "Enforcement action" means an administrative or judicial claim made by a governmental agency pursuant to state, federal, or common law against the property described in the application, which enforcement action is based upon the contaminants to be cleaned up under the VCPRP.

(f) "Environmental site assessment" means an investigation of a property, performed in accordance with standard industry practices, that identifies and defines recognized environmental conditions at the property.

(g) "Environmental use control" has the meaning specified in K.S.A. 2016 Supp. 65-1,222, and amendments thereto.

(h) "Hazard index value" means the sum of more than one hazard quotient for multiple substances, multiple exposure pathways, or both.

(i) "Hazard quotient" means the ratio of a single substance exposure level over a specified time period to a reference dose for that substance derived from a similar exposure period.

(j) "Institutional control" means a legal mechanism that limits access to or use of property, or warns of a hazard, the purpose of which is to ensure the protection of human health and the environment.

(k) "Maximum contaminant level" and "MCL" have the meaning specified for "maximum contaminant level" in K.A.R. 28-16-28b.

(l) "Naturally occurring levels" means ambient concentrations of chemicals or substances present

in the environment that are typical of background levels near the property subject to the voluntary agreement when not affected by the identified contamination source.

(m) “Nonresidential property” means any property that does not meet the definition of residential property.

(n) “Person” means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state agency, unit of local government, school district, federal agency, tribal entity, interstate body, or other legal entity.

(o) “Potable water” has the meaning specified in K.A.R. 28-16-28b.

(p) “Remedial action” means those actions taken to address the effects of a release of a contaminant, so that it does not cause a significant risk to present or future public health or welfare, or to the environment.

(q) “Remediation” means the act of implementing, operating, and maintaining a remedial action.

(r) “Residential property” means any property currently used or proposed for use as one of the following:

(1) A residence or dwelling, including a house, apartment, mobile home, nursing home, or condominium; or

(2) a public use area, including a school, educational center, day care center, playground, unrestricted outdoor recreational area, or park.

(s) “Risk management plan” has the meaning specified in K.S.A. 2016 Supp. 65-34,176, and amendments thereto.

(t) “Voluntary cleanup and property redevelopment program” and “VCPRP” mean the implementation of the voluntary cleanup and property redevelopment act, as defined in K.S.A. 65-34,161 et seq. and amendments thereto, by the department.

(u) “Voluntary party” means an applicant whose property is determined by the secretary to be eligible for the voluntary cleanup and property redevelopment program. (Authorized by K.S.A. 65-34,163; implementing K.S.A. 65-34,164, K.S.A. 65-34,165, K.S.A. 65-34,166, K.S.A. 2016 Supp. 65-34,167, K.S.A. 2016 Supp. 65-34,168, K.S.A. 2016 Supp. 65-34,169, and K.S.A. 65-34,172; effective June 26, 1998; amended Sept. 29, 2017.)

28-71-2. Applicant. Each applicant shall include a person that has title, control, or access to the property described in the application and is one of the following:

(a) A person who owns the property;

(b) a person who operates a facility located on the property;

(c) a person who previously owned, operated, or otherwise controlled activities on the property;

(d) a prospective owner of the property;

(e) a prospective operator of a facility located on the property;

(f) a person or generator of hazardous or solid waste who by contract, agreement, or otherwise, directly or indirectly, arranged for the disposal of contaminants at the property;

(g) a person who legally controls the property; or

(h) any unit of government that acquired title or control of the property involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances. (Authorized by K.S.A. 65-34,163; implementing K.S.A. 65-34,164; effective June 26, 1998; amended Sept. 29, 2017.)

28-71-3. Eligibility determination. (a) The property described in the application shall contain an actual, threatened, or suspected release of a contaminant or be impacted or threatened by contaminants from an off-property source.

(b) Properties that may be eligible for application to VCPRP shall include the following:

(1) Properties that have been assessed by the United States environmental protection agency, its contractors and agents, and the department, if the property meets the additional criteria required by K.S.A. 65-34,161 et seq., and amendments thereto, and this article of the department’s regulations;

(2) contaminated properties that are currently under an existing department order or agreement, upon completion of the actions required by the department order or agreement, if the property meets the additional criteria required by K.S.A. 65-34,161 et seq., and amendments thereto. The determination of completion of the actions required by the order or agreement shall be made by the secretary;

(3) portions of a larger property that have or require a resource conservation and recovery act (RCRA) permit, but these portions do not require a permit in accordance with RCRA, which contains a corrective action component, as determined by the secretary, if the property meets the additional criteria required by K.S.A. 65-34,161 et seq., and amendments thereto;

(4) portions of a larger property that includes oil and gas activities regulated by the state cor-

poration commission, but the specific portion is not regulated by the state corporation commission, if the property meets the additional criteria required by K.S.A. 65-34,161 et seq., and amendments thereto; and

(5) contaminated properties that are not statutorily excluded. (Authorized by K.S.A. 65-34,163; implementing K.S.A. 65-34,164; effective June 26, 1998; amended Sept. 29, 2017.)

28-71-4. Application process. (a) Each applicant shall submit to the department a complete application consisting of the following:

(1) An application form provided by the department;

(2) a nonrefundable application fee of \$200.00; and

(3) all documentation that supports the application, including environmental site assessments, investigation reports, or both.

(b) Determination of whether the property described in the application is eligible for participation in the VCPRP shall be made by the secretary pursuant to K.S.A. 65-34,161 et seq., and amendments thereto.

(c) The applicant shall submit a revised application package if the initial application is determined by the department to be incomplete.

(d) The applicant may submit an additional revised application package if the revised application is determined by the department to be incomplete. The applicant shall submit an additional application fee of \$200 with the additional revised application. (Authorized by K.S.A. 65-34,163; implementing K.S.A. 65-34,164 and 65-34,165; effective June 26, 1998; amended Sept. 29, 2017.)

28-71-5. Classification determination. (a) Each applicant shall include the following documentation for consideration by the secretary in determining placement of the property described in the application into one of two contamination classes, as defined in K.A.R. 28-71-1:

(1) The application and associated documentation that supports the voluntary party's application;

(2) review of available technical bulletins and scientific documents describing the geology and geohydrology of the property and surrounding area; and

(3) scientific information relating to the toxicity, mobility, persistence, and other characteristics of the contaminants suspected or identified at a property.

(b) Any applicant may provide additional information to support a reclassification of property subject to the voluntary agreement. (Authorized by K.S.A. 65-34,163; implementing K.S.A. 65-34,165 and 65-34,166; effective June 26, 1998; amended Sept. 29, 2017.)

28-71-6. Voluntary agreement. (a) Upon the secretary's approval of the application for the voluntary cleanup and property redevelopment program, the voluntary party shall enter into a voluntary agreement with the secretary. The voluntary agreement shall be developed by the department and submitted to the voluntary party for signature. The voluntary agreement shall specify all of the terms and conditions for implementation of the work anticipated in the VCPRP.

(b) Oversight, management, and review activities pertaining to the property shall not be commenced by the department until the voluntary agreement is signed by both the secretary and the voluntary party.

(c) The voluntary agreement shall require the voluntary party to deposit one of the following with the department, as applicable:

(1) For class I, an initial amount of \$2,000; or

(2) for class II, an initial amount not to exceed \$5,000.

(d) The voluntary agreement shall require the voluntary party to provide the department with access to the property at all reasonable times, upon reasonable notice to the voluntary party during all the activities conducted under K.S.A. 65-34,161 et seq., and amendments thereto. (Authorized by K.S.A. 65-34,163; implementing K.S.A. 65-34,165; effective June 26, 1998; amended Sept. 29, 2017.)

28-71-7. Initial deposit and reimbursement. (a) The initial deposit made by the voluntary party shall be based on the contamination classification of the property described in the application. The voluntary party shall submit quarterly payments upon billing for direct and indirect costs to maintain the voluntary party's account at a balance of at least \$1,000 for class I and at least \$2,000 for class II.

(b) The voluntary party shall be subject to oversight performed by the department or its contractors. This oversight shall include the following:

(1) The review of documents, studies, and test results;

(2) collection of split samples, laboratory analysis, and sampling supplies;

- (3) travel;
- (4) per diem;
- (5) verification activities; and
- (6) associated indirect costs. (Authorized by K.S.A. 65-34,163; implementing K.S.A. 65-34,165; effective June 26, 1998; amended Sept. 29, 2017.)

28-71-8. Environmental site assessments.

(a) Each environmental site assessment shall be prepared by an individual who possesses the education, experience, or licensure sufficient to prepare a competent environmental site assessment.

(b) Each environmental site assessment shall include the following information regarding the property either described in the application or subject to a voluntary agreement:

(1) The legal description and a map identifying the location, boundaries, and size of the property;

(2) the physical characteristics of the property and areas contiguous to the property, including the location of any surface water bodies and groundwater aquifers;

(3) the location of any water wells located on the property or in an area within a one-half mile radius of the property and a description of the use of the those wells;

(4) the operational history of the property, based upon the best efforts of the applicant and the current use of areas in the vicinity of the property;

(5) the present and proposed uses of the property;

(6) information concerning the nature and extent of any contamination;

(7) information on releases of contaminants that have occurred at the property, including any environmental impact on areas in the vicinity of the property;

(8) any sampling results, evidence, or other data that characterizes the soil, groundwater, or surface water on the property; and

(9) a description of the human and environmental exposures to contamination at the property, based upon current use and any future use proposed by the property owner as approved by the local zoning authority. (Authorized by K.S.A. 65-34,163; implementing K.S.A. 65-34,165 and 65-34,166; effective June 26, 1998; amended Sept. 29, 2017.)

28-71-9. Voluntary cleanup work plans and reports.

(a) Upon signature of the voluntary agreement by the voluntary party and the secretary, the voluntary party shall submit each environmental site assessment, investigation report, or

both, for review by the department to determine whether the following objectives have been met:

(1) The sources for contaminants have been adequately identified and investigated.

(2) The vertical and horizontal extent of contaminants has been determined.

(3) The human health and environmental receptors have been identified.

(4) The potential risks and impacts to receptors have been evaluated.

(5) Quality assurance and quality control have been maintained.

(6) The work has been performed in accordance with standard industry practices.

(b) If the secretary determines that further investigation is necessary to meet the objectives specified in subsection (a), the voluntary party shall submit a work plan to the department for review and approval. After approval of the work plan by the secretary, the following actions shall occur:

(1) The voluntary party shall implement the approved work plan for investigation.

(2) The voluntary party shall document and submit the results of the investigation in a report, which shall be submitted to the department for review.

(c) If the secretary determines that remediation is necessary to mitigate the risks posed by the property subject to the voluntary agreement, the voluntary party shall submit a proposal for remediation to the department for review and approval. The proposal for remediation shall meet the following requirements:

(1) Be protective of human health and the environment for documented present and proposed future land uses;

(2) meet applicable state standards or acceptable contaminant concentrations as determined by a risk analysis that evaluates the property subject to the voluntary agreement and surrounding properties as a whole and that is approved by the secretary;

(3) evaluate remedial alternatives that are proven reliable and are economically and technically feasible by completing the following activities:

(A) Comparing at least two alternatives, not including the "no action" alternative; and

(B) documenting the ability of each remedial alternative to attain a degree of cleanup and control of contaminants established by the department; and

(4) provide a description and evaluation of the voluntary party's proposed remedial alternative.

(d) If the secretary approves the proposal for remediation, the applicant shall submit a cleanup plan. The cleanup plan shall include the following:

(1) A description of all tasks necessary to implement the preferred remedial alternative;

(2) preliminary or final design plans and specifications of the preferred remedial alternative;

(3) a description of all necessary easements and permits required for implementation of the cleanup;

(4) an implementation schedule;

(5) a plan to monitor the effectiveness of the cleanup during implementation; and

(6) a verification plan to document that cleanup objectives have been achieved, which shall include sampling to be performed by the voluntary party, department, or both, as determined by the secretary. (Authorized by K.S.A. 65-34,163; implementing K.S.A. 65-34,166, K.S.A. 2016 Supp. 65-34,167, and K.S.A. 2016 Supp. 65-34,168; effective June 26, 1998; amended Sept. 29, 2017.)

28-71-10. “No further action” determination. (a) For the purposes of the regulations in this article of the department’s regulations, the term “no further action” determination shall mean that the secretary has determined, pursuant to K.S.A. 65-34,161 et seq. and amendments thereto, that no further action is necessary at the property subject to the voluntary agreement.

(b) Each voluntary party shall demonstrate to the department that the following conditions have been met to receive a “no further action” determination for class one contamination:

(1) The owner or operator of the property, or both parties, submit a complete application to the department, including environmental site assessments and investigation reports.

(2) A determination that the contamination on the property resulted from an off-property source is made by the secretary.

(3) A determination that there is no on-site source of contamination, including soil contamination, is made by the secretary.

(4) The owner or operator of the property, or both parties, document that the past and current use of the property did not contribute to the contamination of soils, surface water, or groundwater.

(c) Each voluntary party shall demonstrate to the department that the following conditions have been met to receive a “no further action” determination for class two contamination:

(1) No contamination was detected.

(2) Contamination was detected, and following review of the environmental site assessment, investigation reports, and remediation reports, or a combination of these, the secretary has determined that contamination levels do not present significant risk to human health and the environment and, based on those levels, are less than applicable federal or state standards or site-specific cleanup levels as specified in K.A.R. 28-71-11.

(3) Contamination does not exceed acceptable contaminant concentrations as determined by the secretary in a site-specific qualitative risk analysis that evaluates the property and surrounding properties as a whole.

(d) Each voluntary party shall demonstrate to the department that the following conditions have been met to receive a “no further action” determination for class two contamination with conditions:

(1) Site conditions described in paragraph (c)(2) or (c)(3) have been met.

(2) Secretary-approved controls, including institutional controls, environmental use controls, a risk management plan, or a combination of these restricting the use of a property, are in place to ensure continued protection of human health and the environment. (Authorized by K.S.A. 65-34,163; implementing K.S.A. 2016 Supp. 65-34,169; effective June 26, 1998; amended Sept. 29, 2017.)

28-71-11. Remedial standards and remedial actions. (a) All remedial alternatives performed by the voluntary party and approved by the secretary shall attain a degree of cleanup, control, or both, of contaminants that ensures protection of human health and the environment.

(b) All remedial actions to restore the environment to conditions before its altered state shall be considered by the department if protection of human health and the environment is maintained and the movement of contaminants is controlled.

(c) The voluntary party shall propose any one of the following approaches to determine cleanup levels for the property:

(1) Comparison to background levels;

(2) comparison to department-established risk-based levels;

(3) comparison to a site-specific, risk-based quantitative analysis conducted by the voluntary party or the department, based on formulas, exposure parameters, and land-use scenarios; or

(4) other risk analysis methods approved by the secretary.

(d) Responsibility for reviewing and approving the approach and final selection of cleanup levels for property subject to the voluntary agreement shall rest with the secretary.

(1) The selection of cleanup levels shall be based on the present and proposed future uses of the property and surrounding properties.

(2) Land use shall include two general categories: residential property and nonresidential property.

(3) Multiple media, exposure pathways, and contaminants shall be taken into account during the determination of cleanup levels.

(4) Existing and applicable federal or state standards shall be considered by the department during the determination of cleanup levels.

(e) Secretary-approved controls, including the controls specified in K.A.R. 28-71-10, may be required by the department to ensure continued protection of human health and the environment.

(1) Approved controls for property subject to the voluntary agreement shall not be proposed as a substitute for evaluating remedial actions that would otherwise be technically and economically practicable.

(2) Approved controls for property subject to the voluntary agreement shall be considered as remedial actions.

(f) Soil cleanup levels and the depths to which the cleanup levels shall apply shall be based on human exposure, the present and proposed uses of the property, the depth of the contamination, and the potential impact to groundwater, surface water, or both, and any other risks posed by the soil contamination to human health and the environment.

(g) Soil and groundwater property-specific cleanup levels may be determined by the secretary for contaminants for which there is insufficient toxicological evidence to support a regulatory standard for risk-based cleanup levels or for nontoxic contaminants for which cleanup is required as a result of other undesirable characteristics of those contaminants. The soil levels shall be based on the following:

(1) The ability of the impacted soil to support vegetation representative of unimpacted properties in the vicinity of property subject to the voluntary agreement; and

(2) the potential of the contaminant to impact and degrade groundwater, surface water, or both, through infiltration or runoff.

(h) If there are multiple contaminants in the soil, the cleanup level of each contaminant shall

not allow the cumulative risks posed by the contaminants to exceed a cancer risk level of 1×10^{-4} , one in 10,000, or a hazard index value of 1.0.

(i) Soil cleanup levels shall ensure that migration of contaminants in the soil shall not cause the cleanup levels established for groundwater, surface water, or both, to be exceeded.

(j) Groundwater cleanup levels shall be based on the actual and most probable use of the groundwater considering present and future uses. The most probable use of the groundwater is for a potable water source, unless demonstrated otherwise by the voluntary party and approved by the secretary.

(k) Groundwater potentially or actually used as a potable water source and impacted by the site contamination shall require maximum protection in determining cleanup levels.

(l) Remedial action to restore contaminated groundwater shall, at a minimum, prevent additional degradation and migration.

(m) When the need for cleanup of a contaminant can be predicated on characteristics of that contaminant other than toxicity, including the contribution of an undesirable taste or odor, or both, the site-specific cleanup levels as determined by the department or secondary maximum contaminant levels (MCLs) may be used as cleanup levels for contaminants for which insufficient toxicological evidence has been gathered to support a regulatory standard for risk-based cleanup levels or nontoxic contaminants. These levels shall be based on the aesthetic quality and usability of the groundwater, surface water, or both, for the present and proposed future use.

(n) Surface water cleanup levels shall meet the Kansas surface water quality standards, as specified in K.A.R. 28-16-28e. (Authorized by K.S.A. 65-34,163; implementing K.S.A. 2016 Supp. 65-34,167 and K.S.A. 2016 Supp. 65-34,168; effective June 26, 1998; amended Sept. 29, 2017.)

28-71-12. Public notification and participation. (a) The public shall have the opportunity during the public comment period to submit to the department written comments regarding the cleanup plan.

(b) The voluntary party or a member of the public may request a meeting following the 15-day public comment period.

(1) The public information meeting shall provide the public with information about relevant activities at the property associated with the

voluntary cleanup and property redevelopment program. Public information meetings shall be attended by a member of the department and the voluntary party or designated representative, or both.

(2) A notice to the city, the county, or both, of the public information meeting shall be provided by the department. (Authorized by K.S.A. 65-34,163; implementing K.S.A. 2016 Supp. 65-34,168; effective June 26, 1998; amended Sept. 29, 2017.)

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 window-sills; 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 employee 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/cm²) 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) Reccreditation for lead abatement supervisor, lead abatement worker, and project designer courses	\$1,000
(ii) Reccreditation for risk assessor and inspector courses	\$1,000
(B)(i) Refresher reccreditation for lead abatement supervisor, lead abatement worker, and project designer courses	\$500
(ii) Refresher reccreditation 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 non-refundable 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 work-

er 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 institution 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 following 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 non-refundable 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. 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 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 elevated 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 re-

quest 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 sec-

retary 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 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 non-refundable 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 licensure 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 sub-

section (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 residual 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 µg/ft ²
Interior windowsills	less than 250 µg/ft ²
Window troughs and exterior walking surfaces	less than 400 µg/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 15µg/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 reports 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) Replacing 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; im-

plementing K.S.A. 2007 Supp. 65-1,224 and 65-1,228; effective April 7, 2006; amended Jan. 30, 2009.)

Article 74.—RISK MANAGEMENT PROGRAM

28-74-1. Definitions. For purposes of this article, each of the following terms shall have the meaning specified in this regulation: (a) “Acceptance” means that an application for the risk management program has been approved by the secretary and a risk management plan agreement has been signed by the secretary.

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

(c) “Environmental contamination” has the meaning specified in K.A.R. 28-73-1. (Authorized by and implementing K.S.A. 2015 Supp. 65-34,176; effective May 13, 2016.)

28-74-2. Application. (a) Each prospective participant shall submit a completed application to the secretary on a form provided by the department. Each application shall include the following information:

(1) A map identifying the location of the site and the area within the site to which the risk management plan applies;

(2) a map identifying all parcels within the site to which the risk management plan applies, including ownership of each parcel;

(3) documentation that the applicant provided written notification to all property owners and occupants within the site to which the risk management plan applies and proof that those property owners and occupants received the notification; and

(4) a draft risk management plan for review and consideration for approval.

(b) If an application is determined to be incomplete by the secretary, written notification shall be provided to the applicant, identifying the documentation, data, or other information that is needed to complete the application. The applicant may then submit the required information or withdraw the application. The application shall be considered void if a complete response has not been received from the applicant within 60 calendar days from the date of the written request for additional information from the department. (Authorized by and implementing K.S.A. 2015 Supp. 65-34,176; effective May 13, 2016.)

28-74-3. Risk management plan. (a) Each risk management plan shall include the following:

(1) Demonstration that all of the following conditions have been met:

(A) The extent of the environmental contamination has been determined;

(B) the source reduction has been completed, if necessary;

(C) the contaminant concentration trends are not dependent on the continued operation and maintenance of active remediation systems;

(D) the associated groundwater contaminant plume is stable or shrinking, if applicable;

(E) imminent future exposure is not likely; and

(F) all current complete exposure pathways have been addressed;

(2) any site-specific requirements for monitoring, inspection, or maintenance;

(3) a process for completing routine verification of and notices to property owners and occupants;

(4) a description of the specific terms and conditions that shall be in effect for the duration of the risk management plan; and

(5) a process for redefining the area within the site to which the risk management plan applies.

(b) Upon review of each draft risk management plan, a notification shall be issued to the applicant, either approving the draft risk management plan or noting deficiencies in the draft risk management plan and describing the modifications necessary to address the deficiencies. The applicant may then submit a revised draft risk management plan for the secretary's approval.

(c) If the secretary and the applicant are unable to agree on an appropriate risk management plan, notification that the application is void shall be provided by the department to the applicant. An invoice for the costs incurred by the department to process the application package and review the draft risk management plan shall be included in the notification.

(d) Each risk management plan shall be implemented upon the effective date of the risk management plan agreement. (Authorized by and implementing K.S.A. 2015 Supp. 65-34,176; effective May 13, 2016.)

28-74-4. Risk management plan agreement. (a) Pursuant to K.S.A. 2015 Supp. 65-34,176 and amendments thereto, a risk management plan agreement shall be required for each site.

(b) Upon approval of a risk management plan, a risk management plan agreement shall be issued by the secretary and shall include the following information:

(1) A description of site conditions and specification of any monitoring, inspection, or maintenance requirements proposed by the participant and approved by the secretary;

(2) a description of the area within the site to which the risk management plan applies;

(3) authorization for agents of the department to have access to the site as necessary to monitor and inspect all risk management plan activities, as required by the act;

(4) identification of the one-time payment to reimburse the department for all direct and indirect costs incurred by the department in implementing and administering the risk management plan required by K.S.A. 2015 Supp. 65-34,176, and amendments thereto;

(5) a description of the specific terms and conditions that shall be applied as part of the risk management plan for the area within the site to which the risk management plan applies; and

(6) a description of the enforcement provisions authorized by K.S.A. 2015 Supp. 65-34,176, and amendments thereto.

(c) The risk management plan agreement shall be effective with the signature of the secretary.

(d) Any participant may request a transfer of the obligations specified in the risk management plan agreement to another person. The following requirements for each transfer shall be met:

(1) Each participant requesting a transfer shall provide written notice to the department indicating that both the participant and the transferee agree to the transfer.

(2) A review of site conditions and consideration of the transferee's capacity to implement the risk management plan shall be factors in the secretary's determination of approving the transfer.

(3) The automatic transfer of risk management plan agreement obligations shall be prohibited. The participant and the transferee shall comply with the risk management plan agreement until an amendment conveying the responsibilities from the participant to the transferee has been executed.

(e) A long-term care agreement as required by K.S.A. 65-1,226, and amendments thereto, may replace a risk management plan agreement for a site where environmental use controls are es-

tablished in conjunction with a risk management plan if the long-term care agreement meets the requirements of the risk management plan.

(f) If site conditions change or new information that could warrant additional action becomes available, a risk management plan agreement shall not absolve any party of environmental liability associated with the site under state and federal law. (Authorized by and implementing K.S.A. 2015 Supp. 65-34,176; effective May 13, 2016.)

Article 75.—HEALTH INFORMATION

28-75-100. Authorization form. Pursuant to K.S.A. 65-6826 and amendments thereto, the Kansas department of health and environment's form titled "authorization to disclose protected health information," dated August 20, 2012, is hereby adopted by reference. (Authorized by and implementing K.S.A. 2011 Supp. 65-6826; effective Jan. 25, 2013.)

Agency 30

Kansas Department for Children and Families

Editor's Note:

Pursuant to Executive Reorganization Order (ERO) No. 41, the Department of Social and Rehabilitation Services was renamed the Kansas Department for Children and Families. See L. 2012, Ch. 185.

Articles

- 30-4. PUBLIC ASSISTANCE PROGRAM.
- 30-5. PROVIDER PARTICIPATION, SCOPE OF SERVICES, AND REIMBURSEMENTS FOR THE MEDICAID (MEDICAL ASSISTANCE) PROGRAM.
- 30-6. MEDICAL ASSISTANCE PROGRAM — CLIENTS' ELIGIBILITY FOR PARTICIPATION.
- 30-10. ADULT CARE HOME PROGRAM.
- 30-14. CHILDREN'S HEALTH INSURANCE PROGRAM.
- 30-44. SUPPORT ENFORCEMENT.
- 30-45. YOUTH SERVICES.
- 30-46. CHILD ABUSE AND NEGLECT.
- 30-47. FOSTER CARE LICENSING.
- 30-63. DEVELOPMENTAL DISABILITIES — LICENSING PROVIDERS OF COMMUNITY SERVICES.

Article 4.—PUBLIC ASSISTANCE PROGRAM

30-4-34. Public assistance program. The public assistance program shall include the following types of assistance:

(a) Temporary assistance for needy families (TANF);

(b) foster care assistance, which shall include the federal financial participation-foster care (FFP-FC) and non-federal financial participation foster care (non-FFP-FC) programs;

(c) low income energy assistance program (LIEAP);

(d) food assistance. The federal term for this program is supplemental nutrition assistance program (SNAP); and

(e) child care assistance. (Authorized by and implementing K.S.A. 2018 Supp. 39-708c; effective May 1, 1981; amended, T-84-8, April 1, 1983; amended May 1, 1983; amended, T-84-9, May 1, 1983; amended May 1, 1984; amended, T-88-14, July 1, 1987; amended May 1, 1988; amended, T-30-6-10-91, July 1, 1991; amended Dec. 30, 1994; amended April 1, 1995; amended Aug. 1, 1995; amended March 1, 1997; amended May 3, 2019.)

30-4-35. Application process. (a) Who may file. Each individual seeking public assistance, or

another person authorized to act on the applicant's behalf, shall submit an application for public assistance to the department.

(b) Applications. The applicant or person authorized to act on behalf of the applicant shall sign the application. If the applicant or the applicant's representative signs by mark, the names and addresses of two witnesses shall be required. A telephonic signature, by the applicant or the applicant's authorized representative, shall be an acceptable form of attestation by the applicant when applying for public assistance and shall not be denied legal effect based solely on its format. When a telephonic signature is accepted, measures shall be taken by the department to verify the identity of each applicant. These measures shall be designed to safeguard applicants against any form of identity theft or invasion of privacy. Memoranda of understanding shall be required with any non-profit organization that wants to assist applicants with applications for public assistance and accept telephonic signatures for those applications on behalf of the department.

(c) Interview. An interview shall be required at the time of application for food assistance and TANF assistance. An interview may be required at the time of initial application for child care assistance if information provided by the applicant is incomplete, unclear, or contradictory. (Authorized

by and implementing K.S.A. 2018 Supp. 39-708c; effective May 1, 1981; amended May 1, 1984; amended May 1, 1988; amended July 1, 1989; amended July 1, 1997; amended, May 3, 2019.)

30-4-36. Redetermination of eligibility.

(a) Redetermination. Redetermination shall give each recipient an opportunity to bring to the attention of the department the recipient's current situation and to give the department an opportunity to review the eligibility factors in order to determine the recipient's continuing eligibility for assistance.

(b) Interview. An interview shall be required at the time of each redetermination for food assistance and cash assistance. An interview may be required at the time of each redetermination for child care assistance if any information provided by the applicant is incomplete, unclear, or contradictory.

(c) Frequency of redetermination. A recipient's eligibility for assistance shall be redetermined as specified in this subsection. Each TANF case shall be reviewed at least once each 12 months. Each TANF caretaker relative case shall be reviewed at least once each 24 months. (Authorized by and implementing K.S.A. 2018 Supp. 39-708c; effective May 1, 1981; amended May 1, 1983; amended May 1, 1986; amended May 1, 1988; amended May 3, 2019.)

30-4-40. Department responsibility to applicants and recipients. (a) On the request of any applicant or recipient, the applicant's or recipient's rights and responsibilities shall be explained by the department.

(b) Each applicant and recipient shall be informed of the following:

(1) Periodic redeterminations. Periodic redeterminations of eligibility shall be made if the application is approved.

(2) Fraud. Each fraudulent application for or receipt of assistance shall be investigated and referred for legal action.

(3) Release of confidential information. Unless otherwise prohibited by other local, state, or federal law, confidential information shall be released by the department if the release is directly related to any of these duties:

(A) The administration of the public assistance program;

(B) an investigation or criminal or civil proceeding being conducted in connection with the administration of the program;

(C) the reporting of a fugitive felon's address to local, state, and federal law enforcement officials. This report shall be made only if the law enforcement official furnishes the recipient's name and social security number and satisfactorily demonstrates that the individual is a fugitive felon, that the location or apprehension of the fugitive felon is within the law enforcement officer's official duties, and that the request is made in the proper exercise of those duties;

(D) the reporting of an applicant's or recipient's intention to commit a crime to the appropriate law enforcement officials; or

(E) release of confidential information concerning applicants and recipients as authorized by state or federal law. (Authorized by and implementing K.S.A. 2018 Supp. 39-708c; effective May 1, 1981; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended May 1, 1987; amended March 1, 1997; amended Oct. 1, 1997; amended May 3, 2019.)

30-4-41. Assistance planning for TANF. (a) For the purposes of K.A.R. 30-4-50 through 30-4-98, the following terms and definitions shall apply:

(1) "Family group" means the applicant or recipient and all individuals living together in which there is a relationship of legal responsibility or a caretaker relationship. This term shall include a cohabiting boyfriend or girlfriend living with the person legally responsible for the child.

(2) "Mandatory filing unit" means all persons in the family group whose needs or resources are required to be considered in determining eligibility and amount of payment as outlined in K.A.R. 30-4-70(e) for TANF purposes. If the department is unable to determine who is required to be a member of the mandatory filing unit as a result of an applicant's or recipient's failure to cooperate in providing necessary information or in complying with an eligibility requirement that is within the applicant's or recipient's control, those persons who would otherwise be required to be in the mandatory filing unit if the applicant or recipient had cooperated shall be ineligible for assistance.

(3) "Caretaker," for TANF assistance purposes, means any of the following persons:

(A) The parent or parents, including the parent or parents of an unborn child; or

(B) the person who is assigned the primary responsibility for the care and control of the child as one of the following representatives:

(i) A guardian, conservator, or relative, as defined in K.A.R. 30-4-70(b); or

(ii) a legal custodian, when based on an approved social service plan.

Caretaker status shall be extended to the spouse of a non-parental caretaker and a cohabiting boyfriend or girlfriend living with the person legally responsible for the child.

(4) "Eligible caretaker" means a caretaker who is considered in the assistance plan with the child.

(5) "Legally responsible relative" means the person who has the legal responsibility to provide support for the person in the assistance plan.

(b) The assistance plan shall consist of those members of the mandatory filing unit and any other persons in the family group for whom assistance is requested and eligibility is determined. An individual excluded from the assistance plan shall not be eligible in a separate assistance plan. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. 2018 Supp. 39-708c and K.S.A. 2018 Supp. 39-709; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-88-14, July 1, 1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended July 1, 1989; amended July 1, 1991; amended Jan. 2, 1992; amended March 1, 1997; amended, May 3, 2019.)

30-4-50. Assistance eligibility. (a) General requirements. This regulation shall apply to the TANF and foster care programs except as noted in subsection (b) for TANF. K.A.R. 30-4-51 through 30-4-55 shall apply to all public assistance programs specified in K.A.R. 30-4-34.

(b) Time-limited assistance. A family group shall not be eligible for TANF if at least one of the following conditions is met:

(1) The family group contains at least one adult member who has received TANF, including similar assistance received in any other state, for 24 calendar months beginning on and after October 1, 1996, unless a hardship extension has been granted or certain months of TANF assistance were determined to be an exception and were not counted towards the time limit, allowing receipt of TANF until the 36-month limit is reached. A hardship extension shall be granted under any of the following conditions:

(A) The TANF recipient is a caretaker of a disabled family member living in the household. The nature and duration of the disability shall be verified by a medical professional.

(B) The TANF adult has a disability that precludes employment on a long-term basis or requires substantial rehabilitation. Verification shall be obtained from a medical professional.

(C) The TANF adult needs an extension of the time limit to overcome the effects of domestic violence or sexual assault.

(D) The family is involved with DCF prevention and protection services and has an open social service plan.

(E) A hardship is presented by the family, and a determination is made by a DCF executive review team that an additional 12 months of TANF would benefit the family.

(2) The family group contains at least one adult member who has received a Kansas diversion payment and has received TANF, including assistance similar to TANF in another state for 18 calendar months beginning on and after October 1, 1996, unless a hardship extension has been granted, allowing receipt of TANF until the 30-month limit is reached.

(3) The family group has received TANF for any 24 calendar months beginning on and after October 1, 1996, during which time one or more adult family members residing in the family group were ineligible due to the provisions of K.A.R. 30-4-54(b), K.A.R. 30-4-140(d), or subsections (c) and (d) of this regulation.

(c) Denial of assistance for fugitive felons and probation and parole violators. Assistance shall not be provided to a fugitive from justice by reason of a felony conviction or charge, or to a person who is violating a condition of probation or parole imposed under federal or state law.

(d) Requirements for special projects. Certain eligibility requirements may be waived by the secretary, and additional eligibility requirements for all, or designated areas, of the state may be adopted by the secretary for the purpose of utilizing special project funds or grants or for the purpose of conducting special demonstration or research projects.

(e) TANF suspicion-based drug testing. Suspicion-based drug testing shall be mandatory for applicants and recipients if there appears to be unlawful use of a controlled substance or controlled substance analog. The definition and list of controlled substances shall be as specified in K.S.A. 39-709(l)(9)(B) and (C), and amendments thereto.

(1) TANF assistance shall not be provided to each individual who meets any of the following conditions:

(A) Tests positive for illegal drug use;
 (B) fails to complete drug testing; or
 (C) refuses to undergo drug testing.
 (2) The periods of ineligibility for each individual who tests positive for illegal drug use shall be as follows:

(A) For the first positive drug test, the individual shall be ineligible until the individual completes substance abuse treatment and the skills training course.

(B) For the second positive drug test, the individual shall be ineligible for one year or shall complete a substance abuse treatment program and the skills training course, whichever is later.

(C) For the third positive drug test, the individual shall be ineligible for that person's lifetime.

(3) The periods of ineligibility for each individual who fails or refuses to complete drug testing shall be as follows:

(A) For the first failure or refusal to complete drug testing, the individual shall be ineligible for six months from the date of failure or refusal. To regain eligibility for TANF, the individual shall undergo drug testing and, if necessary, complete substance abuse treatment and skills training.

(B) For the second failure or refusal to complete drug testing, the individual shall be ineligible for 12 months from the date of failure or refusal. To regain eligibility for TANF, the individual shall undergo drug testing and, if necessary, complete substance abuse treatment and the skills training course.

(C) For any subsequent failure or refusal, the individual shall be ineligible for that person's lifetime.

(4) For each positive test, failure, or refusal to test, a protective payee shall be named for the family group. Each protective payee shall be subject to suspicion-based drug testing. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. 2018 Supp. 39-708c, K.S.A. 2018 Supp. 39-709, K.S.A. 2018 Supp. 39-709e, and K.S.A. 2018 Supp. 39-719b; effective May 1, 1981; amended May 1, 1983; amended, T-30-7-29-88, July 29, 1988; amended Sept. 26, 1988; amended Oct. 1, 1989; amended, T-30-10-1-96, Oct. 1, 1996; amended Jan. 17, 1997; amended March 1, 1997; amended July 1, 1998; amended Oct. 1, 2000; amended July 1, 2004; amended, May 3, 2019.)

30-4-51. Eligibility process. The determination of eligibility shall be based upon information provided by the applicant, the recipient, or collateral sources. If any information provided by the applicant or recipient is unclear, incomplete,

conflicting, or questionable, a further review, including collateral sources, shall be required. A collateral source shall mean an individual or entity that has knowledge of, but is not part of, a household and provides written or verbal confirmation of the household's circumstances. Applicants and recipients shall be eligible for assistance only if all applicable eligibility requirements have been met. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. 2018 Supp. 39-708c, 39-709, and 39-719b; effective May 1, 1981; amended May 3, 2019.)

30-4-54. Citizenship, alienage, and residence. (a) Definition. For the purposes of this regulation, "resident" shall mean any person who is living in Kansas voluntarily, with no intention of presently moving from Kansas, and who is not living in Kansas for a temporary purpose.

(1) Each child living in Kansas shall be considered a resident.

(2) For TANF, each person who has entered Kansas with a job commitment or who is seeking employment in Kansas shall be considered a resident.

(b) Citizenship and alienage. Each applicant or recipient shall be a citizen of the United States or shall be an alien who meets the conditions in either paragraph (1) or paragraph (2) of this subsection.

(1) The individual entered the United States before August 22, 1996 and meets one of these conditions:

(A) Is a refugee, including persons who are Cuban or Haitian entrants or admitted as Amerasian immigrants;

(B) is granted asylum;

(C) has deportation withheld;

(D) is a lawful permanent resident;

(E) is an honorably discharged veteran or currently on active duty in the armed forces or is the spouse or unmarried dependent child of such an alien;

(F) is paroled into the United States for at least one year;

(G) is granted conditional entry; or

(H) is a person who does not meet any of the conditions listed in paragraphs (b)(1)(A)-(G) but who has been battered or subjected to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent and entered the U.S. on or before August 22, 1996. The person shall have a pending or approved violence against women

act (VAWA) case or a family-based petition before United States citizenship and immigration services (USCIS). This provision shall include the person's children.

(2) The individual entered the United States on or after August 22, 1996 and meets one of these conditions:

(A) Is a refugee, including persons who are Cuban or Haitian entrants or admitted as Amerasian immigrants;

(B) is granted asylum;

(C) has deportation withheld;

(D) is an honorably discharged veteran or currently on active duty in the armed forces or is the spouse or unmarried dependent child of such an alien;

(E) is a lawful permanent resident who has resided in the United States at least five years as required by federal law;

(F) is paroled into the United States for at least one year and has resided in the United States at least five years;

(G) is granted conditional entry and has resided in the United States for at least five years; or

(H) is a person who does not meet any of the conditions listed in paragraphs (b)(2)(A)-(G) but who has been battered or subjected to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent and entered the U.S. on or before August 22, 1996. The person shall have a pending or approved violence against women act (VAWA) case or a family-based petition before USCIS. This provision shall include the person's children.

(c) Residence. Each applicant or recipient shall be a Kansas resident. Temporary absence from Kansas, with subsequent returns to Kansas or intent to return when the purposes of the absence have been accomplished, shall not be considered to interrupt continuity of residence. Residence shall be considered to be maintained until abandoned or established in another state. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. 2018 Supp. 39-708c, K.S.A. 2018 Supp. 39-709; effective May 1, 1981; amended, T-88-10, May 1, 1987; amended May 1, 1988; amended Oct. 1, 1989; amended, T-30-2-20-97, March 1, 1997; amended May 16, 1997; amended June 26, 1998; amended, May 3, 2019.)

30-4-64. Work program requirements for TANF. Each applicant or recipient of TANF, unless exempted, shall be required to participate in one or more components of the work program.

Any exempt applicant or recipient may volunteer for participation in the program. The geographic areas in the state and the public assistance programs in which work program requirements are to be enforced shall be designated by the secretary. The administration of the work program shall be within the limits of appropriations.

(a) Exemptions. The following persons shall be exempt from the work requirements:

(1) Any person who is aged 17 or younger or who is aged 18 and working toward attainment of a high school diploma or its equivalent. This exemption shall not be claimed by a female who is pregnant or a parent of a child in the home and who has not yet attained a high school diploma or its equivalent;

(2) any person who is needed in the household because another member of the household requires the person's presence due to illness or incapacity and no other appropriate member of the household is available to provide the needed care; and

(3) any parent or other caretaker who is personally providing care for a child under the age of three months. Only one person in a case may be exempt on the basis of providing care for a child under the age of three months. This exemption shall not be claimed under any of the following circumstances:

(A) A custodial parent or pregnant woman under the age of 20 does not possess a high school diploma or its equivalent;

(B) both parents, a stepparent, a cohabiting partner, or a caretaker of the child is present and is not exempt, unsuitable, or incapable of providing child care; or

(C) a parent, a stepparent, a cohabiting partner, or a caretaker is determined to have a substance abuse disorder.

(b) Participation requirements. Each applicant or recipient shall participate in one or more components of a department-approved, work-related program directed toward the recipient's plan of self-reliance.

(c) Support costs. Payment of support costs shall be provided to participants. Support costs may include the following:

(1) Transportation expenses for each person participating in a work program activity in accordance with a department-approved plan;

(2) child care expenses, as necessary for the person to participate in a work program activity in accordance with a department-approved plan;

(3) education and training costs for each participant based on a department-approved plan, which may include tuition, books, and fees; and

(4) support service expenses to obtain goods and services needed to participate in an approved component.

(d) Transitional expenses. Payment for transitional expenses may be provided to each qualifying participant who loses eligibility for TANF if not otherwise disqualified. Transitional expenses may include any reasonable and necessary expenses for job retention.

(e) Penalty.

(1) A person who is required to participate in the work program shall be ineligible for assistance if one of the following conditions is met in any assistance program administered by the secretary in which work program participation is required:

(A) The person fails without good cause to cooperate in the work assessment process or participate in the program.

(B) The person refuses without good cause a bona fide referral for or offer of employment.

(C) The person terminates employment without good cause.

(D) The person is terminated from employment by voluntarily making oneself unacceptable without good cause.

(E) The person reduces earnings without good cause.

(2) The period of ineligibility shall be as follows:

(A) For the first penalty, three months and full cooperation with work program activities;

(B) for the second penalty, six months and full cooperation with work program activities;

(C) for the third penalty, one year and full cooperation with work program activities; and

(D) for the fourth and each subsequent penalty, 10 years.

If the person is an adult, the mandatory filing unit of which the person is a member shall also be ineligible.

(f) Good cause. Each individual who presents verification that the individual meets one or more of the following conditions shall be determined to have good cause for failing to participate in the work program:

(1) The individual is exempt from participation in the program.

(2) The individual was incapable of performing the activity as determined by the individual's case manager.

(3) Performance of the activity was so danger-

ous or hazardous according to occupational safety and health administration (OSHA) standards as to make a refusal to perform the activity or termination of the activity a reasonable one.

(4) Child care or day care for an incapacitated individual living in the same home is necessary for an individual to participate or continue to participate in the program, and the care is not available.

(5) The total daily commuting time to and from home to the activity to which the individual is assigned exceeds two hours, not including the transporting of a child to and from a child care facility. If a longer commuting distance is generally accepted in the community, the roundtrip commuting time shall not exceed the generally accepted community standards.

(6) The failure occurred in the month in which the individual's pregnancy ended or the two following months.

(7) A single custodial parent has demonstrated the inability to obtain needed child care for a child under the age of six, because of one or more of the following reasons:

(A) Unavailability of appropriate child care within a reasonable distance from the individual's home or work site;

(B) unavailability or unsuitability of informal child care. "Informal child care" shall mean care that is legally exempt from regulation; or

(C) unavailability of appropriate and affordable formal child care arrangements.

(8) The individual was a victim of domestic violence, and compliance with program requirements would increase the risk of harm for the individual or any children in the individual's care.

(9) There was no bona fide offer of employment or training.

(10) The payment offered for employment was less than the federal minimum wage. (Authorized by and implementing K.S.A. 2018 Supp. 39-708c and K.S.A. 2018 Supp. 39-709; effective Oct. 1, 1989; amended Jan. 2, 1990; amended, T-30-3-29-90, April 1, 1990; revoked, T-30-7-2-90, July 2, 1990; amended, T-30-7-2-90, July 2, 1990; revoked, T-30-8-14-90, Oct. 1, 1990; amended Oct. 1, 1990; amended Jan. 7, 1991; amended, T-30-6-10-91, July 1, 1991; amended, T-30-8-9-91, Aug. 30, 1991; amended Oct. 28, 1991; amended Oct. 1, 1993; amended Aug. 1, 1995; amended July 1, 1996; amended March 1, 1997; amended July 1, 1998; amended April 1, 1999; amended Dec. 1, 1999; amended May 1, 2001; amended Jan. 1, 2007; amended May 3, 2019.)

30-4-90. (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; revoked May 3, 2019.)

30-4-98. Funeral assistance. Assistance may be provided for funeral expenses upon the death of a recipient at the discretion of the secretary.

(a) Funeral expenses. Funeral expenses may include the cost of any of the following, based on available resources and the requirements in this regulation:

- (1) The preparation of the body;
- (2) a minimal casket or urn;
- (3) the transportation of the body within Kansas; or
- (4) a cremation.

(b) Application. Each request for funeral assistance shall be made within six months after either the date of death or the date on which the body is released by a county coroner, whichever is later.

(c) Treatment of resources.

(1) If a decedent, at the time of death, was not living with a child of the decedent who was under the age of 21, the spouse of the decedent, or an adult disabled child of the decedent, the total estate of the decedent shall be considered available. This provision shall not be applicable in situations in which there were separate living arrangements because of the need for institutional care. The estate shall not be allowed any exemptions.

(2) Eligibility for assistance shall be based on the assets owned by the family group at the time of the decedent's death, under either of the following circumstances:

(A) At the time of death, the decedent was living with a child of the decedent who was under the age of 21, the spouse of the decedent, or an adult disabled child of the decedent, or the decedent was a child under the age of 21 living with the parent of the decedent.

(B) There were living arrangements separate from one of the persons specified in paragraph (c) (2)(A) because of the need for institutional care.

(3) The total amount of proceeds on any life insurance policy on the decedent shall be considered available if the policy was owned by the decedent, the spouse of the decedent, or, if the decedent was a child under the age of 21, the parent of the decedent.

(4) Death benefits from SSA, VA, railroad retirement, KPERS, and any other burial funds shall be considered available.

(d) Resource limit. If the value of the resources considered available in accordance with subsection (c) does not exceed \$2,000, funeral assistance may be provided.

If the resource value exceeds \$2,000, the decedent shall be ineligible for funeral assistance. (Authorized by and implementing K.S.A. 2018 Supp. 39-708c and K.S.A. 39-713d; effective Aug. 11, 2006; amended Jan. 1, 2008; amended May 3, 2019.)

30-4-100. Payment standards for the TANF and foster care programs.

(a) The basic and shelter standards in K.A.R. 30-4-101 and 30-4-102, and the designated special requirements in K.A.R. 30-4-120, shall be used in determining the total benefit amount for the TANF and foster care programs. An applicant or recipient shall not be eligible to have a standard included in the computation of the applicant's or recipient's benefit amount if the department or another state's assistance program has issued the applicant or recipient a payment for the same maintenance items in the same calendar month.

(b) The benefit amount for the TANF and foster care program shall be based upon the total number of persons in each assistance plan.

(1) The basic standard and 100% of the shelter standard shall be used under each of the following circumstances:

(A) All persons in the home are in the same assistance plan.

(B) The only person in the home not in the plan is an SSI recipient to whom the one-third SSI reduction is applied because the person lives in the household and receives support and maintenance in kind.

(C) There is a bona fide commercial landlord-tenant relationship between the family group and the other persons in the home.

(D) All persons in the plan are in a commercial board and room or commercial room-only living arrangement or are residing in nonmedical living arrangements that are publicly funded or are funded by not-for-profit agencies or organizations, including temporary homeless shelters, alcohol or drug abuse treatment facilities, and shelters for battered persons.

(2) The basic standard, plus a percentage reduction of the shelter standard, shall be used when there are one or more persons residing in the home who are not included in the assistance plan, except as specified in paragraphs (b)(1) (B), (C), and (D). The percentage reduction shall be as follows:

- (A) 60% reduction for one person in the plan;
 - (B) 50% reduction for two persons in the plan;
 - (C) 40% reduction for three persons in the plan;
 - (D) 35% reduction for four persons in the plan;
 - (E) 30% reduction for five persons in the plan;
- and

(F) 20% reduction for six or more persons in the plan. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. 2018 Supp. 39-708c, K.S.A. 2018 Supp. 39-709; effective May 1, 1981; amended, T-84-8, April 1, 1983; amended May 1, 1983; amended, T-84-9, May 1, 1983; amended May 1, 1984; amended, T-86-19, July 1, 1985; amended May 1, 1986; amended, T-88-14, July 1, 1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended July 1, 1989; amended March 1, 1997; amended May 3, 2019.)

30-4-107. Property exemption. Any assistance family may own otherwise nonexempt real or personal property with an aggregate resource value that shall not exceed the amounts prescribed by the secretary of the United States department of health and human services pursuant to 7 U.S.C. 2014(c). Ownership of property with a resource value in excess of this amount shall render the assistance family group ineligible for assistance. However, if there is ineligibility due to excess real property, assistance shall be provided for a period of up to nine months if the applicant or recipient is making a bona fide and documented effort to dispose of the property. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. 2018 Supp. 39-708c, 39-709; effective May 1, 1981; amended May 1, 1983; amended, T-84-25, Sept. 19, 1983;

amended May 1, 1984; amended, T-85-33, Dec. 19, 1984; amended May 1, 1985; amended Oct. 1, 1997; amended May 3, 2019.)

30-4-109. Personal property. (a) Definitions for TANF and food assistance programs.

(1) "Cash assets" shall mean money, investments, and cash surrender or loan values of life insurance policies, trust funds, and similar items on which a determinate amount of money can be realized.

(2) "Personal property" shall mean personal effects, household equipment and furnishings, home produce, livestock, equipment, vehicles, inventory, contracts from the sale of property, and similar items on which a determinate amount of money can be realized. This term shall not include real property.

(b) Treatment of personal property. Personal property, unless exempted, shall be considered a resource.

(c) Exempted personal property. The resource value of the following classifications of personal property shall be exempt:

(1) Privately owned personal effects, including clothing and jewelry worn by or carried on an individual;

(2) household equipment and furnishings in use or only temporarily not in use;

(3) tools in use and necessary for the maintenance of house or garden;

(4) income-producing property, other than cash assets, that is essential for employment or self-employment or that is producing income consistent with its fair market value. Income-producing property may include tools, equipment, machinery and livestock;

(5) the stock and inventory of any self-employed person that are reasonable and necessary in the production of goods or services;

(6) items for home consumption, which shall consist of the following:

(A) Produce from a small garden consumed from day to day and any excess that can be canned or stored; and

(B) a small flock of fowl or livestock that is used to meet the food requirements of the family;

(7) one motor vehicle, regardless of the value of the vehicle. Each additional motor vehicle used by the applicant, the applicant's spouse, or the applicant's cohabiting partner used for the primary purpose of earning income shall also be exempt. Nonexempt vehicles shall be considered in the resource limit. Nonexempt vehicles shall include

any equity in any boat, personal watercraft, recreational vehicle, recreational off-highway vehicle or all-terrain vehicle, as defined by K.S.A. 8-126 and amendments thereto;

(8) cash assets that are traceable to income exempted as income and as a cash asset;

(9) proceeds from the sale of a home if the proceeds are conserved for the purchase of a new home and the funds so conserved are expended or committed to be expended in the month received or in the following month;

(10) burial plots and funeral agreements that meet conditions established by the secretary of the United States department of health and human services and approved by the secretary of the department for children and families;

(11) any contract for the sale of property, if the proceeds from the contract are considered as income;

(12) escrow accounts established for families participating in the family self-sufficiency program through the department of housing and urban development. Interest earned on the accounts shall also be exempted as income;

(13) the cash value of any life insurance policy; and

(14) learning quest and other 529 educational savings plans. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. 2018 Supp. 39-708c, 39-709; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended, T-83-17, July 1, 1982; amended May 1, 1983; amended May 1, 1984; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended Oct. 1, 1992; amended March 1, 1997; amended Oct. 1, 1997; amended May 3, 2019.)

30-4-111. Income. (a) "Income" shall mean the amount of earned and unearned income that is subtracted from the benefit standard in determining the benefit amount for TANF.

(b) Earned income for persons included in the assistance plan shall equal gross earned income or the adjusted gross earned income from self-employment, less the following items:

(1) Ninety dollars for each employed person;

(2) the earned income disregard of 60 percent of the remaining income, for the following persons in a TANF or foster care assistance plan:

(A) Each applicant who had received assistance in one of the four preceding months; and

(B) each recipient; and

(3) reasonable expenses for child care or expenses for the care of an incapacitated person. The dependent shall be included in the family group before the deduction is allowed.

(c) For self-employed persons, adjusted gross earned income shall equal gross earned income less costs of the production of the income. Income-producing costs shall include only those expenses directly related to the actual production of income. A standard deduction of 25 percent of gross earned income shall be allowed for these costs. If the person wishes to claim actual costs incurred, the following shall be used by the department in calculating the cost of the production of the income:

(1) The public assistance program shall not be used to pay debts, set up an individual in business, subsidize a nonprofit activity, or treat income on the basis of internal revenue service (IRS) policies.

(2) If losses are suffered from self-employment, the losses shall not be deducted from other income, nor may a net loss of a business be considered an income-producing cost.

(3) If a business is being conducted from a location other than the applicant's or recipient's home, the expenses for business space and utilities shall be considered income-producing costs.

(4) If a business is being conducted from a person's own home, shelter and utility costs shall not be considered income-producing costs unless they are clearly distinguishable from the operation of the home.

(5) If payments increase the equity in equipment, vehicles, or other property, the payments shall not be considered income-producing costs.

(6) If equipment, vehicles, or other property is being purchased on an installment plan, the actual interest paid may be considered an income-producing cost.

(7) Depreciation on equipment, vehicles, or other property shall not be considered an income-producing cost.

(8) Insurance payments on equipment, vehicles, or other property shall be allowed if the payments directly relate to the business.

(9) Expenses for items that are reasonable and required for the business shall be considered income-producing costs.

(10) Wages and other mandated costs related to wages paid by the applicant or recipient shall be considered income-producing costs.

(d) The income for a person in the home whose income is required to be considered and who is

not included in the assistance plan shall equal all nonexempt, unearned income and gross earnings, or adjusted gross earnings of the self-employed, without the application of any income disregards, unless otherwise prohibited by federal law or regulation or state or local law or regulation.

(e) The income of an alien's sponsor and the sponsor's spouse shall be considered in determining eligibility and the amount of the assistance payment for the alien.

(f) All net unearned income of persons included in the assistance plan shall be income unless exempted. Net unearned income shall equal gross unearned income less the costs of the production of the income. Income-producing costs shall include only those expenses directly related to the actual production of income. The requirements in subsection (c) regarding the calculation of income-producing costs shall apply.

(g) Each household that is ineligible for TANF due to excess income, which shall include earnings, shall be eligible for the work incentive payment for five months from the date of ineligibility for TANF.

(h) Any household that has never received TANF or a diversion payment may be eligible for the diversion payment if all of the following conditions are met:

(1) No adults in the family are receiving SSI.

(2) At least one adult in the family has employment or a valid offer of employment.

(3) The family's TANF benefit for a one-year period is not less than the diversion payment divided by 12 months.

(4) The family has a documented crisis or emergency that jeopardizes existing employment, including established self-employment, or prevents the family from accepting a valid offer of employment. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. 2018 Supp. 39-708c and 39-709; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended, T-83-17, July 1, 1982; amended May 1, 1983; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-88-10, May 1, 1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended Oct. 1, 1989; amended Jan. 2, 1990; amended May 1, 1991; amended, T-30-11-16-93, Dec. 1, 1993; amended Jan. 3, 1994; amended March 1, 1997; amended July 1, 1997; amended July 1, 1998; amended Jan. 1, 1999; amended May 3, 2019.)

30-4-113. Exempt income. The following types of income shall be exempt in the determination of the budgetary deficit:

(a) For TANF, earned income of a child who is under the age of 19 years if the child is a student in elementary or secondary school or is working towards attainment of a GED;

(b) for food assistance, earned income of a child who is under the age of 18 years if the child is a student in elementary or secondary school or is working towards attainment of a GED;

(c) lump sum income;

(d) irregular, occasional, or unpredictable monetary gifts that do not exceed \$50.00 per month per family group;

(e) income-in-kind;

(f) shelter cost participation payments. In shared living arrangements in which two families contribute toward the shelter obligations, any cash paid toward the shared shelter obligation by one family to the second family in the shared arrangement shall not be considered as income to the second family. This exemption shall not be applicable in a bona fide, commercial landlord-tenant arrangement;

(g) tax refunds and rebates, except for earned income tax credits in accordance with K.A.R. 30-4-112;

(h) incentive payments received by renal dialysis patients;

(i) home energy assistance furnished on the basis of need by a federally regulated or state-regulated entity whose revenues are primarily derived on a rate-of-return basis, by a private, non-profit organization, by a supplier of home heating oil or gas, or by a municipal utility company that provides home energy;

(j) income received from the job training partnership act of 1982. However, earnings received by individuals who are participating in on-the-job training programs shall be countable unless the individual is a child;

(k) housing assistance from federal housing programs;

(l) assistance payments in the month received;

(m) support payments received following the effective date of the assignment of support rights to the department. However, a support refund disbursed by the department to the recipient or reported current support that, if prospectively treated as nonexempt income, would result in ineligibility, shall not be exempt income;

(n) up to \$2,000.00 per year of income received by an individual Indian that is derived from leas-

es or other uses of an individually owned trust or restricted lands;

(o) veterans administration (VA) payments resulting from unusual medical expenses, shall mean expenditures exceeding five percent of the veteran's reported annual income;

(p) interest income that does not exceed \$50.00 per month per family group; and

(q) the amount of any child support pass-through payment. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. 2018 Supp. 39-708c and 39-709; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended May 1, 1983; amended, T-84-11, July 1, 1983; amended, T-84-25, Sept. 19, 1983; amended May 1, 1984; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended, T-87-15, July 1, 1986; amended May 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 May 1, 1991; amended July 1, 1991; amended Sept. 30, 1994; amended Dec. 30, 1994; amended March 1, 1997; amended July 1, 1997; amended Oct. 1, 1997; amended May 3, 2019.)

30-4-120. (Authorized by K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104; implementing K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104, K.S.A. 1995 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, T-84-25, Sept. 19, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-33, Dec. 1, 1986; amended May 1, 1987; amended, T-88-14, July 1, 1987; amended May 1, 1988; amended, T-30-7-29-88, July 29, 1988; amended Sept. 26, 1988; amended Oct. 1, 1989; amended, T-30-3-29-90, April 1, 1990; amended, T-30-7-2-90, Aug. 1, 1990; revoked, T-30-8-14-90, Oct. 1, 1990; amended Oct. 1, 1990; amended Jan. 7, 1991; amended May 1, 1991; amended Aug. 1, 1995; amended Jan. 1, 1997; amended March 1, 1997; revoked May 3, 2019.)

30-4-130. Types of payments and payees. Public assistance payments shall be issued in accordance with this regulation.

(a) Money payment.

(1) Payments shall be available through the state electronic benefit transfer system or, in certain circumstances, by check or written order

immediately redeemable at face value. Payments shall be made with no restriction on the use of the funds, except TANF payments.

(2) All payments shall be money payments, except for the following types of payments:

(A) Payments pursuant to the foster care programs; and

(B) work program support costs and transitional expenses in accordance with K.A.R. 30-4-64 (c) and (d).

(b) Who may receive money payments. The following persons may receive money payments:

(1) A caretaker;

(2) a recipient;

(3) a personal representative;

(4) a substitute payee;

(5) a protective payee; or

(6) an emancipated minor who meets the requirements in K.A.R. 30-4-52.

(c) Protective payments in the TANF program.

(1) If any caretaker repeatedly mismanages the money payment to the detriment of any child for whom assistance is claimed and if an approved service plan is on file, a protective payment, in lieu of a money payment to the caretaker, shall be issued to a protective payee.

(2) If a caretaker has refused to undergo drug testing or has tested positive for illegal use of a controlled substance, a protective payee shall be named to administer the caretaker's cash benefit for each remaining household member.

(d) Substitute payee.

(1) Appointment and dismissal. Each substitute payee shall be appointed as assisted by the department. The substitute payee may be terminated by the department if the payee's services are no longer needed or if the payee is not giving satisfactory service.

(2)(A) Who may be substitute payee. An individual selected to be a substitute payee may be a relative, friend, neighbor, or member of a religious or community organization. The following persons shall not serve as substitute payees:

(i) Any staff member of the department, unless there is a direct familial relationship;

(ii) the landlord, grocers, or vendors of goods or services dealing directly with the client; or

(iii) another adult residing in the household.

(e) Protective payee.

(1) A protective payee may be selected by the household. If the household does not name a suitable protective payee, the protective payee may be selected by the department.

(2)(A) Who may be a protective payee. An individual selected to be a protective payee may be a relative, friend, neighbor, or member of a religious or community organization. The following persons shall not serve as protective payees:

- (i) Any staff from the department, unless there is a direct familial relationship;
- (ii) the landlord, grocers, or vendors of goods or services dealing directly with the client; and
- (iii) another adult residing in the household.

(B) Exception. Payments may be made to a foster parent on behalf of a minor living in a foster care home with the minor's child in order to provide TANF for the child. The foster care home shall be licensed or approved as meeting licensing standards. This provision shall not be used in any other kind of public assistance case and may continue until the minor is released from custody of the department or becomes emancipated.

(3) Criteria for selection. Each protective payee shall demonstrate the following characteristics:

(A) An interest in and concern for the welfare of the family;

(B) the ability to help the family with ordinary budgeting, experience in purchasing food, clothing, and household equipment within a limited income, and knowledge of effective household practices;

(C) the ability to establish and maintain a positive relationship;

(D) the ability to maintain close contacts with the caretaker and child by virtue of living near the caretaker or having transportation available; and

(E) responsibility and dependability.

(4) Payee-recipient relationship. Any payee may make decisions about the expenditure of the assistance payment. The payee may expend the payment in any of the following ways:

(A) Spend the money for the family;

(B) supervise the recipient's use of the money; or

(C) give a portion of the money to the recipient to spend for certain expenses and pay for other expenses of the recipient.

(5) Payee-department relationship. Each payee shall ensure that the money is spent for the children's benefit. The payee's responsibility to the department shall be specified in writing with one copy for the payee and one for the department.

(A) This written agreement shall cover the following areas:

- (i) The plans for accounting;
- (ii) use of the assistance funds; and
- (iii) reporting on the general progress made.

(B) The agreement shall be supplemented by the following:

- (i) Discussions of the payee's responsibility;
- (ii) a statement of the purpose of the plan;
- (iii) a description of the nature and frequency of reports;
- (iv) a statement of the rights of the recipient; and
- (v) a statement of the confidential nature of the relationship.

(6) Periodic review of cases. Each money payment mismanagement case shall be reviewed at least every six months to determine which of the following actions will be taken:

(A) Restore the recipient to regular money payment status;

(B) continue the recipient on protective payment status; or

(C) develop another plan for the care of the child or children if necessary, including any of the following options:

- (i) Placement with another relative;
- (ii) seeking appointment of a guardian; or
- (iii) placement in a foster home.

(7) Discontinuance of protective payments. Protective payments shall be discontinued when the caretaker has demonstrated an ability to manage the money payment or after a period of two years has lapsed, whichever comes first. Payment may continue for any additional time reasonably necessary to complete a substitute plan for the care of the child.

(8) Discontinuance of protective payments. Protective payments shall be discontinued under either of the following conditions:

(A) The individual who failed to complete a drug test completes that person's period of ineligibility, submits to a drug test, and has a negative result for illegal controlled substances.

(B) The individual who tested positive for an illegal controlled substance successfully completes the requirements to regain eligibility for cash assistance.

(f) Special personal representative. A petition for the appointment of a personal representative shall be filed by the department pursuant to K.S.A. 59-2801, and amendments thereto, only if the need for an appointment is clearly established and the department has counseled the applicant or recipient concerning the money management problems. Confidential reports shall be filed by the department with the appropriate court as requested.

(1) Appointment of personal representative. A person who meets the following requirements shall be recommended to the court as a personal representative by the department:

(A) The person shall not be an employee of the department.

(B) The person shall not benefit directly from the assistance payment.

(C) The person shall meet the criteria in paragraph (d)(2)(A).

(2) Dismissal of personal representative. A recommendation to the court to dismiss a personal representative shall be made by the department if the client demonstrates that the client no longer requires a personal representative, or if the personal representative is failing to execute the responsibilities specified in this regulation, in which instance a substitute personal representative shall be recommended by the department.

(3) Responsibility of personal representative. Each personal representative shall be responsible to the court, the department, and the recipient. Each personal representative shall make an annual accounting to both the court and the department. A more frequent accounting may be required by the department or the court in the form and at the times prescribed by the department or the court. Each personal representative shall maintain a confidential relationship with the applicant or recipient and shall consult with the applicant or recipient concerning the applicant's or recipient's requirements, resources, and the use of the money payment.

(4) Periodic review. The necessity of continuing the appointment of a personal representative shall be reviewed semiannually. Consideration shall be given to whether or not the recipient's ability to manage personal affairs has improved or if other changes in the recipient's circumstances or living arrangements make it possible for the recipient to manage without the help of a personal representative. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. 2018 Supp. 39-708c and K.S.A. 2018 Supp. 39-709; effective May 1, 1981; amended May 1, 1983; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended July 1, 1989; amended Oct. 1, 1989; amended Jan. 2, 1990; amended, T-30-6-10-91, July 1, 1991; amended Oct. 1, 1993; amended July 1, 1996; amended March 1, 1997; amended May 3, 2019.)

30-4-140. Payments; penalties; enforcement. (a) Assistance payments shall equal the budgetary deficit, which shall be rounded down to the nearest dollar, except as follows:

(1) Payments for the month of application shall equal the budgetary deficit, which shall be prorated beginning with the date of application through the end of the month. This amount shall be rounded down to the nearest dollar.

(2) A payment shall not be made if the amount of the budgetary deficit is less than \$10.00. If a payment is not made under this paragraph, recipient status shall continue.

(b) Overpayments shall be corrected by the end of the calendar quarter following the calendar quarter in which the overpayment was first identified. Recovery procedures shall not be initiated by the department, pending the disposition of a welfare fraud referral. Overpayments may be recovered by voluntary repayment, administrative recoupment, or legal action. The assistance payment shall be reduced for recoupment as follows:

(1) For fraud claims, by the greater of 20 percent of the household's monthly benefit or \$10.00 per month; and

(2) for non-fraud claims, by the greater of 10 percent of the household's monthly benefit or \$10.00 per month.

(c) Disqualification penalties. Each individual who is found to have committed fraud in the temporary assistance for needy families (TANF) program, either through an administrative disqualification hearing or by a court of appropriate jurisdiction, or who has signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in any case referred for prosecution, shall be ineligible for assistance, along with all adult household members. For the TANF program, each child shall also be ineligible if living in a household with a disqualified adult until the child moves into another qualified household, becomes an adult, or is able to act on that individual's own behalf. A protective payee shall be named pursuant to K.S.A. 39-709(b)(12)(A), and amendments thereto. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. 2018 Supp. 39-708c, 39-719b; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended, T-83-17, July 1, 1982; amended, T-83-38, Nov. 23, 1982; amended, T-84-8, March 29, 1983; amended May 1, 1983; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended

May 1, 1986; amended July 1, 1989; amended May 1, 1992; amended March 1, 1997; amended July 1, 1998; amended, May 3, 2019.)

**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 6.—MEDICAL ASSISTANCE
PROGRAM—CLIENTS' ELIGIBILITY
FOR PARTICIPATION**

30-6-34. (Authorized by and implementing K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended May 1, 1982; amended May 1, 1984; amended Dec. 30, 1994; amended March 1, 1997; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-35. (Authorized by and implementing K.S.A. 1997 Supp. 39-708c; effective May 1, 1981; amended May 1, 1984; amended May 1, 1988; amended July 1, 1989; amended, T-30-5-1-90, May 1, 1990; amended, T-30-7-2-90, Aug. 30, 1990; revoked, T-30-8-14-90, Oct. 1, 1990; amended Oct. 1, 1990; amended July 1, 1997; amended Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-36. (Authorized by and implementing K.S.A. 1997 Supp. 39-708c; effective May 1, 1981; amended May 1, 1988; amended Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-39. (Authorized by and implementing K.S.A. 1985 Supp. 39-708c, K.S.A. 39-719b; effective May 1, 1981; amended May 1, 1984; amended May 1, 1986; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-40. (Authorized by and implementing K.S.A. 1980 Supp. 39-708c; effective May 1, 1981; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-41. (Authorized by K.S.A. 1997 Supp. 39-708c; implementing K.S.A. 1997 Supp. 39-708c, K.S.A. 1997 Supp. 39-709; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended, T-83-17, July 1, 1982; amended May 1, 1983; amended May 1, 1984; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended, T-87-15, July 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, T-30-7-1-88, July 1, 1988; amended Sept. 26, 1988; amended April 1, 1990; amended March 1, 1997; amended Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-50. (Authorized by K.S.A. 1985 Supp. 39-708c; implementing K.S.A. 1985 Supp. 39-708c, 39-709; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1986; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-51. (Authorized by and implementing K.S.A. 1983 Supp. 39-708c, 39-709; effective May 1, 1981; amended May 1, 1984; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-52. (Authorized by and implementing K.S.A. 1997 Supp. 39-708c and 39-709; effective May 1, 1981; amended May 1, 1984; amended Jan. 4, 1993; amended Sept. 30, 1994; amended March 1, 1997; amended October 1, 1997; amended July 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-53. (Authorized by K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Chapter 229, Section 104; implementing K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104, and 39-709; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1987; amended, T-30-7-1-88, July 1, 1988; amended Sept. 26, 1988; amended Jan. 2, 1989; amended July 1, 1989; amended, T-30-7-2-90, July 2, 1990; revoked, T-30-8-14-90, Oct. 1, 1990; amended Oct. 1, 1990; amended, T-30-8-9-91, Aug. 30, 1991; amended Oct. 28, 1991; amended Jan. 4, 1993; amended July 19, 1996; amended Jan. 1, 1997; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-54. (Authorized by and implementing K.S.A. 1997 Supp. 39-708c and 39-709; effective May 1, 1981; amended May 1, 1987; amended, T-88-10, May 1, 1987; amended May 1, 1988; amended, T-30-2-20-97, March 1, 1997; amended May 16, 1997; amended June 26, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-55. (Authorized by and implementing K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104, K.S.A. 1995 Supp. 39-709; effective May 1, 1981; amended, T-86-9, May 1, 1985; amended, T-86-19, July 1, 1985; amended May 1, 1986; amended, T-87-15, July 1, 1986; amended May 1, 1987; amended Jan. 1, 1990; amended May 1, 1992; amended March 1, 1997; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-56. (Authorized by K.S.A. 39-708c; implementing K.S.A. 39-708c, 39-709; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended, T-89-13, April 26, 1988; amended Sept. 26, 1988; amended July 1, 1989; amended May 1, 1992; amended Jan. 4, 1993; amended May 3, 1993; amended Oct. 1, 1993; amended, T-30-11-16-93, Dec. 1, 1993; amended Jan. 3, 1994; amended July 1, 1994; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-60. (Authorized by and implementing K.S.A. 1983 Supp. 39-708c, 39-709; effective May 1, 1981; amended May 1, 1984; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-63. (Authorized by and implementing K.S.A. 39-708c, K.S.A. 1988 Supp. 39-709; effective, T-86-19, July 1, 1985; effective May 1, 1986; amended Oct. 1, 1989; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-65. (Authorized by and implementing K.S.A. 39-708c, K.S.A. 39-709; effective May 1, 1981; amended, E-82-19, Oct. 21, 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-85-26, Oct. 15, 1984; amended, T-85-34, Dec. 19, 1984; amended May 1, 1985; amended, T-86-19, July 1, 1985; amended May 1, 1986;

amended, T-87-5, May 1, 1986; amended, T-87-15, July 1, 1986; amended, T-87-29, Nov. 1, 1986; amended, T-87-44, Jan. 1, 1987; amended May 1, 1987; amended, T-88-10, May 1, 1987; amended, T-88-14, July 1, 1987; amended May 1, 1988; amended, T-30-7-29-88, July 29, 1988; amended Sept. 26, 1988; amended Oct. 1, 1989; amended Jan. 2, 1990; amended, T-30-1-2-90, Jan. 2, 1990; amended, T-30-2-28-90, Jan. 2, 1990; amended, T-30-3-29-90, April 1, 1990; amended, T-30-7-2-90, Aug. 1, 1990; revoked, T-30-8-14-90, Oct. 1, 1990; amended Oct. 1, 1990; amended Jan. 7, 1991; amended May 1, 1991; amended Jan. 2, 1992; amended July 1, 1996; amended March 1, 1997; amended July 1, 1998; amended July 1, 2003; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-70. (Authorized by and implementing K.S.A. 1997 Supp. 39-708c; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended May 1, 1982; amended March 1, 1997; amended July 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-73. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1983; amended May 1, 1986; amended, T-87-15, July 1, 1986; amended May 1, 1987; amended May 1, 1988; amended, T-30-7-1-88, July 1, 1988; amended Sept. 26, 1988; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-80. (Authorized by and implementing K.S.A. 1982 Supp. 39-708c; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended May 1, 1983; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-81. (Authorized by and implementing K.S.A. 1980 Supp. 39-708c, 39-709; effective May 1, 1981; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-82. (Authorized by K.S.A. 1996 Supp. 39-708c; implementing K.S.A. 1996 Supp. 39-708c, 39-709; effective, T-30-3-1-91, March 1, 1991; effective July 1, 1991; amended Oct. 1, 1997; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-85. (Authorized by and implementing K.S.A. 1980 Supp. 39-708c, 39-709; effective May 1, 1981; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-86. (Authorized by K.S.A. 39-708c and 38-2002; implementing K.S.A. 39-708c, 39-709, and 38-2002; effective Jan. 2, 1989; amended July 1, 1989; amended, T-30-12-28-90, Jan. 2, 1991; amended May 1, 1991; amended Jan. 4, 1993; amended July 2, 1999; amended Dec. 31, 2002; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-87. (Authorized by and implementing K.S.A. 39-708c, as amended by 1990 HB 3085, K.S.A. 1989 Supp. 39-709; effective, T-30-7-2-90, July 2, 1990; revoked, T-30-8-14-90, Oct. 1, 1990; effective Oct. 1, 1990; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-88. (Authorized by and implementing K.S.A. 39-708c, 39-709; effective July 1, 2002; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-89. (Authorized by and implementing K.S.A. 39-708c; effective Oct. 1, 2001; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-91. (Authorized by K.S.A. 39-708c; implementing K.S.A. 39-708c and K.S.A. 39-709; effective July 1, 2004; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-94. (Authorized by and implementing K.S.A. 39-708c, 39-709; effective Jan. 2, 1992; amended May 1, 2002; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-95. (Authorized by K.S.A. 39-708c; implementing K.S.A. 39-708c, 39-709; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-103. (Authorized by and implementing K.S.A. 39-708c and 38-2002; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended, T-83-17, July 1, 1982; amended May 1, 1983; amended, T-84-11, July 1, 1983; amended, T-84-36, Dec. 21, 1983; amended May 1, 1984; amended, T-85-34, Dec. 19, 1984; amended May 1, 1985; amended, T-86-19, July 1, 1985; amended, T-86-42, Jan. 1, 1986; amended May 1, 1986; amended, T-87-15, July 1, 1986; amended, T-88-2, Feb. 1, 1987; amended May 1, 1987; amended, T-88-10, May 1, 1987; amended, T-88-14, July 1,

1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended, T-30-7-1-88, July 1, 1988; amended Sept. 26, 1988; amended Jan. 2, 1989; amended July 1, 1989; amended Oct. 1, 1989; amended Jan. 2, 1990; amended, T-30-12-28-89, Jan. 1, 1990; amended, T-30-3-29-90, April 1, 1990; revoked, T-30-7-2-90, July 2, 1990; amended, T-30-7-2-90, July 2, 1990; revoked, T-30-8-14-90, Oct. 1, 1990; amended Oct. 1, 1990; amended Jan. 7, 1991; amended, T-30-12-28-90, Jan. 2, 1991; amended May 1, 1991; amended July 1, 1991; amended Jan. 2, 1992; amended, T-30-6-10-92, July 1, 1992; amended Oct. 1, 1992; amended Jan. 4, 1993; amended Jan. 3, 1994; amended Dec. 30, 1994; amended Dec. 29, 1995; amended Jan. 1, 1997; amended July 1, 1998; amended July 2, 1999; amended July 1, 2002; amended Dec. 31, 2002; amended, T-30-1-2-03, Feb. 1, 2003; amended April 18, 2003; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-106. (Authorized by and implementing K.S.A. 39-708c, 39-709; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-15, July 1, 1986; amended, T-87-20, Sept. 1, 1986; amended May 1, 1987; amended, T-88-14, July 1, 1987; amended, T-88-59, Jan. 1, 1988; amended May 1, 1988; amended, T-89-13, April 26, 1988; amended, T-30-7-1-88, July 1, 1988; amended Sept. 26, 1988; amended July 1, 1989; amended Oct. 1, 1989; amended Jan. 2, 1990; amended April 1, 1990; amended, T-30-10-1-90, Oct. 1, 1990; revoked, T-30-11-29-90, Jan. 2, 1991; amended Jan. 7, 1991; amended, T-30-12-28-90, Jan. 2, 1991; amended, T-30-3-1-91, March 1, 1991; amended May 1, 1991; amended July 1, 1991; amended, T-30-8-9-91, Aug. 30, 1991; amended Oct. 28, 1991; amended Jan. 2, 1992; amended, T-30-6-10-92, July 1, 1992; amended Oct. 1, 1992; amended Jan. 4, 1993; amended Oct. 1, 1993; amended, T-30-11-16-93, Dec. 1, 1993; amended Jan. 3, 1994; amended Feb. 6, 1995; amended Dec. 29, 1995; amended March 1, 1997; amended Oct. 1, 1997; amended March 7, 2003; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-107. (Authorized by and implementing K.S.A. 39-708c, 39-709; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended May

1, 1982; amended May 1, 1983; amended, T-84-25, Sept. 19, 1983; amended May 1, 1984; amended, T-85-33, Dec. 19, 1984; amended, T-85-34, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-43, Jan. 1, 1987; amended May 1, 1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended, T-30-7-1-88, July 1, 1988; amended Sept. 26, 1988; amended Jan. 2, 1989; amended, T-30-7-2-90, July 2, 1990; revoked, T-30-8-14-90, Oct. 1, 1990; amended Oct. 1, 1990; amended July 1, 1991; amended Dec. 30, 1994; amended July 1, 2002; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-108. (Authorized by K.S.A. 39-708c; implementing K.S.A. 39-708c and K.S.A. 39-709; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended, E-82-19, Oct. 29, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-20, Sept. 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Sept. 26, 1988; amended, T-30-5-1-90, May 1, 1990; amended, T-30-7-2-90, Aug. 30, 1990; revoked, T-30-8-14-90, Oct. 1, 1990; amended Oct. 1, 1990; amended March 1, 1997; amended July 1, 2003; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-109. (Authorized by K.S.A. 39-708c; implementing K.S.A. 39-708c and 39-709; effective May 1, 1981; amended, E-82-11, June 17, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended, T-83-17, July 1, 1982; amended May 1, 1983; amended May 1, 1984; amended, T-85-26, Oct. 15, 1984; amended, T-85-34, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-15, July 1, 1986; amended May 1, 1987; amended, T-88-14, July 1, 1987; amended May 1, 1988; amended, T-89-13, April 26, 1988; amended Sept. 26, 1988; amended July 1, 1989; amended, T-30-5-1-90, May 1, 1990; amended, T-30-7-2-90, Aug. 30, 1990; revoked, T-30-8-14-90, Oct. 1, 1990; amended Oct. 1, 1990; amended Oct. 1, 1992; amended, T-30-11-16-93, Dec. 1, 1993; amended Jan. 3, 1994; amended July 1, 1994; amended Jan. 1, 1997; amended March 1, 1997; amended Oct. 1, 1997; amended July 1, 2002; amended July 1, 2003; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-110. (Authorized by and implementing K.S.A. 1995 Supp. 39-708c, as amended by L.

1996, Ch. 229, Sec. 104; K.S.A. 1995 Supp. 39-709; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended Oct. 1, 1989; amended Jan. 1, 1990; amended March 1, 1997; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-111. (Authorized by and implementing K.S.A. 1997 Supp. 39-708c and 39-709; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended, T-85-26, Oct. 15, 1984; amended May 1, 1985; amended, T-86-9, May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended, T-88-10, May 1, 1987; amended, T-88-14, July 1, 1987; amended, T-88-59, Dec. 16, 1987; amended May 1, 1988; amended Oct. 1, 1989; amended Jan. 2, 1990; amended April 1, 1990; amended May 1, 1991; amended July 1, 1994; amended Dec. 30, 1994; amended Aug. 1, 1995; amended March 1, 1997; amended July 1, 1998; amended Nov. 1, 1998; amended Jan. 1, 1999; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-112. (Authorized by and implementing K.S.A. 39-708c and 39-709; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended May 1, 1983; amended May 1, 1984; amended May 1, 1986; amended May 1, 1987; amended, T-88-14, July 1, 1987; amended, T-88-59, Jan. 1, 1988; amended May 1, 1988; amended, T-89-13, April 26, 1988; amended Sept. 26, 1988; amended July 1, 1989; amended Oct. 1, 1989; amended Jan. 2, 1990; amended, T-30-7-2-90, July 2, 1990; revoked, T-30-8-14-90, Oct. 1, 1990; amended Oct. 1, 1990; amended May 1, 1991; amended July 1, 1991; amended Jan. 2, 1992; amended Oct. 1, 1992; amended Oct. 1, 1993; amended Dec. 30, 1994; amended Oct. 1, 1997; amended July 1, 1998; amended July 1, 2002; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-113. (Authorized by and implementing K.S.A. 1996 Supp. 39-708c, 39-709; effective May 1, 1981; amended, E-82-19, Oct. 21, 1981; amended May 1, 1982; amended May 1, 1983; amended, T-84-11, July 1, 1983; amended, T-84-25, Sept. 19, 1983; amended May 1, 1984; amended, T-85-26,

Oct. 15, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-15, July 1, 1986; amended May 1, 1987; amended, T-88-14, July 1, 1987; amended, T-88-59, Jan. 1, 1988; amended May 1, 1988; amended, T-89-13, April 26, 1988; amended, T-30-7-1-88, July 1, 1988; amended Sept. 26, 1988; amended July 1, 1989; amended Oct. 1, 1989; amended, T-30-12-28-90, Jan. 2, 1991; amended May 1, 1991; amended July 1, 1991; amended, T-30-6-10-92, July 1, 1992; amended Oct. 1, 1992; amended Jan. 4, 1993; amended May 3, 1993; amended, T-30-11-16-93, Dec. 1, 1993; amended Jan. 3, 1994; amended Sept. 30, 1994; amended Dec. 30, 1994; amended March 1, 1997; amended July 1, 1997; amended Oct. 1, 1997; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-120. (Authorized by and implementing K.S.A. 1982 Supp. 39-708c, 39-709; effective May 1, 1981; amended May 1, 1983; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-140. (Authorized by and implementing K.S.A. 1995 Supp. 39-708c, as amended by L. 1996, Ch. 229, Sec. 104, K.S.A. 1995 Supp. 39-709; effective May 1, 1981; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986; amended March 1, 1997; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-6-150. (Authorized by K.S.A. 1992 Supp. 39-708c; implementing K.S.A. 1992 Supp. 39-708c, and 39-709, as amended by L. 1993, Chapter 180, Sec. 1; effective, T-30-6-10-92, July 1, 1992; effective Oct. 1, 1992; amended Jan. 4, 1993; amended May 3, 1993; amended, T-30-11-16-93, Dec. 1, 1993; amended Jan. 3, 1994; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

Article 10.—ADULT CARE HOME PROGRAM

30-10-19. (Authorized by and implementing K.S.A. 39-708c; effective May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended Jan. 2, 1989; amended Jan. 2, 1990; amended, T-30-10-1-90, Oct. 1, 1990; amended Jan. 30, 1991; amended Oct. 28, 1991; amended Nov. 2, 1992; amended Jan. 3, 1994; amended Dec. 29, 1995; amended Jan. 1, 1997; amended July 1, 2002; amended, T-30-5-30-03, July 1, 2003; amended July 25, 2003; amended May 1, 2005; revoked Feb. 5, 2016.)

Article 14.—CHILDREN’S HEALTH INSURANCE PROGRAM

30-14-1. (Authorized by K.S.A. 1997 Supp. 39-708c and L. 1998, Chapter 125, Section 2; implementing L. 1998, Chapter 125, Section 1; effective Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-14-2. (Authorized by K.S.A. 1997 Supp. 39-708c and L. 1998, Chapter 125, Section 2; implementing L. 1998, Chapter 125, Section 1; effective Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-14-3. (Authorized by K.S.A. 1997 Supp. 39-708c and L. 1998, Chapter 125, Section 2; implementing L. 1998, Chapter 125, Section 1 and Section 5; effective Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-14-20. (Authorized by K.S.A. 1997 Supp. 39-708c and L. 1998, Chapter 125, Section 2; implementing L. 1998, Chapter 125, Section 1; effective Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-14-21. (Authorized by K.S.A. 1997 Supp. 39-708c and L. 1998, Chapter 125, Section 2; implementing L. 1998, Chapter 125, Section 1; effective Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-14-23. (Authorized by K.S.A. 1997 Supp. 39-708c and L. 1998, Chapter 125, Section 2; implementing L. 1998, Chapter 125, Section 1; effective Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-14-24. (Authorized by K.S.A. 1997 Supp. 39-708c and L. 1998, Chapter 125, Section 2; implementing L. 1998, Chapter 125, Section 1; effective Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-14-25. (Authorized by K.S.A. 1997 Supp. 39-708c and L. 1998, Chapter 125, Section 2; implementing L. 1998, Chapter 125, Section 1; effective Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-14-26. (Authorized by K.S.A. 1997 Supp. 39-708c and L. 1998, Chapter 125, Section 2; implementing L. 1998, Chapter 125, Section 1; effective Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-14-28. (Authorized by K.S.A. 39-708c and K.S.A. 38-2002; implementing K.S.A. 2001 Supp. 38-2001; effective Nov. 1, 1998; amended, T-30-1-2-03, Jan. 2, 2003; amended April 18, 2003; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-14-29. (Authorized by K.S.A. 1997 Supp. 39-708c and L. 1998, Chapter 125, Section 2; implementing L. 1998, Chapter 125, Section 1; effective Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-14-30. (Authorized by K.S.A. 1998 Supp. 39-708c and 38-2002; implementing K.S.A. 1998 Supp. 38-2001; effective Nov. 1, 1998; amended July 2, 1999; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-14-31. (Authorized by K.S.A. 1997 Supp. 39-708c and L. 1998, Chapter 125, Section 2; implementing L. 1998, Chapter 125, Section 1; effective Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

30-14-50. (Authorized by K.S.A. 1997 Supp. 39-708c and L. 1998, Chapter 125, Section 2; implementing L. 1998, Chapter 125, Section 1; effective Nov. 1, 1998; revoked, T-30-10-31-13, Nov. 1, 2013; revoked Feb. 28, 2014.)

Article 44.—SUPPORT ENFORCEMENT

30-44-2. Standardized cost recovery fee.

(a) As used in this regulation, the following definitions shall apply:

(1) “Applicant or recipient” means a person who has applied for or is receiving support enforcement services from the department for children and families pursuant to Part D of Title IV of the federal social security act, 42 U.S.C. § 651 et seq., as amended.

(2) “IV-D case” means a case in which the department for children and families is providing child support services pursuant to Part D of Title IV of the federal social security act, 42 U.S.C. § 651 et seq., as amended.

(3) (A) “Non-PA case” means a case in which the applicant or recipient or the child, as appropriate, has not received and is not currently receiving public assistance from the state of Kansas, including the following:

- (i) Temporary assistance to needy families (TANF), regardless of how designated;
- (ii) medical services;

(iii) care due to placement under K.S.A. 38-2201 et seq. and K.S.A. 38-2301 et seq., and amendments thereto;

(iv) care in a state institution, as defined in K.S.A. 59-2006b and amendments thereto;

(v) supplemental nutrition assistance program (SNAP); and

(vi) child care assistance.

(B) “Non-PA case” shall also mean, in any IV-D case in which the applicant or recipient or the child previously received but is not currently receiving public assistance from the state of Kansas, that portion of the case not subject to any assignment of support rights for reimbursement of public assistance.

(C) In an interstate IV-D case referred to Kansas by another state, unless the other state clearly designates otherwise, “non-PA case” shall mean a case, or that portion of a case, designated as IV-D non-TANF.

(D) “Non-PA” case shall not include any IV-D case referred to Kansas from a foreign country.

(b) A cost recovery fee may be collected in all non-PA cases. If a fee is required pursuant to subsection (c), the fee shall be retained from support collections made on behalf of the applicant or recipient. If any fee remains unpaid and the applicant or recipient will receive no further support collections in the non-PA case, the fee shall be remitted by the applicant or recipient upon demand.

(c) The fee shall be in an amount equal to the basic rate times the amount of support collections distributed to the applicant or recipient. The date of collection shall determine the applicable basic rate. The basic rate shall be four percent. If the secretary determines that the department for children and families’ funds for support enforcement services are sufficient to pay for some or all of the costs associated with all non-PA cases statewide, then the basic rate for all non-PA cases statewide may be reduced by an amount commensurate with the department’s available funds or not collected. (Authorized by and implementing K.S.A. 2015 Supp. 39-756; effective Feb. 6, 1995; amended Jan. 3, 2000; amended Feb. 12, 2016.)

30-44-6. Support arrears forgiveness.

(a) If a child’s parent or parents are liable to repay the secretary for state assistance expended on the child’s behalf pursuant to K.S.A. 39-718b and amendments thereto, the amount due may be offset by one of the following:

(1) The parent's or parents' participation in an arrears adjustment program; or

(2) the parent's or parents' contributions to a Kansas postsecondary education savings account established on behalf of the child through the child support savings initiative program.

(b) All arrears adjustment programs shall be approved by the department's child support services and shall include programs designed to provide job skills, further education, and enhance parenting skills.

(c) The arrears adjustments earned through participation in an arrears adjustment program or contributions to the child support savings initiative program shall be applied to offset the amount owed to the secretary. The department's child support services shall have the authority to determine any arrears adjustment rates and to determine whether participation in a particular class or program qualifies a participant for any arrears adjustments. (Authorized by and implementing K.S.A. 2015 Supp. 39-753; effective Feb. 12, 2016.)

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 central registry, the following definitions shall apply:

(a) "Abandon" and "abandonment" have the

meaning specified in K.S.A. 38-2202, and amendments thereto.

(b) "Abuse" means "physical, mental or emotional abuse" or "sexual abuse," as these two terms are defined in K.S.A. 38-2202 and amendments thereto and as "sexual abuse" is further defined in this regulation, involving a child who resides in Kansas or is found in Kansas, regardless of where the act occurred. The term "abuse" shall include any act that occurred in Kansas, regardless of where the child is found or resides.

The term "abuse" 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.

(c) "Affirmed perpetrator" means a person who has been determined by the secretary or the secretary's designee, by a preponderance of evidence, to have committed an act of abuse or neglect, regardless of where the person resides, but has not been substantiated so the affirmed perpetrator's name is not placed on the child abuse and neglect central registry.

(d) "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.

(e) "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.

(f) "Child abuse and neglect central registry" means the list of names for individuals identified by the department as substantiated perpetrators.

(g) "Child care facility" has the meaning specified in K.S.A. 65-503, and amendments thereto.

(h) "Department" means Kansas department for children and families.

(i) "Investigation" means the gathering and assessing of information to determine if a child has been harmed, as defined in K.S.A. 38-2202 and amendments thereto, as the result of abuse or neglect, to identify the individual or individuals responsible, and to determine if the incident per-

petrated by the individual or individuals should be affirmed or substantiated.

(j) “Neglect” has the meaning specified in K.S.A. 38-2202, 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.

The term “neglect” may include the following:

(1) The birth of an infant who is identified as being affected by or having withdrawal symptoms resulting from prenatal exposure to a legal or an illegal substance; and

(2) failure of the parent or caregiver to meet that individual’s responsibilities to provide for the child’s education as required by law.

(k) “Sexual abuse” has the meaning specified in K.S.A. 38-2202, and amendments thereto. With respect to the determination by the department for children and families of an affirmed or substantiated finding of sexual abuse, difference in age and maturity between the perpetrator and victim and issues of force or coercion may be considered.

(l) “Substantiated perpetrator” and “perpetrator” mean a person, regardless of where the person resides, who has been substantiated by the secretary or the secretary’s designee, by a preponderance of evidence, to have either intentionally committed an act of abuse or neglect or failed or refused to protect a child when a reasonable person would have anticipated that the act of abuse or neglect would result in or create a likelihood of serious harm, injury, or deterioration to the child. The substantiated perpetrator’s name is placed on the Kansas child abuse and neglect central registry, and the person is thereby prohibited from residing, working, or volunteering in a child care facility pursuant to K.S.A. 65-516, and amendments thereto.

(m) “Unsubstantiated alleged perpetrator” means a person who has been determined by the secretary or the secretary’s designee, by a preponderance of evidence, to have not committed an alleged act of abuse or neglect. (Authorized by K.S.A. 2018 Supp. 38-2225 and 39-708c; implementing K.S.A. 2018 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; amended, T-30-6-1-12, June 1, 2012; amended Sept. 14, 2012; amended July 1, 2016; amended, T-30-11-15-18; Nov. 15, 2018; amended Feb. 22, 2019.)

30-46-13. Right to interview. Each alleged perpetrator shall have an opportunity to be interviewed before a finding affirming or substantiating the perpetrator under K.A.R. 30-46-15 is issued. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. 2018 Supp. 38-2226, K.S.A. 2018 Supp. 39-708c, and K.S.A. 65-516; effective Jan. 2, 1989; amended Oct. 28, 1991; amended July 1, 1997; amended July 9, 2004; amended, T-30-11-15-18; Nov. 15, 2018; amended Feb. 22, 2019.)

30-46-15. Notice of decision. (a) Each affirmed perpetrator shall be notified in writing of the secretary’s decision to affirm the perpetrator for an incident of child abuse or neglect. The notice shall specify the reasons for the finding and shall inform the affirmed perpetrator of the perpetrator’s right to appeal the decision.

(b) Each substantiated perpetrator shall be notified in writing of the secretary’s decision to substantiate the perpetrator for the purpose of placing the name of the perpetrator in the child abuse and neglect central registry. The notice shall specify the reasons for the finding and shall inform the substantiated perpetrator of the perpetrator’s right to appeal the decision.

(c) Each unsubstantiated alleged perpetrator shall be notified in writing of the secretary’s decision that based on a preponderance of evidence, the alleged perpetrator has not committed an alleged act of abuse or neglect. (Authorized by K.S.A. 2018 Supp. 39-708c; implementing K.S.A. 2018 Supp. 38-2226, K.S.A. 2018 Supp. 39-708c, and K.S.A. 65-516; effective Jan. 2, 1989; amended Oct. 28, 1991; amended July 1, 1997; amended July 9, 2004; amended, T-30-11-15-18; Nov. 15, 2018; amended Feb. 22, 2019.)

30-46-17. Expungement of record of perpetrator from child abuse and neglect 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 child abuse and neglect central registry when three years have passed since the perpetrator’s name was entered on the child abuse and neglect central registry. Thereafter, if the expungement is denied, an application for expungement may be submitted by the perpetrator to the secretary no more than once every 12 months after the date of the most recent expungement review panel hearing.

(2) Each application for expungement shall be referred to the expungement review panel. The panel shall consist of the director of prevention and protection 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 prevention and protection services or the director's designee shall chair the panel.

(b) Expungement review panel 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 child abuse and neglect central registry. The applicant shall have the burden of providing the panel with the basis for granting the expungement. Evidence in support of or in opposition to the application and a recommendation may be presented by the regional office that conducted the original investigation.

(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) specification of whether the applicant was a child at the time of the finding of abuse or neglect for which expungement is requested and the age of the applicant at the time of the incident;

(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 since the incident 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 prevention and protection 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 of the hearing may be granted by the secretary or the secretary's designee only for good cause.

(4) A written recommendation to the secretary shall be rendered by the panel within 45 days from the date of the hearing. The recommendation to the secretary shall be submitted in writing and shall specify the reasons for the recommendation.

(c) Expungement.

(1) Based upon the application for expungement, other records in the expungement file, and the findings and recommendations of the panel, a decision to grant or deny the requested expungement shall be made by the secretary and shall be the final agency order. The secretary's decision shall be made with 60 days of the expungement hearing.

(2) The applicant shall be informed in writing of the secretary's decision, the specific reasons for the decision, and the applicant's right to appeal that decision pursuant to the Kansas judicial review act.

(3) Any record may be expunged from the child abuse and neglect central registry by the secretary or the secretary's designee when 18 or more years have passed since the most recent finding of abuse or neglect.

(4) Each record of a perpetrator who was under 18 at the time of abuse or neglect and has not been substantiated for more than a single event or incident while a minor shall be expunged five years after the finding of abuse or neglect is entered in the child abuse and neglect 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, other than the event or incident that resulted in the offender's name being placed on the child abuse and neglect central registry, 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. (Authorized by K.S.A. 2018 Supp. 39-708c and K.S.A. 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; amended, T-30-11-15-18; Nov. 15, 2018; amended Feb. 22, 2019.)

Article 47.—FOSTER CARE LICENSING

30-47-3. License requirements. Each individual shall meet the following requirements to obtain a license and to maintain a license:

(a) Submit a complete application for a license on forms provided by the department, including requests for the background checks specified in K.A.R. 28-4-805;

(b) be at least 21 years of age;

(c) have adequate financial resources to provide for the needs and financial obligations of the household, independent of foster care reimbursement payments; provide basic income and expense information to the secretary for review at the time of initial application and annual license renewal; and provide documentation of financial information for review as deemed necessary;

(d) participate in an initial family assessment, a family assessment for each renewal, and any additional family assessments conducted by the sponsoring child-placing agency. Each family assessment shall include at least one individual interview with each household member at least seven years of age and at least one visit in the family foster home;

(e) meet the training requirements in K.A.R. 28-4-806; and

(f) obtain and maintain ongoing sponsorship by a public or private child-placing agency, including a recommendation by the sponsoring child-placing agency that the home be used for placement of children in foster care. (Authorized by K.S.A. 2016 Supp. 65-508, 75-3084, and 75-3085; implementing K.S.A. 2016 Supp. 65-504 and 65-508; effective Sept. 8, 2017.)

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 quasigovernment 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 provider. 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.
- 36-45. ESCORT VEHICLES, ESCORT VEHICLE SERVICE PROVIDERS, AND ESCORT VEHICLE OPERATORS.

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 railroads, 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

federal 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 provide 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.)

Article 45.—ESCORT VEHICLES, ESCORT VEHICLE SERVICE PROVIDERS, AND ESCORT VEHICLE OPERATORS

36-45-1. Definitions. Each of the following terms, as used in this article of the department's regulations, shall have the meaning specified in this regulation:

(a) "Department" and "KDOT" mean the Kansas department of transportation.

(b) "Escort vehicle" and "EV" mean a vehicle that accompanies a load and meets the requirements of K.A.R. 36-45-5.

(c) "Escort vehicle operator" and "EVO" mean a person who is driving a vehicle that is accompanying a load and who meets the requirements of K.A.R. 36-45-4.

(d) "Escort vehicle service provider" and "EVSP" mean a person, firm, owner, or company that operates an escort vehicle for the purpose of accompanying a load as required by K.A.R. 36-1-36 and K.A.R. 36-1-38 and that meet the requirements of K.A.R. 35-45-2 and K.A.R. 36-45-3.

(e) "Escort vehicle service provider registrar" and "EVSP registrar" mean a department employee who makes the initial determination to revoke or deny any EVSP registration. The determination made by the EVSP registrar shall be deemed to be the decision of the secretary.

(f) "Height-measuring pole" and "height pole" mean a retractable and flexible device made of non-conductive material that measures vertical clearance. A height pole shall be used when the height of the permitted load exceeds 16 feet when measured from the ground to the highest point on the load.

Each height-measuring pole shall meet the following requirements:

(1) Be set at the height of the permitted load plus three inches;

(2) be securely attached to the EV and be designed and operated in a manner that will notify the EVO that the load cannot safely pass under an overhead obstruction without causing damage to the obstruction, the load, or both; and

(3) not interfere with the ability of the EVO to safely operate the EV and communication equipment.

(g) "Large structure" means any load that exceeds either 16 feet, six inches in width or 18 feet in height.

(h) "Law enforcement agency" means the Kansas highway patrol (KHP) or any local law enforcement agency in Kansas.

(i) "Load" means either of the following:

(1) At least one item, object, or device, including self-propelled, that exceeds the maximum sizes or weights prescribed in K.S.A. 8-1902, 8-1904, 8-1908, and 8-1909, and amendments thereto; or

(2) the combination of an item, object, or device and a vehicle transporting the item, object, or device if the combination of these two exceeds the maximum sizes or weights prescribed in K.S.A. 8-1902, 8-1904, 8-1908, and 8-1909, and amendments thereto.

(j) "MUTCD" means the most recent edition of the manual on uniform traffic-control devices for streets and highways issued by the federal highway administration and adopted by the secretary of transportation pursuant to K.S.A. 8-2003, and amendments thereto.

(k) “Nondivisible,” when used to describe a load or vehicle, means that the load or vehicle exceeds the applicable dimensions or weight limitations and, if separated into smaller loads or vehicles, would result in having any of the following effects:

- (1) Compromise the intended use of the vehicle;
- (2) destroy the value of the load or vehicle; or
- (3) require more than eight work hours to dismantle, using appropriate equipment.

(l) “Permit” means a document issued by the secretary that grants the movement of a load or vehicle that exceeds the maximum sizes and weights as prescribed in K.S.A. 8-1902, 8-1904, 8-1908, and 8-1909, and amendments thereto, over the highways that are under the jurisdiction of the secretary.

(m) “Permitted route” means a designated course of travel that is over the highways under the jurisdiction of the secretary and has been approved by the secretary.

(n) “Secretary” means Kansas secretary of transportation or Kansas secretary of transportation’s designee.

(o) “Superload” means either of the following:

(1) A load or a vehicle transporting a nondivisible load that exceeds a gross weight of 150,000 pounds; or

(2) a load or a vehicle transporting a nondivisible load in which any group or groups of axles exceed the limitations prescribed in K.A.R. 36-1-37.

(p) “Traffic-control operation” means the temporary suspension of normal traffic activity at locations of limited maneuverability, including any bridge or intersection, for the purpose of allowing a load to safely traverse the area in accordance with the MUTCD.

(q) “Vehicle” means any self-propelled device in, upon, or by which any person or property is or can be transported or drawn upon a public highway. The self-propelled device is designed to travel on at least four wheels in contact with the ground. This term shall not include electric personal assistive mobility devices, devices moved by human power or used exclusively upon stationary rails or tracks, devices propelled by electric power obtained from overhead trolley wires but not operated on rails, and motorized nonhighway devices. (Authorized by K.S.A. 2019 Supp. 8-1921 and K.S.A. 68-404; implementing K.S.A. 2019 Supp. 8-1911, K.S.A. 2019 Supp. 8-1921, and K.S.A. 66-1326; effective, T-36-8-28-20, Aug. 28, 2020; effective Dec. 18, 2020.)

36-45-2. Registration. Each EVSP shall register annually with the secretary. Each registration shall meet the requirements of this regulation.

- (a) Each registration shall specify the following:
 - (1) The name and address of the EVSP;
 - (2) the name and address of the registered agent for the EVSP;
 - (3) the vehicle identification number (VIN) of each EV operated in Kansas; and
 - (4) the license plate number of each EV operated in Kansas.

(b) Each registrant shall attest to the following under penalty of perjury and revocation of the registration:

(1) That each EV operated in Kansas maintains the required insurance specified in K.A.R. 36-45-3;

(2) that the vehicle registration of each EV operated in Kansas is current in a state or territory of the United States;

(3) that each EVO possesses a current driver’s license issued by the state or jurisdiction in which the EVO resides and, when operating as an EVO, the EVO is operating within any restrictions on the driver’s license;

(4) that each EVO has successfully completed an escort vehicle training course from one of the states accepted and approved by the secretary and listed on the department’s web site;

(5) that each EVO has a driving history without any conviction of driving while impaired, driving reckless, or both within the previous 36 months; and

(6) that each EVO is authorized to operate an EV for the EVSP. (Authorized by K.S.A. 2019 Supp. 8-1921 and K.S.A. 68-404; implementing K.S.A. 2019 Supp. 8-1911, K.S.A. 2019 Supp. 8-1921, and K.S.A. 66-1326; effective, T-36-8-28-20, Aug. 28, 2020; effective Dec. 18, 2020.)

36-45-3. Insurance. (a) Each EVSP shall have in effect all motor vehicle liability insurance coverage required for each EV traveling pursuant to any EVSP registration approved under this article of the department’s regulations on the date of EVSP registration. As a prerequisite for EVSP registration under K.A.R. 36-45-2, each EVSP shall maintain the minimum required insurance, self-insurance, or other financial security required by K.S.A. 40-3104, and amendments thereto, to cover any damage that could occur to any person or property, including highways and highway features, during movement of the load. Each insur-

ing company shall be authorized to conduct business in Kansas.

(b) Each EVSP shall maintain the required insurance coverage for the duration of the EVSP registration and shall furnish proof of insurance upon demand by the department or any law enforcement agency.

(c) Failure to maintain the required insurance coverage throughout the duration of the EVSP registration shall result in revocation of the EVSP registration. (Authorized by K.S.A. 2019 Supp. 8-1921 and K.S.A. 68-404; implementing K.S.A. 2019 Supp. 8-1911, K.S.A. 2019 Supp. 8-1921, and K.S.A. 66-1326; effective, T-36-8-28-20, Aug. 28, 2020; effective Dec. 18, 2020.)

36-45-4. Escort vehicle operator. Each EVO shall meet the following requirements before operating any EV in Kansas:

(a) Have a driving history without any conviction of driving while impaired, driving reckless, or both within 36 months before operating any EV;

(b) successfully complete an escort vehicle training course from one of the states accepted and approved by the secretary and listed on the department's web site;

(c) be at least 18 years of age; and

(d) possess a current driver's license issued by the state or jurisdiction in which the EVO resides. (Authorized by K.S.A. 2019 Supp. 8-1921 and K.S.A. 68-404; implementing K.S.A. 2019 Supp. 8-1911, K.S.A. 2019 Supp. 8-1921, and K.S.A. 66-1326; effective, T-36-8-28-20, Aug. 28, 2020; effective Dec. 18, 2020.)

36-45-5. Escort vehicle. Each EVSP shall ensure that each EV that is registered to the EVSP and operated in Kansas meets the following requirements:

(a) Meets all statutory requirements to operate legally on the highways;

(b) has at least two axles;

(c) is able to operate safely under the conditions found to exist upon any highway without endangering the safety of the traveling public and the persons involved in moving and escorting the load;

(d) does not exceed a gross vehicle weight rating of 16,000 pounds;

(e) has a clearly visible and current license plate attached to the rear of the EV at least 12 inches from the ground;

(f) has an unobstructed outside rear-view mirror on each side of the EV;

(g) has current registration in the state in which the EV is registered;

(h) has left and right signal lamps on the front and rear of the EV that are in operable condition;

(i) is equipped with a horn that is in operable condition and capable of emitting sound audible under normal conditions from a distance of at least 200 feet;

(j) is at least 60 inches wide and does not exceed 102 inches wide;

(k) has full visibility in all directions from the driver's side from within the vehicle; and

(l) has a sign on the driver's side and the passenger's side of the EV displaying the name of the EVSP during movement of the load. The name of the EVSP shall visibly contrast with the background of the sign so that the name of the EVSP is easily visible. (Authorized by K.S.A. 2019 Supp. 8-1921 and K.S.A. 68-404; implementing K.S.A. 2019 Supp. 8-1911, K.S.A. 2019 Supp. 8-1921, and K.S.A. 66-1326; effective, T-36-8-28-20, Aug. 28, 2020; effective Dec. 18, 2020.)

36-45-6. Equipment. Each EVSP shall ensure that each EV that is accompanying a load in Kansas has, at a minimum, the following equipment meeting the requirements specified in this regulation:

(a) Communication equipment: one two-way communication device capable of transmitting and receiving signals for at least ½ mile and compatible with the device used by the driver of the load and the device used by each EVO during movement of the load;

(b) emergency equipment: one full-size spare tire compatible with the EV to continue travel, one vehicle jack appropriate for the EV, one lug wrench, eight bidirectional reflective triangles, eight red light-emitting flares, three 18-inch cones that are orange in color, and one fire extinguisher having an underwriters' laboratories rating of 5 B:C or more;

(c) handheld warning flags: two handheld flags that are red or orange in color and at least 24 inches square;

(d) height-measuring pole;

(e) paddle signs: at least one standard "Stop" paddle sign and one standard "Slow" paddle sign. Each paddle sign shall be at least 18 inches wide with letters at least six inches high and shall meet the requirements of the MUTCD;

(f) personal safety equipment: one high-visibility hard hat and one high-visibility vest or jacket that meet the requirements of the MUTCD;

(g) warning sign: one warning sign that states "OVERSIZE LOAD." The letters shall be black on a yellow background and shall be at least eight inches high with a minimum brush stroke of 1.125 inches. The sign shall not obstruct the warning light or lights. The sign shall be at least five feet long and 12 inches high and shall be visible from a minimum distance of 500 feet;

(h) warning light or lights: either one oscillating or rotating light or two flashing lights. Each warning light shall be amber in color, at least six inches in diameter, and fully visible from all directions from a minimum distance of 500 feet. The warning light or lights shall not be obstructed by the warning sign; and

(i) vehicle warning flags: two vehicle flags red or orange in color and at least 18 inches square. Each flag shall be capable of being placed on the driver's or passenger's side of the EV. (Authorized by K.S.A. 2019 Supp. 8-1921 and K.S.A. 68-404; implementing K.S.A. 2019 Supp. 8-1911, K.S.A. 2019 Supp. 8-1921, and K.S.A. 66-1326; effective, T-36-8-28-20, Aug. 28, 2020; effective Dec. 18, 2020.)

36-45-7. Documentation for permitted route. (a) Pretrip requirements. Each designated EVO shall ensure and document that the requirements of this subsection are met before accompanying each load.

(1) Planning and coordination meeting. A planning and coordination meeting shall be held no more than seven days before accompanying a load. Each person who will be accompanying or moving the load shall attend the meeting. The meeting shall accomplish each of the following:

(A) Designate one or more EVO to complete the pretrip and posttrip evaluation;

(B) establish the communication equipment and hand signals used during movement of the load;

(C) discuss the conditions and restrictions of the permitted route;

(D) review the procedures and requirements of this article of the department's regulations for compliance; and

(E) verify the type and dimensions of the load.

(2) Equipment inspections. Each EVO shall inspect the equipment to verify compliance with K.A.R. 36-45-6.

(3) Escort vehicle inspections. Each EVO shall inspect the EV for defects and verify that the EV meets the requirements of K.A.R. 36-45-5.

(b) Route survey. An EVO who will be accompanying the load shall conduct a survey of the permitted route no more than 14 days before accompanying the load.

(c) Posttrip requirements. A designated EVO shall complete a posttrip evaluation at the conclusion of movement of the load within Kansas. Each posttrip evaluation shall document the following:

(1) Each incident in which any communication equipment was defective, blocked, or otherwise failed to properly function and resulted in property damage, personal injury, or both;

(2) any warnings, citations, and enforcement actions taken by any law enforcement agency, the identity of each law enforcement agency, and, if applicable, each accident report number and citation number;

(3) any issues with the equipment required by K.A.R. 36-45-6 resulting in property damage, personal injury, or both;

(4) any injuries to persons resulting from accompanying the load;

(5) any load incidents, including tipping, spilling, or breaking, and the time, date, and location of each load incident;

(6) any incidents involving property damage resulting from movement of the load, accompanying the load, or both, and the time, date, location, and the property damaged in the incident;

(7) any traffic-control operations that exceeded 15 minutes, and the time, date, location, and purpose of each traffic-control operation;

(8) any vehicle issues, including any signal lamp failure, brake failure, tire failure, and engine failure, if any failure resulted in property damage, bodily injury, or both; and

(9) the identity of any additional persons or entities not identified in the pretrip evaluation that were utilized or contacted during the movement of the load for emergency purposes.

(d) Trip report. The trip report shall consist of each pretrip and posttrip evaluation. The EVSP shall retain each trip report for at least three years from the date of conclusion of movement of the load within Kansas. The EVSP shall submit a complete copy of the trip report to the department upon the department's request. (Authorized by K.S.A. 2019 Supp. 8-1921 and K.S.A. 68-404; implementing K.S.A. 2019 Supp. 8-1911, K.S.A. 2019 Supp. 8-1921, and K.S.A. 66-1326; effective, T-36-8-28-20, Aug. 28, 2020; effective Dec. 18, 2020.)

36-45-8. Trip procedures. Each EVO shall follow the procedures specified in this regulation when accompanying a load in Kansas.

(a) Limitation of the EV. No EV shall carry any item, object, or device that meets any of the following conditions:

(1) Exceeds the maximum sizes and weights specified in K.S.A. 8-1902, 8-1904, 8-1908, and 8-1909, and amendments thereto;

(2) exceeds the width, length, or height of the EV, excluding the height pole and the required safety and visibility equipment;

(3) renders the EV unrecognizable as an EV by the traveling public;

(4) obstructs the view of the EVO, the driver of the load, or the view of the traveling public;

(5) poses a safety risk to the EVO, the driver of the load, or the traveling public; or

(6) restricts or impairs the EVO's ability to operate the EV or limits the EVO's ability to comply with this article of the department's regulations.

(b) Number of EVs required.

(1) Superloads. At least one front EV and one rear EV shall be required when accompanying a superload. If the permit requires the superload to slow down at bridges, an additional EV shall be required.

(2) Large structures. At least one front EV and one rear EV shall be required when accompanying a large structure.

(3) Loads exceeding 16 feet in height. At least one front EV shall be required when accompanying a load exceeding 16 feet in height.

(4) Loads exceeding 14 feet in width. At least one front EV and one rear EV shall be required when accompanying a load exceeding 14 feet in width. The rear EV may be eliminated if all of the following conditions are met:

(A) A warning light is attached to the top of the load.

(B) A warning light is attached to the rear of the load no less than two feet but no more than eight feet above the surface of the road.

(C) A warning sign meeting the requirements of K.S.A. 8-1911(l)(1), and amendments thereto, is attached to the rear of the load.

(c) Height-measuring pole. At least one EV preceding a load that exceeds a height of 16 feet shall have a height pole.

(d) Load. No EV shall transport, push, or pull any portion of the load while accompanying the load.

(e) Permitted route. No EVO shall accompany

the load on any roadway on which the load has not been authorized to travel.

(f) Restrictions. No EV shall tow a trailer during movement of the load.

(g) Traffic-control operations.

(1) Any EVO may conduct a traffic-control operation during the movement of the load for the purpose of accompanying the load, not to exceed 15 minutes. A traffic-control operation may be appropriate if any of the following conditions is met:

(A) A bridge or roadway is temporarily closed to allow the load to cross.

(B) An intersection with limited maneuverability is temporarily closed to allow the load to turn.

(C) The load or an EV malfunctions.

(D) An event makes load movement unsafe or impossible.

(2) Each traffic-control operation shall be conducted from outside the EV using the equipment specified in K.A.R. 36-45-6(a), (c), (e), (f), and (h). Each traffic-control operation shall follow the procedures specified in the MUTCD.

(3) If a traffic-control operation is anticipated to last longer than 15 minutes, the law enforcement agency or the local area KDOT office shall be notified.

(h) Travel distance.

(1) Front EV and rear EV. Except as specified in paragraph (h)(2), the requirements of paragraph (h)(1) shall apply. When traveling within city limits, the EV immediately preceding the load shall not travel more than 500 feet to the front of the load. When traveling outside of city limits, the EV immediately preceding the load shall not travel more than 1,000 feet to the front of the load. The EV immediately following the load shall not travel more than 500 feet to the rear of the load.

(2) Visibility; temporary conditions. The load shall be visible to the EVs immediately preceding and following the load at all times unless temporary conditions, including curves with limited visibility, steep grades, upcoming bridges and overhead obstructions, and intersections requiring traffic-control operations, temporarily dictate a greater lead or follow distance than specified in this subsection.

(i) Trip communications. Each EVO shall communicate verbally using two-way communication equipment with the person transporting the load and with each EVO accompanying the load.

(j) Warning flags. A warning flag shall be securely attached to the driver's side of the EV and to the passenger's side of the EV.

(k) Warning lights. The warning light or lights attached to the EV shall be activated during movement of the load and shall meet the requirements in K.A.R. 36-45-6(h).

(l) Warning signs.

(1) Front EV. Each EV preceding a load shall have a warning sign, as specified in K.A.R. 36-45-6(g), attached to the front or top of the EV and shall be visible to the traveling public preceding or approaching the EV.

(2) Rear EV. Each EV following a load shall have a warning sign, as specified in K.A.R. 36-45-6(g), attached to the top or rear of the EV and shall be visible to the traveling public approaching the load from the rear.

(m) Responsibilities when any EV is not accompanying a load. Each EVO shall meet all of the following requirements when the EV is being driven and not accompanying the load:

(1) The height pole shall be retracted or removed from the EV.

(2) The warning flags shall be removed from the EV.

(3) The warning light or lights attached to the EV shall be removed, deactivated, or covered.

(4) The warning sign attached to the EV shall be removed or covered. (Authorized by K.S.A. 2019 Supp. 8-1921 and K.S.A. 68-404; implementing K.S.A. 2019 Supp. 8-1911, K.S.A. 2019 Supp. 8-1921, and K.S.A. 66-1326; effective, T-36-8-28-20, Aug. 28, 2020; effective Dec. 18, 2020.)

36-45-10. Determination of registration revocation or denial; registration committee. The procedures specified in this regulation shall be followed for each determination to revoke or deny any EVSP registration.

(a) Determination of registration revocation or denial.

(1) The registration of an EVSP shall be revoked or denied by the EVSP registrar for failing to comply with any provision of this article of the department's regulations or any other applicable law.

(2) If the registration of an EVSP is revoked or denied by the EVSP registrar, the EVSP registrar shall provide written notice of the revocation or denial to the EVSP. Each notice of revocation or denial shall be sent by certified mail to the EVSP no more than 15 business days from the date the EVSP registrar revokes or denies the registration of the EVSP.

(b) Appeals of registration revocation or denial.

(1) Each EVSP whose EVSP registration is revoked or denied shall be entitled to an appeal if the EVSP files a written appeal with the EVSP registrar and the appeal is received by the EVSP registrar, either electronically or by U.S. mail, within 30 days of notification of the registration revocation or denial.

(2) Each appeal shall be filed on a form provided by the department. The appeal form for EVSP registration revocation or denial shall be available on the department's web site. Upon the request of the EVSP, the EVSP registrar shall provide a paper copy of the appeal form by certified mail.

(3) If an EVSP files an appeal of a revocation of registration according to this regulation, the EVSP registration shall be valid, pending final determination of revocation by the EVSP registration committee.

(4) If an EVSP files an appeal of a denial of registration according to this regulation, the EVSP registration shall be deemed invalid, pending a final determination of the denial by the EVSP registration committee.

(5) If an EVSP fails to file an appeal according to this regulation, the revocation or denial determination by the EVSP registrar shall become final, upon expiration of the appeal period.

(c) Registration committee.

(1) A committee of at least three members shall be established by the secretary to act as an appellate body to hear and determine appeals concerning revocations and denials of EVSP registrations. The members of the registration committee shall be appointed by the secretary and shall serve at the pleasure of the secretary.

(2) The registration committee shall be chaired by the EVSP registrar. The EVSP registrar shall be a non-voting member of the committee.

(d) Decisions of registration committee.

(1) If an appeal is filed according to this regulation, the EVSP registration committee shall make a final determination to revoke, deny, or reinstate the EVSP registration.

(2) Pursuant to K.S.A. 77-601 et seq. and amendments thereto, the decisions of the registration committee shall not be subject to further administrative review by any officer or committee of the department.

(3) If the registration committee determines that the EVSP registration of the appealing EVSP should not have been revoked or denied, the registration of the EVSP shall be reinstated, effective immediately.

(4) If the registration committee affirms the revocation of the EVSP registration of the appealing EVSP, the EVSP shall not register with the secretary for one year from the original date of the initial revocation made by the EVSP registrar.

(5) If the registration committee affirms the

denial of the EVSP registration, the EVSP shall not register with the secretary until the EVSP remedies the cause or causes for the denial. (Authorized by K.S.A. 2019 Supp. 8-1921 and K.S.A. 68-404; implementing K.S.A. 2019 Supp. 8-1911 and K.S.A. 2019 Supp. 8-1921; effective, T-36-8-28-20, Aug. 28, 2020; effective Dec. 18, 2020.)

Agency 40

Insurance Department

Articles

- 40-1. GENERAL.
- 40-2. LIFE INSURANCE.
- 40-3. FIRE AND CASUALTY INSURANCE.
- 40-4. ACCIDENT AND HEALTH INSURANCE.
- 40-5. CREDIT INSURANCE.
- 40-7. AGENTS.
- 40-9. ADVERTISING.
- 40-10. FIREFIGHTER'S RELIEF FUND TAX.
- 40-16. PROFESSIONAL EMPLOYER ORGANIZATIONS.

Article 1.—GENERAL

40-1-20. Same; subrogation clause prohibited for certain coverages. No insurance company or health insurer, as defined in K.S.A. 40-4602 and amendments thereto, may issue any contract or certificate of insurance in Kansas containing a subrogation clause, or any other policy provision having a purpose or effect similar to that of a subrogation clause, applicable to coverages providing for reimbursement of medical, surgical, hospital, or funeral expenses. (Authorized by K.S.A. 40-103; implementing K.S.A. 40-2204; effective Jan. 1, 1966; amended Jan. 1, 1967; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended March 1, 2013.)

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.)

40-1-28. Insurance holding companies; reporting forms and instructions. The Kansas insurance department's "policy and procedure providing insurance holding company system reporting forms and instructions," dated December 10, 2014, is hereby adopted by reference. (Authorized by K.S.A. 40-103, K.S.A. 2014 Supp. 40-3309; implementing K.S.A. 2014 Supp. 40-3304, 40-3305, and 40-3306; effective May 1, 1976; amended May 1, 1979; amended May 1, 1986; amended May 1, 1988; amended May 15, 1989; amended, T-40-9-26-91, Sept. 26, 1991; amended Dec. 16, 1991; amended Jan. 31, 2014; amended March 27, 2015.)

40-1-37. Audited financial reports; filing requirements. The Kansas insurance department's "policy and procedure requiring annual

audited financial reports,” dated November 30, 2016, is hereby adopted by reference. (Authorized by K.S.A. 40-103 and 40-225; implementing K.S.A. 40-222b, K.S.A. 2016 Supp. 40-222, 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; amended June 29, 2012; amended Jan. 31, 2014; amended Feb. 27, 2015; amended Aug. 18, 2017.)

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 is hereby adopted by reference:

“2016 NAIC health risk-based capital report including forecasting and instructions for companies as of December 31, 2016,” including the appendices and excluding the unnumbered page titled “companion products” and the preceding unnumbered page; the NAIC health risk-based capital newsletter, volume 18.1, dated August 2016; pages i through iii; pages 18 through 24 titled “underwriting risk – XR012-A (for informational purposes only)”; pages 36 and 37 titled “operational risk informational section instructions (for informational purposes only) XR022”; the last sentence on page 40; page XR012-A titled “underwriting risk (for informational purposes only) experience fluctuation risk”; page XR022 titled “operational risk XR022 (for informational purposes only)”; the health risk-based capital forecasting spreadsheet instructions; and the “health forecasting” CD-ROM attached to the inside back cover. (Authorized by K.S.A. 40-2d29; implementing K.S.A. 40-2d01(f), K.S.A. 2017 Supp. 40-2d02(a), K.S.A. 40-2d03(a), and K.S.A. 2017 Supp. 40-2d05; 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; amended

June 29, 2012; amended Jan. 31, 2014; amended Feb. 27, 2015; amended Aug. 18, 2017; amended April 20, 2018.)

Article 2.—LIFE INSURANCE

40-2-14a. Life insurance and annuities; recommendation standards. The Kansas insurance department’s “policy and procedure regarding suitability in annuity transactions,” dated November 29, 2012, is hereby adopted by reference.

This regulation shall be effective on and after June 1, 2013. (Authorized by K.S.A. 40-103, K.S.A. 2012 Supp. 40-4916, and K.S.A. 40-2404a; implementing K.S.A. 2012 Supp. 40-222, K.S.A. 40-2403, K.S.A. 2012 Supp. 40-2404, K.S.A. 40-2407, and K.S.A. 2012 Supp. 40-4916; effective May 20, 2005; amended Dec. 2, 2005; amended June 1, 2013.)

40-2-18. Annuities; mortality tables; permits; effective dates. The Kansas insurance department’s “policy and procedure recognizing a new annuity mortality table for use in determining reserve liabilities for annuities,” dated January 29, 2016, including the appendices, is hereby adopted by reference. (Authorized by K.S.A. 40-103; implementing K.S.A. 2015 Supp. 40-428; effective May 1, 1986; amended May 20, 2016.)

40-2-20. Life insurance; accelerated benefits; contract requirements and restrictions. (a) As used in this regulation or in a life insurance or annuity contract providing for accelerated benefits, each of the following terms shall have the meaning specified in this subsection:

(1) “Accelerated benefits” means benefits that meet the following conditions:

(A) Are payable under an individual or group life insurance or annuity contract to a policyowner or certificate holder during the lifetime of the insured for the occurrence of a qualifying condition;

(B) reduce the death or annuity benefit otherwise payable under the contract; and

(C) are payable upon the occurrence of a qualifying condition, which results in the payment of a benefit amount fixed at the time of acceleration.

(2) “Commissioner” means commissioner of insurance.

(3) “Elimination period” means a specified period of time during which the insured continuously meets the requirements of a qualifying condition before an accelerated benefit becomes payable.

(4) “Qualifying condition” means a prerequisite designated in a contract for the payment of accelerated benefits. Each contract providing for accelerated benefits shall include as a qualifying condition a medical condition that a health care provider licensed to practice medicine and surgery or osteopathy predicts will result in a limited life expectancy of 24 months or less. Any contract providing for accelerated benefits may include any of the following as a qualifying condition:

(A) A medical condition that has required or requires extraordinary medical intervention, including a major organ transplant or continuous artificial life support, without which the insured would die;

(B) any condition that is reasonably expected to require continuous confinement in an eligible institution as defined in the contract if the insured is expected to remain there for the rest of the insured's life;

(C) a medical condition that medical evidence indicates would, in the absence of extraordinary medical intervention, result in a limited life expectancy of 24 months or less;

(D) a chronic illness, which shall mean either of the following:

(i) An illness that renders the insured permanently unable to perform, without substantial assistance from another individual, a specified number of activities of daily living, except that a company's definition of chronic illness shall not require the inability to perform more than two activities of daily living; or

(ii) permanent severe cognitive impairment and similar forms of dementia; or

(E) any other similar condition approved by the commissioner as a qualifying condition.

(b) Each contract providing for an accelerated benefit shall have a title printed on or attached to the first page of the contract or rider. The title shall describe the coverage provided and shall be followed or accompanied by a description of the coverage containing the phrase “accelerated benefit” or words of similar meaning.

(c) Each applicant for a contract providing for an accelerated benefit shall be given a summary of the accelerated benefit provisions at or before the time the application is completed. For group policies, each certificate holder shall be given a copy of the summary with the certificate. This summary shall include the following:

(1) A brief description of the accelerated benefit and definitions of the qualifying conditions that would result in payment of the benefit;

(2) the existence and amount of any separately identifiable premium for the accelerated benefit and a description of any charge for administrative expense;

(3) a generic illustration numerically demonstrating the effect of the payment of a benefit on cash values, accumulation accounts, death benefits, premiums, policy loans, and policy liens;

(4) a statement that receipt of the accelerated benefit could be taxable;

(5) a statement that receipt of accelerated benefits could affect medicaid eligibility; and

(6) an acknowledgement, signed and dated by the agent and the applicant for the group or individual coverage, that the summary has been furnished. Each direct response insurer shall incorporate the summary and acknowledgement in the application or attach them to the application.

(d) Contract payment options shall include the option to take the accelerated benefit as a lump sum. The accelerated benefit shall not be made available as an annuity contingent upon the life of the insured.

(e) No contract shall restrict the use of the proceeds.

(f) No contract shall limit the time frame within which a claim must be submitted following the occurrence of a qualifying condition.

(g) If the accelerated benefit is offered without an additional premium, a separate written explanation of how the accelerated benefit is funded shall be filed with the commissioner and included with the summary.

(h) Each time an accelerated benefit is requested and whenever a previous summary becomes invalid, the irrevocable beneficiary and either the individual policyowner or group certificate holder shall be given a summary. This summary shall include statements meeting the following conditions:

(1) Warning that receipt of the accelerated benefit could be taxable and that assistance from a tax advisor is suggested;

(2) showing the effect that the payment of the accelerated benefit will have on cash values, accumulation accounts, death benefits, premiums, policy loans, and policy liens; and

(3) disclosing that receipt of accelerated benefit payments may adversely affect the recipient's eligibility for medicaid or other government benefits or entitlements.

(i) Each time an accelerated benefit option is exercised, the policyowner and certificate holder

shall be given an endorsement, rider, or schedule page that reflects any revisions to cash values, death benefits, accumulation accounts, premiums, policy loans, policy liens, and any other values that change as a result of the payment or payments.

(j) Insurers shall not unfairly discriminate among insureds with different or similar qualifying conditions covered under the policy. Insurers shall not apply any additional conditions to the payment of the accelerated benefits other than those conditions specified in the policy or rider.

(k) Any insurer may offer a waiver of premium for the accelerated benefit provision if a regular waiver of premium provision is not in effect. When the accelerated benefit is claimed, the insurer shall explain any continuing premium requirement to keep the policy in force.

(l) Accelerated benefits shall be funded by any of the following methods:

(1) Requiring the policyowner to pay an additional premium;

(2) utilizing the present value of the face amount of the policy if the following conditions are met:

(A) The present value calculation is based on an actuarial discount appropriate to the policy design;

(B) the interest rate used in the present value calculation is based on sound actuarial principles and disclosed in the contract or actuarial memorandum; and

(C) the maximum interest rate is no more than the greater of either of the following:

(i) The current yield on 90-day treasury bills; or

(ii) the current maximum policy loan interest rate permitted by K.S.A. 40-420c, and amendments thereto; or

(3) accruing an interest charge on the amount of the accelerated benefits at an interest rate based on sound actuarial principles and disclosed in the contract or actuarial memorandum and no more than the greater of either of the following:

(A) The current yield on 90-day treasury bills; or

(B) the current maximum policy loan interest rate permitted by K.S.A. 40-240c, and amendments thereto.

(m) When an accelerated benefit is payable, no more than a proportionate reduction in the cash value shall be made, unless the payment of the accelerated benefits and any accrued interest can be treated as a lien against the death benefit of the policy or rider. Therefore, access to the cash value may be restricted to any excess of the cash value over the sum of any other outstanding loans,

and the lien and access to additional policy loans may be limited to the difference between the cash value and the sum of the lien and any other outstanding policy loans on the policy under which the accelerated benefits were paid.

(n) (1) If payment of an accelerated benefit results in a proportionate reduction in the cash value, the payment shall not be applied toward repaying an amount greater than a proportionate portion of any outstanding policy loans; or

(2) if the payment is considered a lien as provided in subsection (m), the insurance company may require any accelerated death benefit payment to be applied toward repaying the portion of any other outstanding policy loan that causes the sum of the accelerated benefit and policy loan to exceed the cash value.

(o) The death benefit shall not be reduced more than the amount of the accelerated benefits after adjustment for any actuarial discount or accrued interest as provided in subsection (l) and any administrative expense charge required by policies providing accelerated benefits without an additional premium charge as disclosed on the summary required by subsection (c).

(p) If any death benefit remains after payment of an accelerated benefit, the accidental death benefit, if any, in a policy or rider shall not be affected by the payment of an accelerated benefit.

(q) The valuation method and assumptions used to produce the accelerated benefit provisions shall be filed with the insurance department with the related policy form or rider. The assumptions shall reflect the statutory mortality and interest rate assumptions for the life insurance provisions and appropriate assumptions for the other provisions incorporated in the policy or rider. Each insurer shall maintain in its files descriptions of the bases and procedures used to calculate benefits, which shall be made available for examination by the commissioner or a designee upon request.

(r) A qualified actuary shall describe the accelerated benefits, the risks, the expected costs, and the calculation of statutory reserves in an actuarial memorandum accompanying each filing of accelerated benefits products with the commissioner. Each insurer shall maintain in its files descriptions of the bases and procedures used to calculate benefits payable under these provisions. These descriptions shall be made available for examination by the commissioner upon request.

(1) If benefits are provided through the acceleration of benefits under group or individual life

policies or riders to these policies, policy reserves shall be determined in accordance with the standard valuation law. All valuation assumptions used in constructing the reserves shall be determined as appropriate for statutory valuation purposes by a member in good standing of the American academy of actuaries. Mortality tables and interest rates currently recognized for life insurance reserves by the national association of insurance commissioners, as well as appropriate assumptions for other provisions incorporated in the contract, may be used. The actuary shall follow both actuarial standards and certification for good and sufficient reserves. Reserves in the aggregate shall be sufficient to cover the following:

(A) Policies upon which no claim has yet arisen; and

(B) policies upon which an accelerated claim has arisen.

(2) For policies and certificates that provide actuarially equivalent benefits, no additional reserves shall be required to be established.

(3) Policy liens and policy loans, including accrued interest, shall represent assets of the company for statutory reporting purposes. For any policy on which the policy lien exceeds the policy's statutory reserve liability, the excess shall be held as a non-admitted asset.

(s) The accelerated benefit provision shall become effective on the effective date of the policy or rider.

(t) Any contract may include an elimination period for the qualifying conditions of continuous confinement and chronic illness, other than chronic illness meeting the requirements of 26 U.S.C. sections 7702B and 202(g) of the United States internal revenue code or any subsequent corresponding internal revenue code, as amended. The elimination period shall not exceed 90 days from the time the qualifying condition first manifests itself after the effective date of the contract.

(u) The individual and group life insurance and annuity contracts subject to this regulation shall not be described or marketed as being long-term care insurance or as providing long-term care benefits. (Authorized by K.S.A. 40-103 and K.S.A. 2014 Supp. 40-401; implementing K.S.A. 2014 Supp. 40-401; effective, T-40-11-29-90, Nov. 29, 1990; effective April 15, 1991; amended Feb. 9, 2007; amended Nov. 30, 2015.)

40-2-28. Preneed insurance contracts; minimum standards for determining re-

serves. 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.)

40-3-59. Workers compensation policies.

(a) For the purpose of this regulation and K.S.A. 40-955 and amendments thereto, each of the following terms shall have the meaning specified in this subsection:

(1) "Advisory organization" means an entity licensed by the commissioner for the reporting of claims and experience data for the administration of the workers compensation experience rating system.

(2) "Client" has the meaning specified in L. 2012, ch. 142, § 2, and amendments thereto.

(3) "Covered employee" has the meaning specified in L. 2012, ch. 142, § 2, and amendments thereto.

(4) "Master policy" means a single policy issued to a professional employer organization or professional employer group for the covered employees and any direct-hire employees of the professional employer organization or the professional employer group.

(5) "Multiple coordinate policy" means an agreement under which a separate policy is is-

sued to or on behalf of each client or group of affiliated clients of a professional employer organization or a professional employer group, but payment of obligations and certain policy communications are coordinated through the professional employer organization or the professional employer group. This term is also known as a "multiple coordinated policy."

(6) "Professional employer group" has the meaning specified in L. 2012, ch. 142, § 2, and amendments thereto.

(7) "Professional employer organization" has the meaning specified in L. 2012, ch. 142, § 2, and amendments thereto.

(8) "Shared employment relationship" means "co-employment relationship" as defined in L. 2012, ch. 142, § 2, and amendments thereto.

(b) When submitting a master policy to the commissioner for examination, the insurer's filing shall include a detailed rule stating the manner in which the insurer will track and report payroll and claims data for each client to the advisory organization in a manner that identifies both the client and the professional employer organization and that is acceptable to the advisory organization. The adjustment of annual premiums based on previous loss experience, which is also known as experience rating modification, shall be calculated for each client as if the client were the sole employer of the client's covered employees. Failure of the insurer to provide this detailed rule with the insurer's filing to the commissioner shall result in the disapproval of the master policy.

(c) Each master policy shall cover only one professional employer organization or professional employer group.

(d) Each master policy shall be issued in the name of the professional employer organization or professional employer group and shall require that each covered client hold a certificate of coverage identifying that client as an alternate employer.

(e) Each insurer or its authorized representative shall issue a certificate of coverage to each client covered under a master policy. Each certificate of coverage shall meet the following requirements:

(1) The certificate of coverage shall specify the effective date of the client's coverage and the expiration date of the underlying master policy. A renewal certificate of coverage shall be issued to each client each time the master policy is renewed. If the insurer cancels the master policy for nonpayment of premium, the insurer shall give the professional employer organization or profes-

sional employer group and each client at least 10 days' written notice before the effective date of cancellation.

(2) The certificate of coverage shall provide that the client is entitled to 30 days' notice before coverage can be cancelled or nonrenewed with the client's consent, unless either of the following conditions is met:

(A) Replacement coverage is provided by the professional employer organization or professional employer group with no break in coverage.

(B) The insurer has notified the client when the certificate of coverage is first issued that the master policy will be cancelled or nonrenewed in less than 30 days.

(f) Cancellation or nonrenewal of a client's coverage at the initiative of the professional employer organization or professional employer group without the written consent of the client shall not be effective, unless at least one of the following conditions is met:

(1) The insurer has given at least 30 days' advance notice to the client.

(2) The professional employer organization or professional employer group has given at least 30 days' advance notice to the insurer and the client.

(3) Coverage for all covered clients has been replaced with no break in coverage, and the professional employer organization has given advance notice to the insurer and the clients.

(g) Each professional employer organization or professional employer group shall be responsible for payment to the insurer of any premiums, policyholder assessments, and deductible reimbursement charges under a master policy or a multiple coordinated policy, whether or not the professional employer organization or professional employer group has received timely payment from the client. A client's failure to pay any fees to the professional employer organization or professional employer group when the fees are due shall not constitute nonpayment of premium pursuant to K.S.A. 40-2,120, and amendments thereto, or K.A.R. 40-3-15. (Authorized by K.S.A. 40-103 and K.S.A. 2012 Supp. 40-955; implementing K.S.A. 2012 Supp. 40-955; effective Jan. 31, 2014.)

40-3-60. Workers compensation; affidavit of exempt status. Each company that underwrites workers compensation insurance in Kansas shall accept each executed affidavit of exempt status provided by each insured, pursuant to K.S.A. 2016 Supp. 44-5,127 and amendments thereto,

unless there is sufficient evidence that the individual who signed the affidavit is required to be covered under the workers compensation act. (Authorized by and implementing K.S.A. 2016 Supp. 44-5,127; effective March 2, 2018.)

Article 4.—ACCIDENT AND HEALTH INSURANCE

40-4-29a. Same; renewability of individual hospital, medical, or surgical expense policy. (a) Except as specifically authorized by K.S.A. 40-2257(b) and amendments thereto, an insurer shall not terminate an individual hospital, medical, or surgical expense policy for any insured who is eligible for medicare if the insured wishes to continue the individual's coverage.

(b) Each insurer shall mail to its current individual medical policyholders approaching the age of 65 or medicare eligibility a notice provided by the Kansas insurance department explaining the options available to them. (Authorized by K.S.A. 40-103 and 40-2257(i); implementing K.S.A. 40-2257; effective Jan. 12, 2007; amended Sept. 18, 2015.)

40-4-34. Accident and health insurance; coordination of benefits. The Kansas insurance department's "policy and procedure relating to coordination of benefits," dated January 27, 2016, including the appendices, is hereby adopted by reference. (Authorized by K.S.A. 40-103, 40-2404a; implementing K.S.A. 2015 Supp. 40-2404; effective May 1, 1981; amended May 1, 1982; amended May 1, 1984; amended May 1, 1985; amended, T-86-13, May 9, 1985; amended May 1, 1986; amended May 1, 1987; amended Feb. 19, 1999; amended May 13, 2016.)

40-4-35. Medicare supplement policies; minimum standards. (a) The Kansas insurance department's "policy and procedure to implement medicare supplement insurance minimum standards," including the appendices, dated May 18, 2017, is hereby adopted by reference, except for sections 1, 2, 25, and 26 and page 651-120.

(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. 2016 Supp. 40-2215, K.S.A. 40-2221, and K.S.A. 40-2404; 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; amended Sept. 8, 2017.)

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.)

40-4-37e. Long-term care insurance; prohibitions. Each long-term care policy shall be prohibited from the following:

- (a) Containing more than one elimination period for periods of confinement in a nursing home that are due to the same or related causes and separated from each other by less than six months;
- (b) excluding coverage for confinement to an intermediate nursing facility if benefits for nursing care are provided;
- (c) providing coverage for skilled nursing care only or providing significantly more coverage for skilled care in a facility than coverage for lower levels of care;
- (d) being delivered or issued for delivery to any person in this state, unless every printed portion of the text of the policy is plainly printed in not less than 10-point type;
- (e) requiring prior confinement to a hospital or prior confinement for a greater level of nursing care as a condition for paying inpatient benefits;
- (f) being delivered in this state, unless the following notice is attached to the policy:

“IMPORTANT NOTICE

Please read the copy of the application attached to this policy. Carefully check the application and write to the company within 30 days if any information shown is incorrect or incomplete or if any past medical history has been left out of the application. This application is a part of the policy and the policy was issued on the basis that answers to all questions and the information shown on the application are correct and complete.”

This statement, preferably in the form of a sticker to be placed on the policy, shall be printed in a prominent manner on paper or in ink of a contrasting color. The insurer may, with the approval of the commissioner of insurance, substitute wording of similar import if equal results are obtained. This requirement shall not apply if the application for insurance is not attached to and made a part of the contract;

- (g) being cancelled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder; and
- (h) if the policy provides benefits for home health care or community care services, limiting or excluding benefits by any of the following means:
 - (1) Requiring that the insured or claimant would need care in a skilled nursing facility if home health care services were not provided;
 - (2) requiring that the insured or claimant first or simultaneously receive nursing or therapeutic

services in a home, community, or institutional setting before home health care services are covered;

(3) limiting eligible services to services provided by registered nurses or licensed practical nurses;

(4) requiring that a nurse or therapist provide services covered by the policy if the services can be provided instead by a home health aide or other licensed or certified home care worker acting within the scope of the home care worker's licensure or certification;

(5) excluding coverage for personal care services provided by a home health aide;

(6) requiring that the provision of home health care services be at a level of certification or licensure greater than that required by the eligible service;

(7) requiring that the insured or claimant have an acute condition before home health care services are covered;

(8) limiting benefits to only those services provided by medicare-certified agencies or providers; or

(9) excluding coverage for adult day care services. (Authorized by K.S.A. 40-103, K.S.A. 2013 Supp. 40-2228; implementing K.S.A. 2013 Supp. 40-2228; effective Jan. 4, 1993; amended Feb. 27, 2015.)

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.)

40-4-41. Utilization review organizations; standards. The Kansas insurance department's "policy and procedure relating to health utilization management standards," dated March 22, 2016, is hereby adopted by reference. (Authorized by K.S.A. 40-103, 40-22a04, and 40-22a11; implementing K.S.A. 40-22a04; effective, T-40-4-26-95, April 26, 1995; effective June 12, 1995; amended June 22, 2001; amended Jan. 12, 2007; amended April 18, 2008; amended July 22, 2016.)

40-4-42a. Notice requirements of adverse decisions. (a) Each written notification of an adverse decision shall be printed in clear, legible type and in at least 12-point type.

(b) The notice of adverse decision shall explain the principal reason for the adverse decision in language easily understood by a person with an eighth-grade reading level. An insurer may meet this requirement by omitting medical terminology that describes an insured's medical condition. The notice shall include the legal names of all impacted parties and their telephone numbers and addresses.

(c) The notice of adverse decision shall explain how an insured, as defined in K.S.A. 40-22a13, and amendments thereto, can initiate an external review with the commissioner. If an insured is eligible for an expedited review due to an emergency medical condition as defined in K.S.A. 40-22a13, and amendments thereto, then the notice shall explain how an insured can initiate an expedited review.

(d) The notice shall explain that an insured may file for an external review with the commissioner within 120 days of receipt of a final adverse decision. The notice shall also list the Kansas insurance department's toll-free number.

(e) The notice of adverse decision shall describe how the insured can request a written statement of the clinical rationale and clinical review criteria used to make the adverse decision. (Authorized by K.S.A. 40-103 and K.S.A. 2015 Supp. 40-22a16; implementing K.S.A. 2015 Supp. 40-22a14; effective Jan. 7, 2000; amended Sept. 1, 2017.)

40-4-42c. Standard external review procedures. (a) At the time a request for external review is accepted pursuant to K.A.R. 40-4-42b, an external review organization that has been approved pursuant to K.S.A. 40-22a15, and amendments thereto, shall be assigned by the commissioner to conduct the external review.

(b) In reaching a decision, the assigned external review organization shall not be bound by any de-

cisions or conclusions reached during the insurer's utilization review process as set forth in K.S.A. 40-22a13 through 40-22a16, and amendments thereto, or the insurer's internal grievance process.

(c) The notice provided in K.A.R. 40-4-42b shall notify both the insurer or its designee utilization review organization and the insured or the insured's authorized representative that any of these persons may, within seven business days after the receipt of the notice, provide the assigned external review organization with additional documents and information that the person wants the assigned external review organization to consider in making its decision. Within one business day of receipt of any additional documents or information from the insured or the insured's authorized representative, the assigned external review organization shall forward a copy of these documents or this information to the insurer or its designee utilization review organization.

(d) Failure by the insurer to provide the documents and information within the time specified in K.S.A. 40-22a14(g), and amendments thereto, shall not delay the conduct of the external review.

(e) The assigned external review organization shall review all of the information and documents received pursuant to subsection (c) and any other information submitted in writing by the insured or the insured's authorized representative pursuant to K.A.R. 40-4-42b.

(f)(1) Upon receipt of the information required to be forwarded pursuant to subsection (e), the insurer may reconsider its adverse decision that is the subject of the external review.

(2) Reconsideration by the insurer of its adverse decision as provided in paragraph (f)(1) shall not delay or terminate the external review.

(3) The external review may be terminated only if the insurer reconsiders its adverse decision and decides to provide coverage or payment for the health care service that is the subject of the adverse decision.

(4)(A) Immediately upon making the decision to reverse its adverse decision as provided in paragraph (f)(3), the insurer shall notify, in writing, the insured or the insured's authorized representative, the assigned external review organization, and the commissioner of the insurer's decision.

(B) The assigned external review organization shall terminate the external review upon receipt of the notice from the insurer sent pursuant to paragraph (f)(4)(A).

(g) In addition to the documents and informa-

tion provided pursuant to subsection (c), the assigned external review organization, to the extent that the documents or information is available, shall consider the following in reaching a decision:

(1) The insured's pertinent medical records;

(2) the attending health care professional's recommendation;

(3) consulting reports from appropriate health care professionals and other documents submitted by the insurer, the insured, the insured's authorized representative, or the insured's treating provider;

(4) the terms of coverage under the insured's insurance plan with the insurer, to ensure that the external review organization's decision is not contrary to the terms of coverage under the insured's insurance plan with the insurer;

(5) the most appropriate practice guidelines, including generally accepted practice guidelines, evidence-based practice guidelines, or any other practice guidelines developed by the federal government and national or professional medical societies, boards, and associations; and

(6) any applicable clinical review criteria developed and used by the insurer or its designee utilization review organization.

(h) Within 30 business days after the date of receipt of the request for external review, the assigned external review organization shall provide written notice of its decision to uphold or reverse the adverse decision to the following:

(1) The insured or the insured's authorized representative;

(2) the insurer; and

(3) the commissioner.

(i) The external review organization shall include the following in the notice sent pursuant to subsection (h):

(1) A general description of the reason for the request for external review;

(2) the date the external review organization received the assignment from the commissioner to conduct the external review;

(3) the date the external review was conducted;

(4) the date of the external review organization's decision;

(5) the principal reason or reasons for the external review organization's decision;

(6) the rationale for the external review organization's decision; and

(7) references, as needed, to the evidence or documentation, including the practice guidelines that the external review organization considered

in reaching its decision. (Authorized by K.S.A. 40-103 and 40-22a16; implementing K.S.A. 40-22a13, 40-22a14, 40-22a15, and 40-22a16; effective Jan. 7, 2000; amended Feb. 17, 2012.)

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 5.—CREDIT INSURANCE

40-5-7. (Authorized by K.S.A. 40-103, 16a-4-112; implementing K.S.A. 16a-4-301; effective Jan. 1, 1966; amended Jan. 1, 1974; amended May 1, 1975; amended May 1, 1979; amended May 1, 1986; revoked Feb. 10, 2012.)

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 license 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.)

Article 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.)

40-9-118. Life insurance and annuities; advertising. The Kansas insurance department's "policy and procedure regarding advertisements of life insurance and annuities," dated October 16, 2014, is hereby adopted by reference. (Authorized by K.S.A. 40-103 and 40-2404a; implementing K.S.A. 40-103, K.S.A. 2014 Supp. 40-2404, and K.S.A. 40-2407; effective Feb. 15, 1977; amended May 1, 1979; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Jan. 4, 1993; amended July 10, 1998; amended Feb. 20, 2015.)

40-9-126. Advertising of medicare supplement insurance. The Kansas insurance department's "policy and procedure regarding advertisements of medicare supplement insurance," dated October 16, 2014, including the appendix, is hereby adopted by reference. (Authorized by K.S.A. 40-2404a; implementing K.S.A. 40-103, K.S.A. 2014 Supp. 40-2404, and K.S.A. 40-2404a; effective Feb. 20, 2015.)

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.)

Article 16.—PROFESSIONAL EMPLOYER ORGANIZATIONS

40-16-1. Professional employer organizations; definition. For the purpose of this article, "act" shall mean professional employer organization registration act. (Authorized by K.S.A. 40-103 and L. 2012, ch. 142, sec. 10; implementing L. 2012, ch. 142, sec. 1; effective Jan. 31, 2014.)

40-16-2. Professional employer organizations; fees. The following fees shall be paid to the department:

(a) For each professional employer organization, the following fees:

(1) For an initial application for registration, \$1,000;

(2) for a renewal application for registration, \$500; and

(3) for an initial or a renewal application for limited registration, \$500; and

(b) for each professional employer group, the following fees:

(1) For an initial application for registration, \$1,000 for each professional employer organization within the professional employer group that would otherwise be required to individually register under the act;

(2) for a renewal application for registration, \$500 for each professional employer organization within the professional employer group that would otherwise be required to individually register under the act; and

(3) for an initial or a renewal application for limited registration, \$500 for each professional employer organization within the professional employer group that would otherwise be required to individually register under the act. (Authorized by K.S.A. 40-103 and L. 2012, ch. 142, sec. 10; implementing L. 2012, ch. 142, sec. 5; effective Jan. 31, 2014.)

Agency 44

Department of Corrections

Articles

- 44-5. INMATE MANAGEMENT.
- 44-6. GOOD TIME CREDITS AND SENTENCE COMPUTATION.
- 44-9. PAROLE, POSTRELEASE SUPERVISION, AND HOUSE ARREST.
- 44-11. COMMUNITY CORRECTIONS.
- 44-12. CONDUCT AND PENALTIES.
- 44-15. GRIEVANCE PROCEDURE FOR INMATES.

Article 5.—INMATE MANAGEMENT

44-5-115. Service fees. (a) Each inmate in the custody of the secretary of corrections shall be assessed a charge of one dollar each payroll period, not to exceed \$12.00 per year, as a fee for administration by the facility of the inmate's trust account. The facility shall be authorized to transfer the fee from each inmate's account from the balance existing on the first of each month. If an inmate has insufficient funds on the first of the month to cover this fee, the fee shall be transferred as soon as the inmate has sufficient funds in the account to cover the fee. All funds received by the facility pursuant to this subsection shall be paid on a quarterly basis to the crime victims' compensation fund.

(b)(1) Each offender under the department's parole supervision, conditional release supervision, postrelease supervision, house arrest, and interstate compact parole and probation supervision in Kansas shall be assessed a supervision service fee of a maximum of \$30.00 per month. This fee shall be paid by the offenders to the department's designated collection agent or agents. Payment of the fee shall be a condition of supervision. All fees shall be paid as directed by applicable internal management policy and procedure and as instructed by the supervising parole officer.

(2) A portion of the supervision service fees collected shall be paid to the designated collection agent or agents according to the current service contract, if applicable. Twenty-five percent of the remaining amount collected shall be paid on at least a quarterly basis to the crime victims' compensation fund. The remaining balance shall be paid to the department's general fees fund for the department's purchase or lease of enhanced parole supervision services or equipment including

electronic monitoring, drug screening, and surveillance services.

(3) Indigent offenders shall be exempt from this subsection, as set forth by criteria established by the secretary in an internal management policy and procedure.

(4) The fees authorized by subsection (d) shall not be considered a portion of the monthly supervision service fee.

(c) Each inmate in the custody of the secretary of corrections shall be assessed a fee of \$2.00 for each primary visit initiated by the inmate to an institutional sick call. A primary visit shall be the initial visit for a specific complaint or condition. Inmates shall not be charged for the following:

(1) Medical visits initiated by medical or mental health staff;

(2) institution intake screenings;

(3) routinely scheduled physical examinations;

(4) clinical service reports, including reports or evaluations requested by any service provider in connection with participation in the reentry program;

(5) evaluations requested by the prisoner review board;

(6) referrals to a consultant physician;

(7) infirmary care;

(8) emergency treatment, including initial assessments and first-aid treatment for injuries incurred during the performance of duties on a work detail or in private industry employment;

(9) mental health group sessions;

(10) facility-requested mental health evaluations;

(11) follow-up visits initiated by medical staff; and

(12) follow-up visits initiated by an inmate within 14 days of an initial visit.

No inmate shall be refused medical treatment for financial reasons. If an inmate has insufficient

funds to cover the medical fee, the fee shall be transferred as soon as the inmate has sufficient funds in the account to cover the balance of the fee.

(d) Each inmate assigned to a batterers intervention program shall be assessed a fee for admission to and continued participation in the program.

(e) Each offender shall be assessed a fee for each urinalysis or other test approved by the secretary of corrections that is administered to the offender for the purpose of determining the use of illegal substances and that has a positive result. The amount of the fee shall be adjusted periodically to reflect the actual cost of administering these tests, including staff participation.

(f) Each inmate or offender shall be assessed a fee, if applicable, for the following:

- (1) Global positioning system (GPS) tracking;
- (2) electronic or any other appropriate form of monitoring;
- (3) an application for transfer under the interstate compact for adult offender supervision;
- (4) polygraph examinations;
- (5) community residential bed housing;
- (6) sexual abuser's treatment services; and
- (7) batterers intervention program services. The fee for each service specified in this subsection shall be assessed only if the service is required as a part of house arrest or postincarceration release supervision.

If applicable, each offender on postincarceration release supervision or house arrest shall also be assessed a fee for the collection of specimens of blood and saliva for the purpose of providing DNA profiles to the Kansas bureau of investigation, pursuant to K.S.A. 21-2511 and amendments thereto. (Authorized by K.S.A. 2011 Supp. 21-6609, as amended by L. 2012, Ch. 172, §29, K.S.A. 2011 Supp. 75-5210, K.S.A. 2011 Supp. 75-5251, K.S.A. 75-52,139; implementing K.S.A. 2011 Supp. 21-6609, as amended by L. 2012, Ch. 172, §29, K.S.A. 2011 Supp. 22-3717, as amended by L. 2012, Ch. 150, §43, K.S.A. 75-52,139; effective Jan. 3, 1995; amended, T-44-3-19-04, March 19, 2004; amended July 2, 2004; amended March 23, 2012; amended Feb. 1, 2013.)

Article 6.—GOOD TIME CREDITS AND SENTENCE COMPUTATION

44-6-101. Definitions. (a) For purposes of sentence computation, as used in this article, terms dealing with good time credits shall be defined as follows:

(1) “Establishment of good time credits” means the creation of that pool of credits that decreases part of the term of actual imprisonment for good work and behavior over a period of time. Good time credits shall not forgive or eliminate the sentence but shall function only to allow the inmate to earn the privilege of being released from incarceration earlier than the full minimum, maximum, or guidelines prison sentence, subject to conditions specified and imposed pursuant to applicable law. Following a revocation of parole or conditional release, good time credits shall not be available to reduce the period of incarceration before a prisoner review board hearing for reparole. Following a revocation of postrelease supervision, good time credits shall be available to reduce the incarceration penalty period as authorized by applicable statutes.

(2) “Allocation of good time credits” means the breakdown of the total number of established good time credits into groups of credits that are available to the inmate in separate time periods.

(3) To “earn good time credits” means that the inmate has acted in a way that merits a reduction of the term of actual imprisonment by those credits.

(4) “Award of good time credits” means the act of the unit team, as approved by the program management committee and the warden or designee, granting all or part of the allocation of credits available for the time period under review.

(5) “Application of good time credits” means the entry of the credits of forfeitures into the official record of the inmate and the consequent adjustment of parole eligibility, conditional release, the guidelines release date, or the guidelines sentence discharge date.

(6) “Forfeiture of good time credits” means the removal of the credits and consequent reinstatement of a term of actual imprisonment by the disciplinary board according to article 12 and article 13, as published in the inmate rule book.

(b) For purposes of sentence computation, as used in this article, terms dealing with sentence structure shall be defined as follows:

(1) “Composite sentence” means any sentence formed by the combination of two or more sentences.

(2) “Concurrent sentence” means two or more sentences imposed by the court with minimum and maximum terms, respectively, to be merged, or two or more sentencing guidelines sentences imposed by the court with their prison terms to be merged.

(3) “Consecutive sentence” means a series of two or more sentences imposed by the court in which the minimum terms and the maximum terms, respectively, are to be aggregated, or a series of two or more sentencing guidelines sentences in which the prison terms are to be aggregated pursuant to K.S.A. 2011 Supp. 21-6819 and amendments thereto.

(4) “Controlling sentence” means the sentence made up of the controlling minimum term and the controlling maximum term of any sentence or composite sentence or the sentencing guidelines sentence made up of two or more sentences, whether concurrent or consecutive, that results in the longest prison term.

(5) “Aggregated controlling sentence” means a controlling sentence composed of two or more sentences. An aggregated controlling sentence has a minimum term consisting of the sum of the minimum terms and a maximum term consisting of the sum of the maximum terms. In the case of sentencing guidelines sentences, an aggregated controlling sentence has a prison term that is the sum of all the prison terms of the sentences that are aggregated, pursuant to K.S.A. 2011 Supp. 21-6819 and amendments thereto. The term “aggregated” shall be applied only to consecutive sentences.

(c) For purposes of sentence computation, as used in this article, terms dealing with sentence service credits, other than good time credits, shall be defined as follows:

(1) “Jail credit” and “JC” mean the time spent in confinement, pending the disposition of the case, before the sentencing to the custody of the secretary of corrections pursuant to K.S.A. 2011 Supp. 21-6615, and amendments thereto, or on or after May 19, 1988, time spent in a residential center while on probation or assignment to a community correctional residential services program, pursuant to K.S.A. 2011 Supp. 21-6615 and amendments thereto.

(2) “Maximum sentence credit” means the total period of incarceration served on a sentence beyond the limitation for credit awarded as prison service credit. This credit shall be used to adjust the maximum expiration date of the sentence.

(3) “Prison service credit” means the penal time credited for time the inmate previously was incarcerated on the sentence and time credited on the sentence while actually incarcerated during release in custody to a law enforcement agency. Prison service credit shall be given for time spent

incarcerated on a sentence that has subsequently been aggregated due to the imposition of a consecutive sentence.

(4) “Program credit” means the pool of credits that serve to decrease the term of actual imprisonment awarded for a completion of a program designated by the secretary. Program credits shall not decrease or eliminate the sentence but shall function only to allow the inmate to earn the privilege of being released from incarceration earlier than the prison sentence adjusted for earned and retained good time credits. Program credits earned and retained while an offender is incarcerated shall be added to the offender’s postrelease supervision period.

(d) For purposes of sentence computation, as used in this article, terms dealing with terms or length of sentences shall be defined as follows:

(1) “Controlling minimum term” means the length of the sentence to be served to reach the controlling minimum date as determined according to applicable case, statutory, and regulatory law.

(2) “Controlling maximum term” means the length of the maximum sentence imposed by the court that constitutes the longest required period of incarceration, determined according to applicable case and statutory law and these regulations.

(e) For purposes of sentences computation, as used in this article, terms dealing with calculation of specific dates in the execution of sentences shall be defined as follows:

(1) “Sentencing date” means the date on which the sentence is imposed by the court upon conviction. “Sentencing date” is also known as the sentence imposition date.

(2) “Sentence begins date” means the calendar date on which service of the sentence is to begin running. This date, as established by the court, shall reflect the time allowances as defined in jail time credit. This date shall be adjusted by department of corrections staff if prison service credit is applicable. If no jail credit is involved but prison service credit exists, the prison service credit shall be subtracted from the sentence imposition date to determine the sentence begins date.

(3) “Controlling minimum date” means the calendar date derived by adding the controlling minimum term to the sentence begins date.

(4) “Controlling maximum date” means the calendar date derived by adding the controlling maximum term imposed by the court to the sentence begins date.

(5) “Guidelines release date” means, for offenders with sentences imposed pursuant to the sentencing guidelines act, K.S.A. 2011 Supp. 21-6801 et seq. and amendments thereto, the date yielded by adding the prison portion of the sentence to the sentence, less any good time credits earned and awarded pursuant to K.S.A. 2011 Supp. 21-6821 and amendments thereto, plus any good time credits forfeited.

(6) “Conditional release date” and “CR date” mean the controlling maximum date minus the total number of authorized good time credits not forfeited.

(7) “Parole eligibility” means the status that results if the inmate has served the sentence required by law to the extent that the law allows the inmate’s immediate release if the prisoner review board grants a parole to that inmate.

(8) “Program release date” means the date the offender may be released with the application of the actually earned, awarded, and retained good time and program credits.

(f) For purposes of sentence computation, as used in this article, terms dealing with loss of forfeiture of sentence service credit while on parole or postrelease supervision status as well as escape status shall be defined as follows:

(1) “Postincarceration supervision” means supervision of any offender released to the community after service of the requisite term of incarceration. This term shall include parole, conditional release, and postrelease supervision.

(2) “Abscond” means departing without authorization from a geographical area or jurisdiction prescribed by the conditions of one’s parole or postrelease supervision.

(3) “Delinquent time lost on postincarceration status” and “DTLOPIS” mean the time lost on the service of sentence from which the offender was paroled or released to postrelease supervision due to being on absconder status after a condition violation warrant was issued and until the warrant was served.

(4) “Forfeited good time on postincarceration status” means the amount of good time ordered forfeited by the prisoner review board from the amount earned from the date of authorized release to the date delinquent time on parole or postincarceration began or to the date of admission to a department of corrections facility.

(5) “Time lost on escape” means the time not counted on the service of sentence while the inmate is on escape status. This term shall mean the time from which the escape took place to

the time of apprehension. (Authorized by K.S.A. 2011 Supp. 21-6821, as amended by L. 2012, Ch. 150, §37, K.S.A. 2011 Supp. 75-5210, K.S.A. 2011 Supp. 75-5251; implementing K.S.A. 2011 Supp. 21-6606, as amended by L. 2012, Ch. 16, §4, K.S.A. 2011 Supp. 21-6821, as amended by L. 2012, Ch. 150, §37, K.S.A. 2011 Supp. 22-3717, as amended by L. 2012, Ch. 150, §43, K.S.A. 2011 Supp. 22-3725, K.S.A. 2011 Supp. 75-5210, K.S.A. 2011 Supp. 75-5217, as amended by L. 2012, Ch. 16, §36, K.S.A. 2011 Supp. 75-5251; effective May 1, 1981; amended, T-84-32, Nov. 23, 1983; amended May 1, 1984; amended Nov. 12, 1990; amended Sept. 6, 2002; amended June 1, 2007; amended Aug. 8, 2008; amended Feb. 1, 2013.)

44-6-114e. Guidelines release date. (a) Except for off-grid crimes, the prison portion of sentences for crimes committed on or after July 1, 1993 but before April 20, 1995, crimes at non-drug severity levels 7 through 10 committed on or after January 1, 2008, crimes at drug grid severity level 3 or 4 committed on or after January 1, 2008 but before July 1, 2012, and crimes at drug grid severity level 4 or 5 committed on or after July 1, 2012, may be reduced by no more than 20% through awarded and retained good time credits.

(b) Except for off-grid crimes, the prison portion of sentences for all crimes committed on or after April 20, 1995 but before January 1, 2008, crimes at non-drug grid severity levels 1 through 6 and drug grid severity levels 1 and 2 committed on or after January 1, 2008, and crimes at drug severity level 3 committed on or after July 1, 2012, may be reduced by no more than 15% through awarded and retained good time credits. Partial days shall be rounded to the next whole number, but over the length of the sentence no more than 15% of the imprisonment portion of the sentence may be awarded as good time.

(c) Concurrent and consecutive sentences for off-grid crimes committed on or after July 1, 1993 shall not be subject to reduction through application of good time credits.

(d) For determinate sentences that are concurrent or consecutive with indeterminate sentences, good time may be awarded on the indeterminate sentence term as described in these regulations and applicable law.

(e) Good time credits awarded and retained on the prison portion of a determinate sentence shall be added to the period of postrelease supervision applicable to the offender’s sentence.

(f) The following charts shall establish the good time credit rate for a 20% reduction of the prison portion of a determinate sentence.

(1) Total good time credits available for the length of sentence imposed.

(2) Except as provided in subsection (h), allocation of good time credits available during the service of sentence.

**TOTAL GOOD TIME AVAILABLE (20% RATE)
OFFENSES COMMITTED ON OR AFTER JULY 1, 1993
THROUGH APRIL 19, 1995**

<i>Length of Sentence [Months]</i>	<i>Possible Good Time Earned</i>			<i>Time To Serve [All GT Kept]</i>		
	<i>Years</i>	<i>Months</i>	<i>Days</i>	<i>Years</i>	<i>Months</i>	<i>Days</i>
5	0	1	0	0	4	0
6	0	1	6	0	4	24
7	0	1	12	0	5	18
8	0	1	18	0	6	12
9	0	1	24	0	7	6
10	0	2	0	0	8	0
11	0	2	6	0	8	24
12	0	2	12	0	9	18
13	0	2	18	0	10	12
14	0	2	24	0	11	6
15	0	3	0	1	0	0
16	0	3	6	1	0	24
17	0	3	12	1	1	18
18	0	3	18	1	2	12
19	0	3	24	1	3	6
20	0	4	0	1	4	0
21	0	4	6	1	4	24
22	0	4	12	1	5	18
23	0	4	18	1	6	12
24	0	4	24	1	7	6
25	0	5	0	1	8	0
26	0	5	6	1	8	24
27	0	5	12	1	9	18
28	0	5	18	1	10	12
29	0	5	24	1	11	6
30	0	6	0	2	0	0
31	0	6	6	2	0	24
32	0	6	12	2	1	18
33	0	6	18	2	2	12
34	0	6	24	2	3	6
35	0	7	0	2	4	0
36	0	7	6	2	4	24
37	0	7	12	2	5	18
38	0	7	18	2	6	12
39	0	7	24	2	7	6
40	0	8	0	2	8	0

<i>Length of Sentence [Months]</i>	<i>Possible Good Time Earned</i>			<i>Time To Serve [All GT Kept]</i>		
	<i>Years</i>	<i>Months</i>	<i>Days</i>	<i>Years</i>	<i>Months</i>	<i>Days</i>
41	0	8	6	2	8	24
42	0	8	12	2	9	18
43	0	8	18	2	10	12
44	0	8	24	2	11	6
45	0	9	0	3	0	0
46	0	9	6	3	0	24
47	0	9	12	3	1	18
48	0	9	18	3	2	12
49	0	9	24	3	3	6
50	0	10	0	3	4	0
51	0	10	6	3	4	24
52	0	10	12	3	5	18
53	0	10	18	3	6	12
54	0	10	24	3	7	6
55	0	11	0	3	8	0
56	0	11	6	3	8	24
57	0	11	12	3	9	18
58	0	11	18	3	10	12
59	0	11	24	3	11	6
60	1	0	0	4	0	0
61	1	0	6	4	0	24
62	1	0	12	4	1	18
63	1	0	18	4	2	12
64	1	0	24	4	3	6
65	1	1	0	4	4	0
66	1	1	6	4	4	24
67	1	1	12	4	5	18
68	1	1	18	4	6	12
69	1	1	24	4	7	6
70	1	2	0	4	8	0
71	1	2	6	4	8	24
72	1	2	12	4	9	18
73	1	2	18	4	10	12
74	1	2	24	4	11	6
75	1	3	0	5	0	0
76	1	3	6	5	0	24
77	1	3	12	5	1	18
78	1	3	18	5	2	12
79	1	3	24	5	3	6
80	1	4	0	5	4	0
81	1	4	6	5	4	24
82	1	4	12	5	5	18
83	1	4	18	5	6	12
84	1	4	24	5	7	6
85	1	5	0	5	8	0

<i>Length of Sentence [Months]</i>	<i>Possible Good Time Earned</i>			<i>Time To Serve [All GT Kept]</i>		
	<i>Years</i>	<i>Months</i>	<i>Days</i>	<i>Years</i>	<i>Months</i>	<i>Days</i>
86	1	5	6	5	8	24
87	1	5	12	5	9	18
88	1	5	18	5	10	12
89	1	5	24	5	11	6
90	1	6	0	6	0	0
91	1	6	6	6	0	24
92	1	6	12	6	1	18
93	1	6	18	6	2	12
94	1	6	24	6	3	6
95	1	7	0	6	4	0
96	1	7	6	6	4	24
97	1	7	12	6	5	18
98	1	7	18	6	6	12
99	1	7	24	6	7	6
100	1	8	0	6	8	0

**ALLOCATION OF GOOD TIME CREDITS
AVAILABLE DURING THE SERVICE OF SENTENCE-20% RATE
OFFENSES COMMITTED ON OR AFTER JULY 1, 1993 THROUGH APRIL 19, 1995**

<i>MONTHS SERVED</i>	<i>TIME EARNED</i>			<i>MONTHS SERVED</i>	<i>TIME EARNED</i>		
	<i>YEARS</i>	<i>MONTHS</i>	<i>DAYS</i>		<i>YEARS</i>	<i>MONTHS</i>	<i>MONTHS</i>
1			08	24		6	00
2			15	25		6	08
3			23	26		6	15
4		1	00	27		6	23
5		1	08	28		7	00
6		1	15	29		7	08
7		1	23	30		7	15
8		2	00	31		7	23
9		2	08	32		8	00
10		2	15	33		8	08
11		2	23	34		8	15
12		3	00	35		8	23
13		3	08	36		9	00
14		3	15	37		9	08
15		3	23	38		9	15
16		4	00	39		9	23
17		4	08	40		10	00
18		4	15	41		10	08
19		4	23	42		10	15
20		5	00	43		10	23
21		5	08	44		11	00
22		5	15	45		11	08
23		5	23	46		11	15

<i>MONTHS SERVED</i>	<i>TIME EARNED</i>			<i>MONTHS SERVED</i>	<i>TIME EARNED</i>		
	<i>YEARS</i>	<i>MONTHS</i>	<i>DAYS</i>		<i>YEARS</i>	<i>MONTHS</i>	<i>DAYS</i>
47		11	23	79	1	7	23
48	1	00	00	80	1	8	00
49	1	00	08	81	1	8	08
50	1	00	15	82	1	8	15
51	1	00	23	83	1	8	23
52	1	1	00	84	1	9	00
53	1	1	08	85	1	9	08
54	1	1	15	86	1	9	15
55	1	1	23	87	1	9	23
56	1	2	00	88	1	10	00
57	1	2	08	89	1	10	08
58	1	2	15	90	1	10	15
59	1	2	23	91	1	10	23
60	1	3	00	92	1	11	00
61	1	3	08	93	1	11	08
62	1	3	15	94	1	11	15
63	1	3	23	95	1	11	23
64	1	4	00	96	2	00	00
65	1	4	08	97	2	00	08
66	1	4	15	98	2	00	15
67	1	4	23	99	2	00	23
68	1	5	00	100	2	01	00
69	1	5	08				
70	1	5	15				
71	1	5	23				
72	1	6	00	(g) The following charts shall establish the good time credit rate for a 15% reduction of the prison portion of a determined sentence.			
73	1	6	08	(1) Total good time credits available for the length of sentence imposed.			
74	1	6	15	(2) Except as provided in subsection (h), allocation of good time credits available during the service of sentence.			
75	1	6	23				
76	1	7	00				
77	1	7	08				
78	1	7	15				

**TOTAL GOOD TIME AVAILABLE (15% RATE)
OFFENSES COMMITTED ON OR AFTER APRIL 20, 1995**

<i>Length of Sentence [Months]</i>	<i>Possible Good Time Earned</i>			<i>Time to Serve [All GT Kept]</i>		
	<i>Years</i>	<i>Months</i>	<i>Days</i>	<i>Years</i>	<i>Months</i>	<i>Days</i>
5	0	0	23	0	4	7
6	0	0	27	0	5	3
7	0	1	2	0	5	28
8	0	1	6	0	6	24
9	0	1	11	0	7	19
10	0	1	15	0	8	15
11	0	1	20	0	9	10

<i>Length of Sentence [Months]</i>	<i>Possible Good Time Earned</i>			<i>Time to Serve [All GT Kept]</i>		
	<i>Years</i>	<i>Months</i>	<i>Days</i>	<i>Years</i>	<i>Months</i>	<i>Days</i>
12	0	1	24	0	10	6
13	0	1	29	0	11	1
14	0	2	3	0	11	27
15	0	2	8	0	12	22
16	0	2	12	0	13	18
17	0	2	17	0	14	13
18	0	2	21	0	15	9
19	0	2	26	0	16	4
20	0	3	0	0	17	0
21	0	3	5	0	17	25
22	0	3	9	0	18	21
23	0	3	14	0	19	16
24	0	3	18	0	20	12
25	0	3	23	0	21	7
26	0	3	27	0	22	3
27	0	4	2	0	22	28
28	0	4	6	0	23	24
29	0	4	11	0	24	19
30	0	4	15	0	25	15
31	0	4	20	0	26	10
32	0	4	24	0	27	6
33	0	4	29	0	28	1
34	0	5	3	0	28	27
35	0	5	8	0	29	22
36	0	5	12	0	30	18
37	0	5	17	0	31	13
38	0	5	21	0	32	9
39	0	5	26	0	33	4
40	0	6	0	0	34	0
41	0	6	5	0	34	25
42	0	6	9	0	35	21
43	0	6	14	0	36	16
44	0	6	18	0	37	12
45	0	6	23	0	38	7
46	0	6	27	0	39	3
47	0	7	2	0	39	28
48	0	7	6	0	40	24
49	0	7	11	0	41	19
50	0	7	15	0	42	15
51	0	7	20	0	43	10
52	0	7	24	0	44	6
53	0	7	29	0	45	1
54	0	8	3	0	45	27
55	0	8	8	0	46	22

<i>Length of Sentence [Months]</i>	<i>Possible Good Time Earned</i>			<i>Time to Serve [All GT Kept]</i>		
	<i>Years</i>	<i>Months</i>	<i>Days</i>	<i>Years</i>	<i>Months</i>	<i>Days</i>
56	0	8	12	0	47	18
57	0	8	17	0	48	13
58	0	8	21	0	49	9
59	0	8	26	0	50	4
60	0	9	0	0	51	0
61	0	9	5	0	51	25
62	0	9	9	0	52	21
63	0	9	14	0	53	16
64	0	9	18	0	54	12
65	0	9	23	0	55	7
66	0	9	27	0	56	3
67	0	10	2	0	56	28
68	0	10	6	0	57	24
69	0	10	11	0	58	19
70	0	10	15	0	59	15
71	0	10	20	0	60	10
72	0	10	24	0	61	6
73	0	10	29	0	62	1
74	0	11	3	0	62	27
75	0	11	8	0	63	22
76	0	11	12	0	64	18
77	0	11	17	0	65	13
78	0	11	21	0	66	9
79	0	11	26	0	67	4
80	1	0	0	0	68	0
81	1	0	5	0	68	25
82	1	0	9	0	69	21
83	1	0	14	0	70	16
84	1	0	18	0	71	12
85	1	0	23	0	72	7
86	1	0	27	0	73	3
87	1	1	2	0	73	28
88	1	1	6	0	74	24
89	1	1	11	0	75	19
90	1	1	15	0	76	15
91	1	1	20	0	77	10
92	1	1	24	0	78	6
93	1	1	29	0	79	1
94	1	2	3	0	79	27
95	1	2	8	0	80	22
96	1	2	12	0	81	18
97	1	2	17	0	82	13
98	1	2	21	0	83	9
99	1	2	26	0	84	4
100	1	3	0	0	85	0

**ALLOCATION OF GOOD TIME CREDITS
AVAILABLE DURING THE SERVICE OF SENTENCE-15% RATE
OFFENSES COMMITTED ON OR AFTER APRIL 20, 1995**

<i>MONTHS SERVED</i>	<i>TIME EARNED</i>			<i>MONTHS SERVED</i>	<i>TIME EARNED</i>		
	<i>YEARS</i>	<i>MONTHS</i>	<i>DAYS</i>		<i>YEARS</i>	<i>MONTHS</i>	<i>DAYS</i>
1			5	43		7	17
2			11	44		7	23
3			16	45		7	28
4			21	46		8	03
5			26	47		8	09
6			02	48		8	14
7		1	07	49		8	19
8		1	12	50		8	25
9		1	18	51		9	00
10		1	23	52		9	05
11		1	28	53		9	10
12		2	03	54		9	16
13		2	09	55		9	21
14		2	14	56		9	26
15		2	19	57		10	02
16		2	25	58		10	07
17		3	00	59		10	12
18		3	05	60		10	17
19		3	10	61		10	23
20		3	16	62		10	28
21		3	21	63		11	03
22		3	26	64		11	09
23		4	02	65		11	14
24		4	07	66		11	19
25		4	12	67		11	24
26		4	18	68		12	00
27		4	23	69		12	05
28		4	25	70		12	10
29		5	03	71		12	16
30		5	09	72		12	21
31		5	14	73		12	26
32		5	19	74	1	01	01
33		5	25	75	1	01	07
34		6	00	76	1	01	12
35		6	05	77	1	01	17
36		6	10	78	1	01	23
37		6	16	79	1	01	28
38		6	21	80	1	02	03
39		6	26	81	1	02	08
40		7	02	82	1	02	14
41		7	07	83	1	02	19
42		7	12	84	1	02	24

MONTHS SERVED	TIME EARNED		
	YEARS	MONTHS	DAYS
85	1	03	00
86	1	03	05
87	1	03	10
88	1	03	16
89	1	03	21
90	1	03	26
91	1	04	01
92	1	04	06
93	1	04	12
94	1	04	17
95	1	04	23
96	1	04	28
97	1	05	03
98	1	05	08
99	1	05	14
100	1	05	19

(h) The charts in subsections (f) and (g) shall be used to compute the total pool of good time credits available on composite sentences for crimes committed on or after January 1, 2008, except that good time credit shall be allocated over the period of time equal to the inmate's composite sentence term less a number that is the sum of the total pool of available good time credits and four months. (Authorized by and implementing K.S.A. 2011 Supp. 21-6821, as amended by L. 2012, Ch. 150, §37, K.S.A. 2011 Supp. 75-5210, K.S.A. 2011 Supp. 75-5251; effective Sept. 6, 2002; amended Aug. 8, 2008; amended Feb. 1, 2013.)

44-6-115a. Awarding and withholding good time credits for incarcerated offenders.

(a) With the exception of calculation of good time credits affecting the conditional release dates, which are controlled by K.A.R. 44-6-114d, this regulation shall govern the award and withholding of good time credits.

(b)(1) At the conclusion of the initial inmate classification, 100% of the good time credits available from the sentence begins date to the date of the initial good time award shall be awarded, unless there is written documentation of maladjustment before the date of the initial award.

(2) The initial award of good time credits shall be made on the same day of the month on which the sentence was established. If a full month has not elapsed between the computed sentence be-

gins date and the conclusion of the initial classification, good time credits shall not be awarded until the first classification review following the initial classification.

(c) Following the initial award, good time credits may be awarded at each classification review from credits available since the previous classification review.

(d) The following factors shall be considered in determining whether or not an inmate is awarded good time credits:

(1) The inmate's performance in a work assignment;

(2) the inmate's performance in a program assignment;

(3) the inmate's maintenance of an appropriate personal and group living environment;

(4) the inmate's participation in release planning activities;

(5) the inmate's disciplinary record; and

(6) any other factors related to the inmate's general adjustment, performance, behavior, attitude, and overall demonstration of individual responsibility and accountability.

(e)(1) If an inmate refuses to work constructively or participate in assigned programs, 100% of the good time credits available for program classification review periods shall be withheld until the inmate reenters and constructively participates in the assigned program at a time that permits the inmate to complete the program, unless the facility health authority determines that the inmate is physically or mentally incapable of working or participating in a particular program or detail. If an assigned program is terminated or no longer offered due to financial constraints, the inmate's program plan shall be modified accordingly, and the inmate shall again be eligible to earn good time credits. Misconduct resulting in a disciplinary conviction not directly related to the program assignment shall result in the withholding of good time credits for only one program review period, pursuant to subsection (g).

(2) If an inmate refuses to work on an assigned work detail or is removed from the work detail for a disciplinary conviction, the inmate shall have 100% of available good time credits withheld for only one program review period.

(f) If an inmate fails to cooperate in the development of an acceptable release plan, the good time credits available for award during the 120-day period immediately before the inmate's projected or scheduled release date shall not be awarded.

(g) Award of good time credits shall be withheld on the basis of an inmate's disciplinary record, including consideration of the degree of actual injury, damage, or disruption caused by the misconduct at issue. Further consideration shall be given to other sanctions or interventions available to address the inmate's misconduct.

(1) If a facility disciplinary hearing officer finds the inmate guilty of a class I disciplinary offense, the amount of good time withheld during the review period in which the violation occurred shall reflect the degree of injury, damage, or disruption caused by the misconduct at issue.

(2) If a facility disciplinary hearing officer finds the inmate guilty of a class II disciplinary offense, not more than 50% of the good time credits available for the classification review period in which the violation occurred shall be withheld. For purposes of this paragraph, summary disciplinary judgments pursuant to K.A.R. 44-13-201b shall not be considered a guilty finding.

(3) If a facility disciplinary hearing officer finds the inmate guilty of a class III disciplinary offense, not more than 25% of the good time credits available for that classification review period in which the violation occurred shall be withheld. For purposes of this paragraph, summary disciplinary judgments pursuant to K.A.R. 44-13-201b shall not be considered a guilty finding.

(4) If a facility disciplinary hearing officer finds the inmate guilty of multiple disciplinary violations within a single disciplinary report, only the most serious violation shall be used in determining the percentage of good time credits to be withheld.

(5) If an inmate is removed from an assigned program due to a disciplinary conviction, 100% of the available good time credits shall be withheld until the inmate reenters the assigned program.

(h) The percentage of good time credits withheld during a classification review period shall be cumulative but shall not exceed 100% of that available for that classification review period. The good time award record for a period in which good time has already been awarded may be adjusted upon a subsequent conviction of a violation committed during the review period or upon discovery of an error in computing good time credits, pursuant to K.A.R. 44-6-128 through 44-6-132.

(i) On and after February 1, 2013, good time credits withheld for any reason may be restored to an inmate in accordance with internal management policies and procedures promulgated by the secretary of corrections. Good time credits with-

held for any review period commencing before that date shall not be restored.

(j) Good time credits and program credits forfeited as a result of a penalty imposed by a facility disciplinary hearing officer shall not be restored to an inmate without the approval of the secretary or secretary's designee. (Authorized by and implementing K.S.A. 2011 Supp. 21-6821, as amended by L. 2012, Ch. 150, §37, K.S.A. 2011 Supp. 75-5210, K.S.A. 2011 Supp. 75-5251; effective Sept. 6, 2002; amended, T-44-3-11-03, March 11, 2003; amended July 25, 2003; amended Aug. 8, 2008; amended Feb. 1, 2013.)

44-6-115b. Awarding, withholding, and restoring good time credits for offenders on supervised release. (a) Offenders on supervised release may be awarded good time credits at the following rates:

(1) Offenders on parole release for indeterminate sentences shall be eligible for good time credits at the rate of one day of good time for each day under supervision and as provided by K.A.R. 44-6-114d.

(2) For offenders convicted of crimes that were committed on or after July 1, 1993 but before April 20, 1995 and that fall into non-drug severity levels 1 through 4 or drug severity level 1 or 2, the period of postrelease supervision shall be 24 months plus the amount of good time awarded and retained on the imprisonment portion of a sentence for such a conviction. Good time credits shall not be available for the reduction of postrelease supervision.

(3) For offenders convicted of crimes committed on or after April 20, 1995, but before July 1, 2012, that fall into non-drug severity levels 1 through 4 or drug severity level 1 or 2 and crimes committed on or after July 1, 2012 that fall into drug severity levels 1 through 3, the period of postrelease supervision shall be 36 months plus the amount of good time awarded and retained on the imprisonment portion of a sentence for such a conviction. The 36-month portion of the post-release supervision period may be reduced by up to 12 months through award of good time credits. Awarded good time credits shall be applied at the rate of one day for every two days served from the date of release from prison, but not to exceed a total of 12 months. That portion of the period of postrelease supervision resulting from the addition of good time credits awarded and retained while in prison pursuant to K.S.A. 2011 Supp.

21-6821, and amendments thereto, shall not be reduced through application of good time credits while on postrelease supervision.

(4) For offenders who are convicted of crimes committed on or after July 1, 1993 that fall into non-drug severity level 5 or 6, drug severity level 3 crimes committed on or after July 1, 1993 but before July 1, 2012, and drug severity level 4 crimes committed on or after July 1, 2012 and who are sentenced to serve a period of postrelease supervision, the period of postrelease supervision shall be 24 months plus the amount of good time awarded and retained on the imprisonment portion of the sentence for any such conviction. The 24-month portion of the postrelease supervision period may be reduced by 12 months through award of good time credits. Awarded good time credits shall be applied at the rate of one day for each day served from the date of release from prison. That portion of the postrelease supervision period resulting from application of good time credits awarded and retained while in prison shall not be subject to reduction through the application of good time credits while on postrelease supervision.

(5) For offenders who are convicted of crimes committed on or after July 1, 1993 that fall into non-drug severity levels 7 through 10, drug severity level 4 crimes committed on or after July 1, 1993 but before July 1, 2012, and drug severity level 5 crimes committed on or after July 1, 2012 and who are sentenced to serve a period of postrelease supervision, the period of postrelease supervision shall be 12 months plus the amount of good time awarded and retained on the imprisonment portion of the sentence for any such conviction. The 12-month portion of the period of postrelease supervision may be reduced by six months through award of good time credits. Awarded good time credits shall be applied at the rate of one day for each day served from the date of release from prison. That portion of the postrelease supervision period resulting from application of good time credits awarded and retained while in prison shall not be subject to reduction through the application of good time credits while on post-release supervision.

(b) All subsequent awards during a single supervision release period shall be made at six-month intervals, unless, in the judgment of the offender's parole officer, good cause exists to shorten the interval.

(c) No good time credits shall be awarded during the time an offender is on absconder status or for

a review period in which a violation resulting in revocation of postrelease supervision occurs.

(d) Factors that shall be considered in determining whether or not an offender on supervised release is awarded good time credits shall include the following:

- (1) Reporting to the parole officer as scheduled;
- (2) maintaining steady employment, participating in treatment, or both;
- (3) refraining from criminal activity;
- (4) following the conditions of release; and
- (5) maintaining behavior indicative of rehabilitation.

(e) Each of the following violations, if committed by the offender during the review period, shall result in the withholding of 100% of the good time credits available during the review period:

(1) Any felonious conduct established with probable cause by a district court, or any misdemeanor conviction, including driving under the influence (DUI) or driving while suspended (DWS);

(2) engagement in assaultive activities, violence, or threats of violence of any sort, or possession of a dangerous weapon, ammunition, or explosives as established by reliable information, including witness statements and police reports;

(3) engagement in contact with victims or contact with specific persons or categories of persons with whom contact is prohibited by special condition;

(4) failure to agree to be subject to a search by any parole officer, enforcement, apprehensions, and investigations officer, or other law enforcement officer as specified by the conditions of supervision;

(5) absconding from supervision.

(f) Each of the following violations shall result in the mandatory withholding of 50% of the good time credits available during the review period for each violation:

(1) Violation of any specific prohibition assigned to sex offenders;

(2) leaving the state of Kansas without permission;

(3) violation of any special condition not specifically identified in this regulation; or

(4) refusal to work or participate in programs during the review period.

(g) Each of the following violations shall result in the mandatory withholding of 25% of the good time credits available for the reward period for each violation:

(1) Changing jobs without notifying the supervising office;

(2) leaving the assigned supervision district without permission, but remaining in the state;

(3) refusing to provide urinalysis or to otherwise submit to substance abuse testing;

(4) moving from the place of residence without notifying the supervising officer; or

(5) each documented instance of the use of drugs, alcohol, or inhalants, either through positive urinalysis, through admission, or based upon reliable information from law enforcement or special agents.

(h) Either of the following violations shall result in the mandatory withholding of 10% of the good time credits available for the reward period for each violation:

(1) Failure to pay supervision fees as directed after it has been established that the offender is able to but unwilling to pay; or

(2) failure to report unless excused by the parole officer.

(i) If multiple violations that result from the same set of circumstances occur, the most severe violation shall be utilized for consideration of the good time award.

(j) Violations resulting in the withholding of good time shall not serve as the basis for withholding of additional good time during subsequent award periods.

(k) Good time credits shall be withheld during the award period in which the criteria for withholding good time has been met. The award of good time for a review period for which good time has already been awarded may be adjusted upon the subsequent discovery of a violation committed during the review period in question or upon discovery of any error in computing good time credits.

(l) On and after February 1, 2013, offenders on postrelease supervision may be eligible for the restoration of good time withheld while on postrelease supervision due solely to nonpayment of supervision fees, in accordance with internal management policies and procedures established by the secretary of corrections. Good time credits withheld for any review period commencing before that date may be restored. (Authorized by and implementing K.S.A. 2011 Supp. 22-3717, as amended by L. 2012, Ch. 150, §43; effective Sept. 6, 2002; amended Feb. 1, 2013.)

44-6-115c. Service of postrelease supervision revocation incarceration penalty period; awarding, withholding, and forfeiture of

good time credits for offenders serving incarceration penalty period. (a) For offenders who were convicted of committing offenses on or after July 1, 1993, but before April 20, 1995, and whose postrelease supervision is revoked for reasons other than commission of a new crime, good time credits shall not be available for the purpose of reducing the applicable 90-day incarceration penalty period.

(b) For offenders who were convicted of crimes committed on or after April 20, 1995, and whose postrelease supervision is revoked for reasons other than commission of a new crime, good time credits may be earned toward reduction of the applicable six-month incarceration penalty period by up to three months. Awarded good time credits shall be applied at the rate of one day for each day served from the date of the revocation hearing or, if applicable, the effective date of waiver of the revocation hearing before the prisoner review board.

(c) For offenders who are serving a sentencing guidelines sentence and whose postrelease supervision is revoked due to commission of a new crime, good time credits shall not be available to reduce the period of the incarceration penalty. Offenders whose postrelease supervision is revoked due to commission of a new felony shall serve the entire remaining balance of postrelease supervision in prison. Offenders whose postrelease supervision is revoked due to commission of a misdemeanor shall serve the remaining balance of postrelease supervision in prison unless released by order of the prisoner review board.

(d) Awards of good time shall be made at 30-day intervals from the date of the revocation hearing before the board, or from the effective date of the waiver of the revocation hearing, as applicable. If an offender who waives the revocation hearing has not yet been transferred to a correctional facility when any 30-day interval occurs, the initial award shall be made when the offender is so transferred. When the offender waives the revocation hearing before the board, 100% of good time credits available for any time spent in detention from the effective date of the waiver and before the offender's transfer to a correctional facility shall be awarded, unless there is written documentation of maladjustment during the detention.

(e) For purposes of forfeiture, award, and withholding of good time credits, offenders serving a postrelease revocation penalty period for reasons other than commission of a new crime shall be

subject to the provisions of articles 12 and 13 that prescribe rules of inmate conduct, penalties for violation thereof, and the procedures employed for processing charges of rules violations.

(f) The following factors shall be considered in determining whether or not an offender is awarded good time credits:

(1) The offender's performance in a work assignment;

(2) the offender's performance in a program assignment;

(3) the offender's maintenance of an appropriate personal and group living environment;

(4) the offender's participation in release planning activities;

(5) the offender's disciplinary record, unless the offender incurred a forfeiture of good time credits based on the same disciplinary conviction; and

(6) any other factors related to the offender's general adjustment, performance, behavior, attitude, and overall demonstration of individual responsibility and accountability.

(g) If an offender refuses to work constructively or to participate in assigned programs, 100% of the good time credits available for program classification review periods shall be withheld until the offender participates in the assigned program at a time that permits the offender to complete the program, unless the facility health authority determines that the offender is physically or mentally incapable of working or participating in a particular program or detail.

(h) If an offender fails to cooperate in the development of an acceptable release plan, the good time credits available for award during the 30-day period immediately before the offender's scheduled release date shall not be awarded.

(i) Award of good time credits shall be withheld on the basis of an offender's disciplinary record in the following manner:

(1) If a facility disciplinary hearing officer finds the offender guilty of a class I disciplinary offense, at least 50% of the good time credits available for that classification review period in which the violation occurred shall be withheld.

(2) If a facility disciplinary hearing officer finds the offender guilty of a class II disciplinary offense, at least 25% but not more than 50% of the good time credits available for that classification review period in which the violation occurred shall be withheld.

(3) If a facility disciplinary hearing officer finds the offender guilty of a class III disciplinary of-

fense, at least 10% but not more than 25% of the good time credits available for that classification review period in which the violation occurred shall be withheld. For purposes of this paragraph, summary disciplinary judgments pursuant to K.A.R. 44-13-201b shall not be considered a guilty finding.

(4) If a facility disciplinary hearing officer finds the offender guilty of multiple disciplinary violations within a single disciplinary report, only the most serious violation shall be used in determining the percentage of good time credits that shall be withheld.

(j) The percentage of good time credits withheld during a classification review period shall be cumulative but shall not exceed 100% of that available for that classification review period. Good time credits awarded and applied during the final review period shall not vest until the offender is actually released from the incarceration penalty period and may be withheld due to the offender's misconduct before actual release.

(k) Good time credits forfeited as a result of a penalty imposed by a facility disciplinary hearing officer shall not be restored to an offender.

(l) On and after February 1, 2013, good time credits awarded during the period of service of the incarceration penalty shall not serve to reduce the offender's period of postrelease supervision. (Authorized by and implementing K.S.A. 2011 Supp. 75-5217, as amended by L. 2012, Ch. 16, §36; effective Sept. 6, 2002; amended Feb. 1, 2013.)

44-6-125. Good time forfeitures not restored; exceptions; limits; parole; guidelines release date; program credits; withholding of good time credits subject to restoration.

(a) On and after May 1, 1981, no good time forfeitures restored. For all inmates, good time credits or program credits that were forfeited on and after May 1, 1981 shall not be restored at a later date.

An exception may be requested by the warden in order that standards of basic fairness, equity, and justice may be met. In such a case, good cause for restoration of good time credits shall be shown, in writing, by the warden to the secretary or the secretary's designee. Restoration of good time credits by exception shall be granted only upon written approval by the secretary or the secretary's designee. Good time forfeited before the first effective date of this regulation, May 15, 1980, may be restored in accordance with the secretary of corrections' policies and procedures then in force and effect. Good time credits or program credits

that are eligible for award but have not yet actually been awarded due to an administrative error or omission may be forfeited.

(b) Forfeit only on minimum until parole eligibility. Before parole eligibility, forfeited good time credits shall be subtracted from the amount of good time credits earned toward the parole eligibility only, and not from those credits used to create the conditional release date. After parole eligibility is achieved, subsequent forfeited credits shall be subtracted from the credits used to form the conditional release date.

(c) Forfeitures limited to awards; no extension of maximum. Good time credits or program credits shall not be forfeited in an amount in excess of the good time or program credit earned before the disciplinary conviction. If an inmate receives an award of jail credit from the sentencing court after issuance of the original journal entry of sentencing and the sentence computation is revised accordingly, previous forfeitures of good time or program credits shall not be revised or modified. In cases of a new sentence conviction, disciplinary offenses occurring before the effective date of the new sentence that result in the forfeiture of good time or program credits shall not be applied to the computation. In no case shall forfeiture of good time or program credits extend the controlling maximum sentence, nor shall the forfeiture of good time credits interfere with or bypass any statutorily fixed parole eligibility that is not controlled by good time credits.

(d) No parole eligibility if forfeited time remains unserved. If good time credits on the term have been forfeited, an inmate shall not be eligible for parole until the inmate has served the time that otherwise would have been subtracted from the term by the application of the credits, or has obtained a restoration of those credits.

(e) In the case of an offender serving a guidelines sentence, forfeiture of good time or program credits shall affect the guidelines release date. Good time or program credits shall not be forfeited in an amount in excess of good time or program credits previously earned.

(f) Forfeitures made by disciplinary process. Forfeiture of good time credits or program credits may be ordered by the disciplinary board or hearing officer as a penalty for the inmate's commission of certain offenses as specified in articles 12 and 13.

(g) Good time or program credits withheld during service of a prison term or good time credits withheld during service of the postrelease su-

pervision period, except credits withheld due to violation of supervision conditions resulting in revocation of postrelease supervision, may be restored in accordance with internal management policies and procedures established by the secretary of corrections. (Authorized by K.S.A. 2011 Supp. 21-6821, as amended by L. 2012, Ch. 150, §37, K.S.A. 2011 Supp. 75-5210, K.S.A. 2011 Supp. 75-5251; implementing K.S.A. 2011 Supp. 21-6821, as amended by L. 2012, Ch. 150, §37, K.S.A. 2011 Supp. 22-3717, as amended by L. 2012, Ch. 150, §43, K.S.A. 2011 Supp. 75-5210, K.S.A. 2011 Supp. 75-5251; effective, T-84-32, Nov. 23, 1983; effective May 1, 1984; amended Nov. 12, 1990; amended April 6, 1992; amended Sept. 6, 2002; amended June 1, 2007; amended Aug. 8, 2008; amended Feb. 1, 2013.)

44-6-127. Program credits. (a) Program credits may be earned on the prison portion of a sentence for crimes at non-drug severity levels 4 through 10 or drug grid severity level 3 or 4 committed on or after January 1, 2008, but before July 1, 2012, or for crimes at non-drug severity levels 4 through 10 or drug severity level 4 or 5 committed on or after July 1, 2012, for successful completion of programs designated by the secretary of corrections. These credits shall be in addition to good time credits awarded pursuant to K.A.R. 44-6-115a.

(b)(1) Subject to the exception stated in this subsection, if any portion of an inmate's composite sentence does not qualify for application of program credits, the inmate's entire sentence shall be found to be ineligible.

(2) Notwithstanding paragraph (b)(1), any inmate serving a composite sentence consisting of a sentence for a crime committed before July 1, 1993, with an indeterminate term of years, which shall mean a term other than a sentence of life imprisonment or a sentence with a maximum term of life imprisonment, and a determinate sentence for an offense committed while on release that otherwise meets the criteria specified in this regulation may be eligible to earn program credits on the remaining determinate sentence if the inmate meets any of the following conditions:

(A) Is paroled to the determinate sentence;

(B) attains conditional release; or

(C) reaches the maximum sentence expiration date on the indeterminate sentence.

(c) Program credits shall not be awarded for successful completion of a sex offender treatment program.

(d) Program credits shall not exceed 60 days on any one eligible controlling sentence, regardless of the number of programs completed. For the purposes of awarding and applying program credits, all calculations shall be based upon a year, which shall be considered a 360-day period with each month consisting of 30 days.

(e) Program credits earned and retained on the prison portion of the sentence shall be added to the inmate's postrelease supervision term.

(f) Earned program credits may be forfeited through the disciplinary process in the same manner as that for any other earned good time credits.

(g) Criteria to determine if an inmate's performance and conduct warrant the awarding of some or all of the available program credits shall be established by the secretary through the issuance of an internal management policy and procedure. (Authorized by and implementing K.S.A. 2011 Supp. 21-6821, as amended by L. 2012, Ch. 150, §37; effective Aug. 8, 2008; amended Feb. 1, 2013.)

44-6-134. Jail credit time. (a) Jail credit shall not be used in the sentence computation unless an authorization appears in the journal entry of judgment form. If only the number of days of jail credit earned is contained in the journal entry, the records officer shall compute the sentence begins date by subtracting jail credit from the date of sentencing. The amount of jail credit shall not adjust the sentence begins date so that it falls before the date of commission of the offense.

(b) Jail credit shall be awarded for time spent in custody by an offender pending disposition of charges on the earlier sentence if consecutive sentences are imposed on different dates. The credits on the earlier sentence shall be computed so that the credits do not overlap into the latest imposed sentence. The credits for time spent previously in custody pending disposition of charges shall be recorded as jail credit, but the credit shall not exceed an amount equal to the previous minimum sentence less the maximum number of good time credits that could have been earned on the minimum sentence. The remainder of credits shall be recorded as sentence maximum credits to apply to the maximum date. If prison service credit was included as jail credit by the court, the credit shall be shown as jail credit.

(c) Jail credit shall be awarded for time spent in custody by an offender pending disposition of charges on an earlier sentence if consecutive

guidelines sentences are imposed on different dates. The credits on an earlier sentence shall be computed so that the credits do not overlap into any sentence imposed after the earlier sentence was imposed.

(d) Jail credit shall be awarded for time spent in custody by an offender pending disposition of charges if consecutive guidelines sentences are imposed on the same date. However, the credits shall be computed so that they do not overlap from one sentence into any other sentence. (Authorized by K.S.A. 2011 Supp. 75-5251; implementing K.S.A. 2011 Supp. 21-6606, as amended by L. 2012, Ch. 16, §4, K.S.A. 2011 Supp. 21-6615, K.S.A. 2011 Supp. 75-5251; effective, T-84-32, Nov. 23, 1983; effective May 1, 1984; amended Nov. 12, 1990; amended Sept. 30, 1991; amended Sept. 6, 2002; amended Feb. 1, 2013.)

44-6-135. Prison service credit. (a) Prison service credit shall be computed and applied by department of corrections' personnel.

(b) To compute prison service credit for court releases, the effective date of the sentence shall be subtracted from the date of the final disposition of the court by release on probation, appeal bond, or vacating of the sentence. Presentence evaluation time spent at the Topeka correctional facility or any other facility designated by the secretary of corrections shall not be considered as prison service credit, but shall be considered jail credit. If prison service credit was included as jail credit by the court, the credit shall be shown as jail credit. After admission to custody of the secretary of corrections, all time spent incarcerated during release to the custody of a law enforcement agency shall be reflected as prison service credit, unless the time spent incarcerated during release to the custody of a law enforcement agency is included as jail credit by the court.

(c) To compute prison service credit for an aggregate sentence, the sentence begins date of the earlier, controlling minimum sentence date shall be subtracted from the release date and applied as follows:

(1) The actual time incarcerated in the custody of the secretary of corrections or release to custody of a law enforcement agency, not exceeding an amount equal to the previous minimum sentence less the maximum amount of good time credit that could have been earned under the law in effect at the time, shall be the prison service credit available.

(2) The prison service credit for a mandatory minimum sentence imposed before July 1, 1982 shall be restricted to a total credit equal to the actual time served before July 1, 1982, and the remaining minimum time to serve less all good time credits that could have been earned after July 1, 1982.

(3) The prison service credit for a life sentence shall not exceed 15 years or the aggregated 15 years. The remainder of the credit shall be credited as maximum sentence credit.

(4) Accelerated parole eligibility dates under K.S.A. 1988 Supp. 22-3725 shall be credited through May 19, 1988 if the accelerated date was before the effective parole eligibility date under that statute.

(5) Accelerated parole eligibility dates under K.S.A. 1989 Supp. 22-3725 shall be credited through August 1, 1989 if the accelerated parole eligibility date was before the effective date of that statute.

(6) Parole eligibilities computed on or after July 1, 1974 and before January 1, 1979, which were established at the discretion of the secretary of corrections upon attainment of the lowest minimum custody status, shall be credited with the actual time served from the sentence begins date of the earlier controlling minimum sentence. This credit shall not exceed the maximum amount of good time credits provided by K.A.R. 44-6-116 that could have been earned on the minimum sentence.

(7) For aggregated guidelines sentences, the actual time incarcerated in the custody of the secretary of corrections or release to custody of a law enforcement agency, not exceeding an amount equal to the previous prison term less the minimum amount of good time credit that could have been earned under the law in effect at the time, shall be the prison service credit available.

(d) Computations of prison service credit shall be subject to the provisions of K.A.R. 44-6-134, 44-6-136, 44-6-137, and 44-6-138. (Authorized by K.S.A. 2011 Supp. 75-5210, K.S.A. 2011 Supp. 75-5251; implementing K.S.A. 2011 Supp. 21-6606, as amended by L. 2012, Ch. 16, §4, K.S.A. 2011 Supp. 22-3427, as amended by L. 2012, Ch. 28, §1, K.S.A. 2011 Supp. 22-3717, as amended by L. 2012, Ch. 150, §43, K.S.A. 2011 Supp. 75-5210, K.S.A. 2011 Supp. 75-5251; effective, T-84-32, Nov. 23, 1983; amended May 1, 1984; amended Nov. 12, 1990; amended Sept. 30, 1991; amended April 6, 1992; amended Feb. 1, 2013.)

44-6-135a. Maximum sentence credit.

Maximum sentence credit shall be the remaining amount of time incarcerated that exceeded the prison service credit or jail credit on an earlier sentence. For consecutive sentences aggregated to previously imposed consecutive sentences, the latest sentence shall be credited with the remaining amount of time incarcerated for the latest release that exceeded the prison service credit plus all the prison service credit earned on the earlier consecutive sentences. The maximum sentence date shall be adjusted by that amount. (Authorized by K.S.A. 2011 Supp. 75-5210, K.S.A. 2011 Supp. 75-5251; implementing K.S.A. 2011 Supp. 22-3427, as amended by L. 2012, Ch. 28, §1, K.S.A. 2011 Supp. 21-6606, as amended by L. 2012, Ch. 16, §4, K.S.A. 2011 Supp. 22-3717, as amended by L. 2012, Ch. 150, §43, K.S.A. 2011 Supp. 75-5210, K.S.A. 2011 Supp. 75-5251; effective Nov. 12, 1990; amended Feb. 1, 2013.)

44-6-138. Sentence begins date. (a) Jail credit. Each sentence begins date shall reflect all jail credit.

(b) Reimposed sentence, governed by date of reimposition; adjustment alternatives. The sentence begins date for reimposed sentences, including those reimposed for technical probation violators or persons returned by appellate mandates, shall be the date the court reimposed the sentence unless jail credit or prison service credit is due. If the court instructs the inmate to surrender to correctional authorities after the sentence imposition date, that surrender date shall become the sentence begins date. This date may be further adjusted by jail credit.

(c) Vacated sentences in aggregated sentences; recomputation of sentence begins date. If one or more sentences in an aggregated sentence are vacated, the sentence begins date shall be the date of the last sentence imposed that is not vacated. Credit shall be given on the remaining sentence or sentences in an amount equal to the time served on all sentences included in the recomputed aggregate sentence, but no credit shall be allowed for time served that is attributable solely to the vacated sentence or sentences.

(d) Multiple concurrent sentences governed by court order. The court orders in which multiple, nonconsecutive sentences were imposed shall serve as the reference to ascertain the sentence begins date for use in computing the controlling minimum, maximum, and conditional release dates, or

guidelines release date, as applicable, subject to the provisions of K.A.R. 44-6-137, K.A.R. 44-6-138, K.A.R. 44-6-140, and K.A.R. 44-6-141.

(e) Multiple consecutive sentences. When multiple sentences are imposed on the same date with the stipulation that one is to be consecutive to another, that date shall be used for the sentence begins date unless adjustments are necessary to allow for jail credit. Jail credits allowed shall reflect the largest amount given on any sentence.

(f) Consecutive before 1979 or after 1982. If a sentence for a crime committed before January 1, 1979 or after July 1, 1982 is to be consecutive with any previously imposed sentence, all dates shall be computed from the earliest sentence imposition date, allowing for jail credit and prison service credit earned on that earliest sentence. If an inmate has been on probation, parole, or conditional release, as a result of a previously imposed sentence, parole eligibility, conditional release, and maximum dates shall also be adjusted to give credit for time served on probation, parole, or conditional release, subject to K.S.A. 2011 Supp. 21-6606 and amendments thereto.

(g) Consecutive sentences between 1979 and 1982. If a sentence for a crime committed on or after January 1, 1979 and through June 30, 1982 is to be consecutive with any previously imposed sentence, the sentence begins date shall be determined by the imposition date of the latest sentence. The sentence begins date shall then be moved to an earlier date by an amount of time equal to jail credit and prison service credit earned on the earlier sentence. Credit shall also be allowed for the time on the minimum term of the earlier sentence, including any time on probation or parole, up to a maximum reduction equal to the minimum term of the earlier sentence.

(h)(1) If a sentence for a crime committed on or after July 1, 1983 is to be consecutive with some previously imposed sentence, the aggregated minimums and maximums shall be computed, and the aggregate sentence shall have the same sentence begins date as the newly imposed sentence. Credit shall be given on the aggregate in an amount equal to the time served on the earlier sentences included in the aggregate. However, for the purpose of computing the sentence begins date, the parole eligibility date, and the conditional release date, this credit shall not exceed the amount of time equal to the period from the sentence begins date, for the previous sentence, to the earliest possible parole eligibility date as if all good

time credits had been earned on that previous sentence. An inmate serving a life sentence shall be allowed credit for the total time served, not to exceed 15 years. An inmate serving a mandatory minimum sentence shall be allowed credit for all time served on the sentence before July 1, 1982 plus the remaining minimum time to serve, less all good time credits allowable. When computing the maximum date, the inmate shall receive credit for all time served on the previous sentence.

(2) If the aggregate includes a sentence on which the inmate was serving probation, parole, or conditional release, no credit for time spent on that probation, parole, or conditional release shall be given in computations for the aggregate sentence.

(i) When the aggregate is being computed, the inmate shall be given credit for time spent on probation or parole if both of the following conditions are met:

(1) An inmate is returned to prison as a parole violator with multiple new charges that have identical sentences running concurrent with each other but consecutive to the previous sentence on which parole was being served.

(2) The date of offense on one or more new charges is before July 1, 1983, and another is after July 1, 1983.

(j) If a sentencing guidelines sentence is run consecutively to a sentence for a crime committed before July 1, 1993, regardless of whether the prior sentence is converted to a sentencing guidelines sentence, the sentence begins date shall be the sentence begins date of the newly imposed sentencing guidelines sentence. Credit shall be given on the aggregate in an amount equal to the time served on the earlier sentences included in the aggregate.

(k) If a sentencing guidelines sentence is run consecutively to a prior sentencing guidelines sentence, the sentence begins date shall be the sentence begins date of the newly imposed sentencing guidelines sentence. Credit shall be given on the aggregate in an amount equal to the time served on the earlier sentences included in the aggregate. (Authorized by K.S.A. 2011 Supp. 75-5251; implementing K.S.A. 2011 Supp. 21-6606, as amended by L. 2012, Ch. 16, §4, K.S.A. 2011 Supp. 22-3717, as amended by L. 2012, Ch. 150, §43; effective, T-84-32, Nov. 23, 1983; effective May 1, 1984; amended, T-85-37, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1988; amended Sept. 6, 2002; amended Feb. 1, 2013.)

Article 9.—PAROLE, POSTRELEASE SUPERVISION, AND HOUSE ARREST

44-9-101. Definitions. (a) “Board” means the prisoner review board established by L. 2011, ch. 130.

(b) “Conditional release,” for offenders serving indeterminate sentences for offenses committed before July 1, 1993, means release subject to supervision under terms and conditions determined by the board after serving the maximum sentence less all projected good time credits, subject to adjustment for any forfeiture of good time credits.

(c) “Correctional facility” means any of the facilities identified in K.S.A. 75-5202, and amendments thereto.

(d) “Docket” means the board’s prearranged schedule of hearings.

(e) “Executive clemency” means the power of the governor to commute or pardon a criminal sentence.

(f) “Commute a criminal sentence” means to reduce the penalty imposed on a convicted person.

(g) “Pardon” means to forgive completely the punishment of a person convicted of a crime.

(h) “Good time credits” means the statutorily authorized reduction in time on an inmate’s sentence as specified by K.S.A. 21-6821 and K.S.A. 22-3717, and amendments thereto, and K.A.R. 44-6-101, K.A.R. 44-6-115a, K.A.R. 44-6-115b, K.A.R. 44-6-115c, K.A.R. 44-6-125, K.A.R. 44-6-126, and K.A.R. 44-6-145.

(i) “House arrest” means the confinement of an inmate or offender under postincarceration supervision in the residence of the inmate or offender pursuant to the release provisions of L. 2010, ch. 136, §249, as amended by L. 2011, ch. 100, §19, and amendments thereto, or as a sanction of an offender under postincarceration supervision for violation of a condition of supervision, subject to conditions imposed by the secretary or designee or by the board, or as otherwise permitted by law.

(j) “In absentia” means a status in which an inmate is committed to the custody of the secretary and is serving the sentence out of state or in another jurisdiction.

(k) “Parole” means, for crimes committed before July 1, 1993 and off-grid offenses designated in K.S.A. 22-3717 and amendments thereto, the release of an inmate to the community by the board before the expiration of the inmate’s sentence, subject to conditions imposed by the board and administered under the secretary’s supervision.

(l) “Postincarceration supervision” means the supervision of any offender released to the community after service of the requisite term of incarceration. This term shall include parole, conditional release, and postrelease supervision.

(m) “Postrelease supervision” means, for crimes committed on or after July 1, 1993, the release of an inmate, subject to conditions imposed by the board, to the secretary’s supervision and to the community after the inmate has served a period of imprisonment or after the inmate has served equivalent time in a facility where credit for time served is awarded as specified by the court.

(n) “Public comment session” means the board’s regular, scheduled meeting with interested parties in the community for the purpose of receiving comments concerning the publicly announced listing of persons to be considered for parole by the board.

(o) “Secretary” means the secretary of corrections.

(p) “Unit team” means the group of correctional facility staff that is responsible for monitoring the overall management, supervision, custody, and rehabilitation plan of an inmate, as initiated by the classification committee, and that recommends custody changes and prepares progress summaries.

(q) “Warden” means the person in charge of the operation and supervision of a correctional facility. (Authorized by K.S.A. 2011 Supp. 21-6609, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp. 22-3701, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp. 22-3717, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp. 75-5251; implementing K.S.A. 21-6609, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp. 22-3701, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp. 22-3717, as amended by L. 2011, ch. 130, §§ 2 and 3; effective May 1, 1980; amended May 1, 1985; amended May 1, 1987; amended March 23, 2012.)

44-9-105. Preliminary hearing for alleged violators. Alleged parole violators, conditional release violators, postrelease supervision violators, and house arrest condition violators shall be afforded a hearing to determine if there has been any violation of any conditions of supervision, unless the releasee knowingly and voluntarily waives the hearing. The requirements for the hearing shall be as follows: (a) The releasee shall be informed of the charges in writing with

sufficient particularity and sufficient time in advance of the hearing to prepare a defense. The hearing shall be held within three to 14 days after service of the notice of charges, subject to authorized continuances. If evidence of any new violation of conditions of supervision is discovered after service of the original notice of charges upon the offender but before the hearing and a determination is then made that the releasee should be so charged, notice of any additional charge of violation shall be given to the releasee in the same manner as that for the original statement of charges. The hearing shall be continued for an appropriate interval if the releasee receives notice of any additional charge of violation less than three days before the original hearing date, unless the releasee waives advance service of the notice of amended charges.

(b) The purpose of the hearing shall be to determine whether probable cause exists to believe that a condition of supervision has been violated. The hearing shall be held before a party not involved in the case. Pending the hearing, the releasee shall remain incarcerated.

(c) If evidence of any new violation of conditions of supervision not yet charged is produced or placed on the record during the hearing, other than a new violation based solely upon a voluntary admission by the offender during the hearing, and it is determined by the hearing officer that the new charge should be added to the statement of charges for consideration, then a recess shall be declared by the hearing officer and a statement of any additional charge of violation of conditions of supervision shall be served upon the releasee in the same manner as that for the original statement of charges. The recess shall be for an appropriate interval of at least three days to permit the releasee to prepare a defense to any such additional charge, unless the releasee waives the three-day period and agrees to proceed with a hearing of the additional charge or charges within a shorter time period. Pending resumption of the hearing, the releasee shall remain incarcerated.

(d) The hearing shall be held at or reasonably near to the site of the arrest or commission of the alleged violation. The hearing may be held at a correctional facility.

(e) The releasee shall be entitled to call witnesses to appear on the releasee's behalf at the hearing.

(1) The hearing officer may restrict the witnesses to those who can testify to the facts relevant to

the occurrence of the alleged violation. Character reference witnesses may be excluded.

(2) Witnesses may testify by telephone if the releasee is able to hear the testimony of the witness contemporaneously with the hearing officer.

(f) The releasee shall have the right to be made aware of adverse evidence. The releasee shall be allowed to cross-examine adverse witnesses unless the hearing officer decides that the witness could be physically harmed if the witness's identity is revealed.

(g) The hearing officer shall issue a written decision indicating whether or not there is probable cause to hold the releasee on each charge of violation of a condition of release and also indicating the evidence relied upon for each finding of probable cause. If a finding of probable cause is made on the basis of a voluntary admission by the releasee of any new violation during the hearing, then the hearing officer shall cause an amended statement of charges of condition violations reflecting the new condition violation or violations to be added to the record. The hearing officer shall then refer the case record to the board for a final revocation hearing, but a charge of violation of a condition of supervision shall not be referred to the board unless a finding of probable cause for that violation is included in the case record. The releasee shall be given a written statement of the basis for the decision and, if applicable, an amended statement of charges of condition violations.

(h) If the releasee had not previously been returned to a correctional facility, upon finding of probable cause, the releasee shall be returned to a correctional facility designated by the secretary of corrections pending a final revocation hearing by the board. (Authorized by K.S.A. 2011 Supp. 21-6609, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp. 75-5210, K.S.A. 2011 Supp. 75-5217; implementing K.S.A. 2011 Supp. 22-3717, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 75-5216, K.S.A. 2011 Supp. 75-5217; effective May 1, 1980; amended July 11, 1994; amended March 23, 2012.)

44-9-107. House arrest program. All inmates and offenders under postincarceration supervision placed in the house arrest program shall be subject to the sanctions and conditions that are prescribed by the secretary in published internal management policies and procedures for house arrestees, ordered by the board, or otherwise permitted by law. (Authorized by and implementing

K.S.A. 2011 Supp. 21-6609, as amended by L. 2011, ch. 130, §§ 2 and 3, and K.S.A. 2011 Supp. 22-3717, as amended by L. 2011, ch. 130, §§ 2 and 3; effective March 23, 2012.)

44-9-501. General provisions. Each offender who is returned on a violator warrant issued by the secretary shall be brought before the board as soon as practical for a final revocation hearing of postincarceration supervision or house arrest status, unless the offender is eligible for and chooses to waive the right to the hearing as provided in K.A.R. 44-9-504. At any time before a final revocation hearing is held under K.A.R. 44-9-502, the warrant may be withdrawn at the request of the secretary, and the offender may be rereleased on parole, conditional release, postrelease supervision, or house arrest. At that time, new conditions may be established, or the conditions of parole, conditional release, postrelease supervision, or house arrest may be modified by the board. (Authorized by and implementing K.S.A. 2011 Supp. 21-6609, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp. 22-3717, as amended by L. 2011, ch. 130, §§ 2 and 3, and K.S.A. 2011 Supp. 75-5217; effective March 23, 2012.)

44-9-502. Final revocation hearings. (a) After an offender is returned to a correctional facility under K.A.R. 44-9-501, the offender may request a hearing before the final decision on revocation by the board. Any offender on postrelease supervision or assigned to house arrest may waive the final revocation hearing as provided in K.A.R. 44-9-504. The final revocation hearing shall be held without unnecessary delay and shall be conducted by the board or any member of the board. After the board considers all pertinent evidence, an appropriate order shall be entered by the board. If the violation is established to the satisfaction of the board, the parole, conditional release, postrelease supervision, or assignment to house arrest may be reinstated, modified, or revoked by the board.

(b) Before the final revocation hearing, the following information shall be provided to the offender by the board:

(1) Written notice of the alleged violations of the conditions of release; and

(2) the evidence against the offender. If the board finds that there are additional violations other than those contained in the written notice, the hearing shall be continued so that a written

notice of the additional violations and a statement of the evidence against the offender can be prepared.

(c) Each offender shall have the right to confront and cross-examine adverse witnesses, unless the board finds good cause for not allowing confrontation. If the board does not allow the offender to confront a witness, the evidence relied upon and the reasons for this determination shall be specified by the board. If the offender had the opportunity to cross-examine a witness at the probable cause hearing provided in K.A.R. 44-9-105, the record may be relied upon by the board, in lieu of calling that witness.

(d) Each offender shall have an opportunity to be heard in person and to present documentary evidence and witnesses who can provide information relevant to the allegations of the violation of the conditions of release or house arrest. The attendance of witnesses favorable to the offender shall be the responsibility of the offender and shall be at the offender's expense. The hearing may be continued to allow for the attendance of witnesses.

(e) All relevant evidence, including letters and affidavits, shall be received by the board. If the violation of the conditions of release or house arrest results from a conviction for a new felony or misdemeanor, the only question considered by the board shall be whether or not the new conviction warrants revocation.

(f) Each offender shall be entitled to have legal counsel present at the hearing, at the offender's expense.

(1) Legal counsel may be appointed by the board upon the request of the inmate or on the board's own motion. The appointment of legal counsel shall be based upon either of the following claims by the offender, which shall be timely and on its face plausible:

(A) A claim that the offender has not committed the alleged violation of the conditions of release or house arrest; or

(B) a claim that there are substantial reasons that justify or mitigate the violation and make revocation inappropriate.

(2) The board's decision regarding the appointment of counsel shall take into account whether or not the offender is capable of speaking effectively for that individual and whether or not the circumstances are complex or otherwise difficult to develop or present.

(3) In all cases in which a request for appointed counsel at a preliminary hearing or final revoca-

tion hearing is denied, the grounds for denial shall be stated in writing.

(g) If the offender's release or assignment to house arrest is revoked, a written statement as to the evidence relied upon and reasons for revoking the release or assignment to house arrest shall be given to the offender by the board. (Authorized by and implementing K.S.A. 2011 Supp. 21-6609, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp. 22-3717, as amended by L. 2011, ch. 130, §§ 2 and 3, and K.S.A. 2011 Supp. 75-5217; effective March 23, 2012.)

44-9-503. Sanctions; computation of time. (a)(1) Any offender whose parole has been revoked may be required by the board to serve all or any part of the remaining time on the sentence up to the original conditional release date, plus all good time forfeited by the board.

(2) Any offender whose conditional release has been revoked may be required by the board to serve all or any part of the remaining time on the sentence.

(3) Each offender whose postrelease supervision has been revoked for reasons other than conviction of a new crime shall serve a six-month period of confinement beginning on the date of the final revocation hearing or the effective date of the waiver of the final revocation hearing under K.A.R. 44-9-504. The six-month period of confinement may be reduced by not more than three months based on the offender's conduct, work, and program participation during this incarceration period, in accordance with regulations adopted by the secretary.

(4) Each parole violator with a new conviction and sentence shall achieve parole eligibility for the new sentence or sentences as determined by K.S.A. 22-3717 and K.S.A. 21-6606, and amendments thereto, and in accordance with regulations adopted by the secretary.

(5) Each postrelease violator whose postrelease supervision has been revoked due to conviction of a new crime shall serve one of the following periods of time:

(A) If the new crime is a felony, a period of confinement equal to the entire remaining balance of postrelease supervision; or

(B) If the new crime is a misdemeanor, a period of confinement to be determined by the board, which shall not exceed the entire remaining balance of the period of postrelease supervision.

(6) Each inmate whose house arrest has been

revoked shall serve the remaining balance of that inmate's underlying prison sentence incarcerated.

(b) Good time credits earned while on parole before the parole revocation date may be forfeited upon order of the board. Upon order of the board, the good time credits earned while on postrelease supervision may likewise be forfeited, before the postrelease supervision revocation date or the effective date of the waiver of the final revocation hearing.

(c) All of the available good time credits shall be withheld for the review period in which the revocation for house arrest occurs.

(d) Good time and program credits previously earned on the prison portion of the sentence of house arrestees may be forfeited by the disciplinary administrator in accordance with K.A.R. 44-6-115a(i) and K.A.R. 44-6-125(f).

(e) If the secretary has issued a warrant for the return of a released offender and it is determined that the warrant cannot be served, the released offender shall be deemed to be a fugitive from justice. If it appears that this fugitive has violated any of the provisions of release, the time from the violation of the provision to the date of arrest, as determined by the department of corrections, shall not be counted as time served under the sentence unless approved by the board. (Authorized by and implementing K.S.A. 2011 Supp. 21-6609, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp. 22-3717, as amended by L. 2011, ch. 130, §§ 2 and 3, and K.S.A. 2011 Supp. 75-5217; effective March 23, 2012.)

44-9-504. Waiver of final revocation hearing. (a)(1) For purposes of this regulation, "misdemeanor" shall mean a class A, B, or C misdemeanor or a criminal charge of an equivalent class under a city ordinance.

(2) For purposes of this regulation, "detainer" shall mean a warrant, electrical or electronic transmission, or written correspondence from a law enforcement or correctional agency citing a misdemeanor or felony charge or conviction in that jurisdiction that results from criminal activity that occurred during the current period of parole or postrelease supervision.

(b) Each supervised offender who is serving only a determinate sentence and who meets all of the following conditions shall be eligible to waive the final revocation hearing before the board:

(1) The offender is not charged with a condition violation alleging conviction of a new crime.

(2) The offender is not the subject of any pending criminal misdemeanor charge, felony charge, or detainer for a misdemeanor or felony. If an offender is arrested on a new felony charge and formal criminal charges are not filed by the county or district attorney within 10 days of the offender's arrest, the offender shall be eligible to waive the final revocation hearing.

(3) The offender is detained in a Kansas correctional facility, jail, or detention center. A supervised offender serving an indeterminate sentence, or a sentence with a lifetime period of postrelease supervision, shall not be permitted to waive the final revocation hearing before the board.

(c) Any eligible offender may waive the final revocation hearing when the statement of condition violations is served, if the eligible offender simultaneously waives the preliminary hearing on those violations as provided by K.A.R. 44-9-105. If the offender elects not to waive the preliminary hearing, the revocation proceeding shall advance to a preliminary hearing. If, after that hearing, probable cause is established in regard to at least one of the alleged condition violations, the offender shall again be afforded the opportunity to waive the final revocation hearing before the board.

(d) If, before the final revocation hearing, the board receives notice that the criminal charges or a pending detainer has been dismissed, the offender shall again be given the opportunity to waive the final revocation hearing.

(e) At the time of presentation of the written waiver form by parole services staff, each offender shall be orally advised of the following:

(1) Execution of the waiver form signifies that the offender admits to guilt on all condition violations charged, unless the hearing officer specifically finds that a condition violation is not supported by probable cause.

(2) The offender waives the right to counsel and the right to present witnesses or the offender's own testimony to the board because no hearing will be held if the offender executes the waiver form.

(3) Upon receipt of the waiver form, the offender's postrelease supervision may be continued, modified, or revoked by the board, or other orders may be entered by the board as the board sees fit.

(f) Each offender shall make an election by indicating in writing upon the waiver form whether or not the offender desires to accept the offer of waiver. The waiver shall be executed in the presence of parole services staff, or the offender shall

acknowledge to parole services staff the authenticity of the offender's signature upon the form, which shall then be executed by parole services staff in the capacity of witness. If the offender refuses to accept the waiver form or to execute it, the waiver shall be deemed rejected, and the revocation proceeding shall advance to the final revocation hearing before the board.

(g) Upon execution of the waiver form, the penalty period of incarceration prescribed by K.S.A. 75-5217(b), and amendments thereto, shall begin, unless the board continues the offender's postrelease supervision. If a waiver is executed under circumstances described in subsection (d) of this regulation, the penalty period of incarceration shall begin on the date the criminal charge or pending detainer was dismissed. If an offender is detained on the basis of a felony arrest for which no formal charges are filed within a 10-day time frame, the penalty period of incarceration shall begin on the date the waiver is signed by the offender or an earlier date determined by the board, which shall not precede the date on which that felony arrest warrant was issued.

(h) Each offender who is serving only a determinate sentence and who either was supervised in a foreign jurisdiction under terms of the interstate compact for adult offender supervision, K.S.A. 22-4110 and amendments thereto, or was apprehended in another state after absconding from Kansas supervision shall be afforded the opportunity to waive the final revocation hearing as provided in subsection (c). This opportunity shall be afforded upon the offender's return to a Kansas correctional facility. Presentation of the waiver form, the formalities of its execution, and the effect of the waiver shall be governed in all respects by the provisions of subsections (e), (f), and (g).

(i) A signed waiver of a final revocation hearing shall be deemed invalid if it is discovered that the offender has been convicted of a new misdemeanor or felony that occurred during a period of postrelease supervision on the current active sentence. Under these circumstances, the offender shall be docketed for a hearing before the board.

(j)(1) An offender shall not rescind a written waiver of final revocation hearing that is before the board unless the offender petitions the board, in writing and in the form directed by the board, and proves any of the following to the satisfaction of the board:

(A) The offender was under duress at the time of execution of the waiver form.

(B) The offender's execution of the waiver form was procured through fraud.

(C) The offender was not advised that execution of the waiver form constitutes admission of guilt of the charged condition violation or violations.

(D) The offender was not advised of the rights that the offender would forego by execution of the waiver form.

The petition for rescission shall be submitted to the board and postmarked on or before the date no later than 14 calendar days after the date of the allegedly defective waiver.

(2) If the board grants the offender's petition, the charge of any condition violation shall be rescheduled for a preliminary hearing or a final revocation hearing, as applicable. If postrelease supervision is revoked by the board at the final hearing and the offender is ordered to serve an incarceration penalty period, this penalty period shall begin on the date of the revocation.

(k) Each inmate assigned to house arrest shall be eligible to waive the final revocation hearing before the board as provided in subsections (c), (e), and (f).

(1) The inmate shall serve the remaining balance of the prison portion of the sentence incarcerated.

(2) The inmate may also be issued a disciplinary report based upon the facts underlying the revocation. (Authorized by and implementing K.S.A. 2011 Supp. 21-6609, as amended by L. 2011, ch. 130, §§ 2 and 3, K.S.A. 2011 Supp. 22-3717, as amended by L. 2011, ch. 130, §§ 2 and 3, and K.S.A. 2011 Supp. 75-5217; effective March 23, 2012.)

Article 11.—COMMUNITY CORRECTIONS

44-11-111. Definitions. (a) "Active cases" means those cases that have been supervised in a manner that is consistent with contact standards adopted by the secretary.

(b) "Community corrections agency" means the structure that exists or is proposed to exist within a planning unit and that delivers the community corrections services outlined in a comprehensive plan.

(c) "Community corrections grant funds" means funds made available to a governing authority by the department of corrections, pursuant to the Kansas community corrections act, K.S.A. 75-5290 et seq. and amendments thereto.

(d) "Comprehensive plan" means the working document developed by a corrections advisory

board at a frequency prescribed by the secretary, setting forth the objectives and services planned for a community corrections agency.

(e) "Corrections advisory board" means a board appointed by a governing authority to develop and oversee a comprehensive plan.

(f) "Governing authority" means any county or group of cooperating counties that has established a corrections advisory board for the purpose of establishing a community corrections agency.

(g) "Grant year" means the year covered in a community corrections agency's comprehensive plan and shall be deemed to begin at the start of a state fiscal year.

(h) "Line items" means specific components comprising a major budget category.

(i) "Offender fees" means charges for drug and alcohol testing, electronic monitoring services, supervision services, housing in a residential center, and other services and assistance provided by community corrections agencies.

(j) "Program" means an adult intensive supervision program (AISP) or adult residential program (ARES) operated by a community corrections agency.

(k) "Reimbursements" means income generated by community corrections agencies and fees assessed and collected by community corrections agencies in prior fiscal years or in the current fiscal year, for expenses incurred.

(l) "Secretary" means the secretary of corrections.

(m) "Service" means a community corrections activity directed by a public or private agency to deliver interventions to offenders and assistance to victims, offenders, or the community.

(n) "Standards" means the minimum requirements of the secretary for the operation and management of community corrections agencies.

(o) "Unexpended funds" means state funds remaining in a program's accounts at the close of a fiscal year that are not obligated for expenses incurred during that fiscal year or that have not been approved for expenditure by the secretary beyond the fiscal year. (Authorized by K.S.A. 75-5294, 75-5296; implementing K.S.A. 2010 Supp. 75-5291, as amended by L. 2011, Ch. 30, Sec. 280, K.S.A. 2010 Supp. 75-5292, K.S.A. 75-5295, K.S.A. 75-5296, K.S.A. 2010 Supp. 75-5297, K.S.A. 75-52,102, K.S.A. 75-52,103, K.S.A. 2010 Supp. 75-52,105, K.S.A. 2010 Supp. 75-52,110; effective May 1, 1981; amended May 1, 1984; amended Feb. 6, 1989; amended March 5, 1990;

amended July 23, 1990; amended March 29, 2002; amended June 1, 2007; amended Feb. 24, 2012.)

44-11-113. Comprehensive plan; comprehensive plan review. (a) The comprehensive plan shall be developed by the community corrections agency in collaboration with the corrections advisory board. The comprehensive plan shall minimally include the following:

- (1) An agency profile;
- (2) signatory approval of the community corrections agency's director, the chairperson of the corrections advisory board, and the governing authority;
- (3) a list of the members of the advisory board, with descriptors that demonstrate compliance with K.S.A. 75-5297, and amendments thereto;
- (4) the name, mailing address, and phone number of the chairperson of the governing authority and, if any, the chairperson's fax number and email address;
- (5) an agency summary of programmatic changes and significant events;
- (6) an organization chart;
- (7) personnel data;
- (8) new position data;
- (9) a description of collaboration that occurred or will occur to identify and address the community's correctional needs;
- (10) a program description, including goals and objectives to be achieved, data elements to be collected, and services to be provided;
- (11) a new service description;
- (12) an explanation of the relationship among the governing authority, the corrections advisory board, the director of the community corrections agency, and the program or programs described in the comprehensive plan;
- (13) a process for the advisory board to monitor the progress of the program or programs described in the plan;
- (14) a timeline for implementation of the plan; and
- (15) any other relevant information requested by the secretary in the comprehensive plan form.

(b) A summary budget, addressing awarded community corrections grant funds, and a detailed narrative describing each line item shall also be submitted annually as prescribed by the secretary.

(c) Agency outcomes shall be submitted on or before May 1 of each year in a format prescribed by the secretary.

(d) Each county desiring to establish a community corrections agency shall issue a resolution indicating this intent and include a copy of the resolution in its initial comprehensive plan. A county desiring to enter into an interlocal agreement with another county for the provision of community corrections services, as prescribed in K.S.A. 12-2901 through K.S.A. 12-2907 and amendments thereto, shall include an interlocal agreement, approved by the attorney general, in its initial comprehensive plan.

(e) A program review committee shall be appointed by the secretary to review each comprehensive plan. The committee shall make a recommendation to the secretary. The comprehensive plan shall be accepted, rejected, or accepted subject to specified modifications by the secretary. (Authorized by K.S.A. 75-5294, K.S.A. 75-5296, K.S.A. 75-52,102; implementing K.S.A. 2010 Supp. 75-5292, K.S.A. 75-5296, K.S.A. 75-5299, K.S.A. 75-52,102; effective May 1, 1981; amended Feb. 6, 1989; amended May 15, 1989; amended March 5, 1990; amended March 29, 2002; amended June 1, 2007; amended Feb. 24, 2012.)

44-11-119. Local programs. (a) A comprehensive plan may provide for community corrections programs to be administered by public or private agencies. A governing authority may enter into a contractual or other written agreement with a private agency to operate programs identified in the comprehensive plan or to provide specialized services to program participants.

(b) An annual audit of all programs identified in the comprehensive plan shall be conducted as prescribed by the secretary. The audit may consist of a fiscal audit, standard compliance audit, performance audit, data accuracy audit, or any other type of review prescribed by the secretary.

(c) Each community corrections agency shall submit notice of the date, time, and location of each advisory board meeting to the deputy secretary of community and field services at least one working day before the scheduled meeting. Each community corrections agency shall submit a copy of the minutes of each advisory board meeting to the secretary within 30 working days after each meeting. (Authorized by K.S.A. 75-5294, 75-5296; implementing K.S.A. 75-5295, 75-5296, 75-52,103; effective May 1, 1981; amended Feb. 6, 1989; amended March 29, 2002; amended Feb. 24, 2012.)

44-11-121. Fiscal management; required reporting. (a) Each governing authority shall designate one person to be responsible for all fiscal matters related to the community corrections grant funds received. This person shall comply with generally accepted accounting principles governing the management of county funds and shall provide information to the corrections advisory board and the secretary on a quarterly basis unless the secretary determines the existence of circumstances that warrant a change in frequency of reporting.

(b) Each county receiving grant funds shall submit, by either original or electronic copy to the secretary, all portions of its annual financial audit pertaining to community corrections grant funds, including the report's cover letter and any exceptions applicable to community corrections grant funds, in the manner provided by K.S.A. 75-1124, and amendments thereto, within 60 calendar days after receipt by the county.

(c) All reimbursements maintained from current and prior fiscal years, collected, and expended by a community corrections agency shall be included in the fiscal workbook and the quarterly reconciliation budget report and certification documents.

(d) Within 60 calendar days after the end of each state fiscal year, each community corrections agency shall submit, by either original or electronic copy to the secretary, a plan approved by the corrections advisory board and governing authority for the use of the reimbursements.

(e) (1) If a community corrections agency complies with the requirements in subsections (c) and (d), the agency shall retain its reimbursements and use them in accordance with its approved plan.

(2) If a community corrections agency chooses not to comply with the requirements in subsections (c) and (d), all current reimbursements and those carried over from previous years may be deducted by the secretary from the agency's current or future allocations. These deductions shall be placed by the secretary in a special fund designated for community corrections.

(3) Agencies, except those that chose not to comply with the requirements in subsections (c) and (d) during the state fiscal year in question, may apply for these special funds to maintain or enhance current funded services or add new services, or support or enhance agency operations, or any combination of these uses. (Authorized by K.S.A. 75-5294, K.S.A. 75-5296; implementing

K.S.A. 75-5296, K.S.A. 75-52,103, K.S.A. 2010 Supp. 75-52,105 and 75-52,111; effective May 1, 1981; amended Feb. 6, 1989; amended May 15, 1989; amended March 5, 1990; amended March 29, 2002; amended Feb. 24, 2012.)

44-11-123. Changes in the comprehensive plan, budget, and agency outcomes. (a) If a community corrections agency wishes to change or deviate from the comprehensive plan or agency outcomes, the agency may do so if approval of the corrections advisory board or governing authority is first obtained. Documentation of approval shall be reflected in the board meeting minutes.

(b) Quarterly grant or carryover reimbursement budget adjustments totaling \$5,000 or one percent of the current grant year award, whichever is higher, shall require signatory approval of the corrections advisory board and the governing authority. The community corrections agency shall submit, by either original or electronic copy to the secretary, documentation of signatory approval along with a description of and justification for the proposed transfer. (Authorized by K.S.A. 75-5294, 75-5296; implementing K.S.A. 2010 Supp. 75-5292, K.S.A. 75-5296, K.S.A. 75-52,102; effective May 1, 1981; amended Feb. 6, 1989; amended May 15, 1989; amended March 5, 1990; amended July 23, 1990; amended March 29, 2002; amended June 1, 2007; amended Feb. 24, 2012.)

44-11-127. Prohibition of use of community corrections grant funds; maintenance and documentation of funds. (a) A governing authority shall not use community corrections grant funds to replace available public or private funding of existing programs.

(b) A governing authority may request community corrections grant funds to continue an existing program that would otherwise cease due to the exhaustion of public or private funds that had been specifically allocated to the program as startup monies with a predetermined termination date.

(c) A governing authority may request community corrections grant funds to supplement existing public or private funding of an existing program if these community corrections grant funds would enhance services.

(d) Community corrections grant funds for adult services shall be maintained in a separate county general ledger account.

(e) Community corrections grant funds shall not be expended for services, supplies, equipment,

or the payment of rent beyond the grant year in which the services, supplies, equipment, or payments are received or due. Only expenditures incurred within the grant year shall be charged to the community corrections grant.

(f) All community corrections expenditures shall have supporting documentation.

(g) Community corrections grant funds shall not be used to fund depreciation.

(h) Community corrections grant funds shall be expended and obligated for operation and management of programs for adult offenders only. Nothing in this regulation shall prohibit the use of state community corrections grant funds to purchase equipment, supplies, and services shared by programs for adult and juvenile offenders if the use by the adult program is proportionate to the monetary contribution of that program.

(i) Community corrections grant funds shall not be expended and obligated for association memberships for individuals. Community corrections grant funds may be expended and obligated by community corrections agencies for staff uniforms or clothing and for association memberships for the agency if specifically authorized by the agency's policies and procedures. Nothing in this regulation shall prohibit housing, transportation, clothing, and billing assistance to indigent offenders, or the acquisition of necessary safety equipment for staff, including bulletproof vests and latex gloves. (Authorized by K.S.A. 75-5294; implementing K.S.A. 2010 Supp. 75-5291, K.S.A. 75-5296, K.S.A. 75-52,103, K.S.A. 2010 Supp. 75-52,105; effective, E-82-25, Dec. 16, 1981; effective May 1, 1982; amended March 29, 2002; amended Feb. 24, 2012.)

44-11-129. Unexpended funds. (a) Unexpended funds may be transferred by the secretary to another county or counties. Any county may make application to the secretary for the unexpended funds. The county shall provide the secretary with a statement of why the funds are necessary, documentation of need, a budget summary and narrative describing the proposed services, and, if the funds are for a new program, a listing of measurable goals and objectives. The county shall be notified by the secretary of approval or disapproval of the application within 60 calendar days after the application due date.

(b) Any community corrections agency may use approved unexpended funds to maintain or enhance current funded services or to support or

enhance agency operations, or any combination of these uses as specified in the application. (Authorized by K.S.A. 75-5294; implementing K.S.A. 75-52,103; effective Feb. 6, 1989; amended March 5, 1990; amended March 29, 2002; amended Feb. 24, 2012.)

44-11-132. Use of grant funds to contract for services. (a) Grant funds may be used to contract for services or to provide services directly.

(b) Each community corrections agency shall make all contracts between the agency and other entities and individuals available to the secretary for review. (Authorized by K.S.A. 75-5294, 75-5296; implementing K.S.A. 75-5295, 75-5296; effective March 5, 1990; amended March 29, 2002; amended Feb. 24, 2012.)

Article 12.—CONDUCT AND PENALTIES

44-12-211. Telephones or other communication devices. (a) When using any authorized inmate telephone, no inmate shall perform or engage in any of the following:

(1) Use another inmate's personalized identification number (PIN) or permit another inmate to use the inmate's PIN;

(2) be a party to call forwarding;

(3) call any telephone number not listed on the inmate's authorized calling list;

(4) participate in any call involving a party at a phone number other than that originally called, including receiving information relayed by an intermediary, and either relaying or receiving information over any telephone service other than that authorized by the secretary of corrections for inmate usage;

(5) initiate any call to a party on the inmate's authorized calling list and then permit the telephone to be used by another inmate, whether in speaking to the authorized party or to another party;

(6) use the telephone in furtherance of any illegal activity; or

(7) use the telephone to communicate or attempt to communicate with a minor, unless correspondence with the minor is authorized by K.A.R. 44-12-601.

(b) Except as specified in subsection (a), the use or possession of any telephone or any communication device by an inmate without the permission of the warden or warden's designee shall be prohibited.

(c) For purposes of this regulation, "minor" shall mean a person under the age of 18.

(d) Violation of this regulation shall be a class I offense. (Authorized by and implementing K.S.A. 2013 Supp. 75-5210; effective July 13, 2007; amended June 20, 2014.)

44-12-212. Accessing unauthorized computer-based information; unauthorized computer communications. (a) No inmate shall perform any of the following:

(1) Access, or attempt to access, any information, data, images, or other material residing on or stored in any computer or available through any computer network, unless the information, data, images, or other material has been authorized for inmate access by the secretary of corrections and established and maintained by the information technology division of the department of corrections for that purpose;

(2) communicate or attempt to communicate with a minor through any computer or computer network, unless correspondence with the minor is authorized by K.A.R. 44-12-601; or

(3) communicate or attempt to communicate with any person through use of another inmate's authorized electronic mail account.

(b) For purposes of this regulation, "minor" shall mean a person under the age of 18.

(c) Violation of this regulation shall be a class I offense. (Authorized by and implementing K.S.A. 2013 Supp. 75-5210; effective July 13, 2007; amended June 20, 2014.)

44-12-301. Fighting. (a) Fighting or any other activity that constitutes violence or is likely to lead to violence shall be prohibited.

(b) It shall be an affirmative defense, for which the offender shall bear the sole burden of proof, if the offender is engaged in self-defense.

(c) Violation of this regulation shall be a class I offense. (Authorized by and implementing K.S.A. 2015 Supp. 75-5210; effective May 1, 1980; amended April 20, 1992; amended, T-44-8-16-16, Aug. 16, 2016; amended Nov. 4, 2016.)

44-12-601. Mail. (a) Definitions.

(1)(A) "Legal mail" means mail affecting the inmate's right of access to the courts or legal counsel. This term shall be limited to letters between the inmate and any lawyer, a judge, a clerk of a court, or any intern or employee of a lawyer or law firm, legal clinic, or legal services organization, including legal services for prisoners.

(B) "Official mail" means any mail between an inmate and an official of the state or federal govern-

ment who has authority to control, or to obtain or conduct an investigation of, the custody or conditions of confinement of the inmate.

(C) "Privileged mail" means any mail between the inmate and the inmate's physician, psychiatrist, psychologist, or other licensed mental health therapist.

(2)(A) "Censor" means to remove or change any part or all of the correspondence or literature.

(B) "Inspect" means to open, shake out, look through, feel, or otherwise check for contraband without reading or censoring. This term shall include any cursory reading necessary to verify that mail is legal or official in nature as permitted by paragraph (f)(3).

(C) "Read" means to read the contents of correspondence or literature to ascertain the content.

(3) "Minor" means a person under the age of 18.

(4) "Bodily substance" means blood, fecal matter, nasal or sinus mucous or secretions, perspiration, saliva, semen, skin or other tissue, sputum, tears, urine, or vaginal secretions.

(b) General provisions.

(1) Each inmate shall comply with the mail procedures and restrictions established by the order of the warden of the facility. Failure to comply with mail procedures or restrictions, or circumventing or attempting to circumvent mail procedures or restrictions by any means, shall be prohibited. The delivery of mail through an employee, volunteer, teacher, or any other person who is not authorized to perform functions related to the established mail-handling system shall be prohibited.

(2) Contraband. Items identified as contraband shall be dealt with as provided in subsection (d) and then either returned to the sender at the inmate's expense or destroyed, at the inmate's option. Items illegal under Kansas or U.S. federal law shall be seized and held as evidence for other law enforcement officers.

(3) All incoming mail shall identify the inmate recipient by name and inmate identification number.

(4) Violation of mail regulations of the department of corrections, orders of the warden, or the laws of Kansas or the United States may result in additional mail restrictions upon the offender that are sufficient to prevent the continuation or recurrence of the violation.

(5) All funds sent for deposit to an inmate's trust account shall be in the form of an electronic funds transfer sent through an entity under contract with the department of corrections to conduct those transactions. These funds shall be sent

to the centralized banking location or individual work release location designated by the secretary. All other funds sent for deposit to an inmate's trust account, other than governmental checks, warrants, and worker's compensation benefit checks, shall be returned immediately to the sender, and the intended inmate recipient shall be so notified in writing, without need of formal censorship. Except for correspondence qualifying as legal mail in which funds are enclosed in an envelope clearly marked as such, correspondence or other material sent with funds shall not be forwarded and shall be discarded.

(6) Any incoming or outgoing mail other than legal, official, or privileged mail may be inspected or read at any time.

(7) Incoming mail addressed solely to a specific inmate and not otherwise subject to censorship shall be delivered regardless of whether the mail is sent free of charge or at a reduced rate. All incoming mail shall nonetheless bear the sender's name and address on the envelope, or this mail shall not be delivered and shall be immediately destroyed.

(8) Any outgoing first-class letters may be sent to as many people and to whomever the inmate chooses, subject to the restrictions in this regulation.

(9) Outgoing inmate mail shall bear the full conviction name, inmate number, and address of the sender, and the name and address of the intended recipient. No other words, drawings, or messages shall be placed on the outside of the envelope or package by an inmate except words describing the mail as being legal, official, privileged, or intended to aid postal officials in delivery of the item. Outgoing inmate mail shall be stamped by the facility to indicate that it was mailed from a facility operated by the department of corrections and that it has not been censored.

(10) Inmates shall not correspond with any person, either directly or through third parties, who has filed a written objection to the correspondence with the director of victim services in the department of corrections central office. The director of victim services in the department of corrections central office shall notify the warden of the facility where the offender is incarcerated of any written objections to correspondence sent by the offender within three business days of its receipt.

(A) The inmate shall be notified of the objection in writing when it is received, but shall not be required to be informed of the exact contents of the objection.

(B) Orders shall be developed by the warden of each facility to prevent further correspondence from being sent to those who have filed an objection.

(C) This regulation shall not prevent an inmate from writing to the inmate's natural or adoptive child, unless the child was the victim of the crime for which the inmate is incarcerated, the person having legal custody of the child files a written objection with the director of victim services in the department of corrections central office, and the inmate has not obtained a court order permitting this written communication with the child. The director of victim services in the department of corrections shall inform the warden of the facility where the inmate is assigned of any objection from the person having legal custody of the child within three business days of its receipt.

(11)(A) No inmate shall correspond with a minor, either directly or through any third party, unless one of the following conditions is met:

(i) A parent or legal guardian of the minor has filed written authorization for the correspondence between the inmate and the minor with the director of victim services in the department of corrections central office.

(ii) If the minor is the inmate's natural or adoptive child, the correspondence is authorized pursuant to paragraph (b)(10)(C), and the inmate has registered the child by providing the name, date of birth, and address of the natural or adoptive child to the director of victim services.

(B) The director of victim services shall notify the warden of the facility where the inmate is incarcerated of any written authorization for correspondence with a minor who is not the natural or adoptive child of the inmate, as well as the registration information of the inmate's natural or adoptive child.

(12) An inmate shall not mail or attempt to mail any of the following:

(A) Any bodily substance;

(B) a substance represented by the inmate as being a bodily substance; or

(C) a substance that a reasonable person would conclude is a bodily substance.

(c) Legal, official, and privileged mail.

(1) Subject to the provisions of paragraph (f)(3), outgoing privileged, official, or legal mail sent by any inmate shall be opened and read only upon authorization of the warden for good cause shown. However, if any inmate threatens or terrorizes any person through this mail, any subsequent mail,

including official or legal mail, from the inmate to the person threatened or terrorized may, at the request of that person, be read and censored for a time period and to the extent necessary to remedy the abuse.

(2) Incoming mail clearly identified as legal, official, or privileged mail shall be opened only in the inmate's presence. This mail shall be inspected for contraband but shall not be read or censored, unless authorized by the warden based upon a documented previous abuse of the right or other good cause.

(3) All legal mail and official mail shall be indefinitely forwarded to the inmate's last known address. If any mail is returned to a facility as undeliverable when sent to the inmate's last known address, the mail shall be returned to the sender with a notice that the mail was forwarded unsuccessfully and is now returned to the sender for further disposition.

(d) Censorship grounds and procedures.

(1) Incoming or outgoing mail, other than legal, official, or privileged mail, may be censored only when there is reasonable belief in any of the following:

(A) There is a threat to institutional safety, order, or security.

(B) There is a threat to the safety and security of public officials or the general public.

(C) The mail is being used in furtherance of illegal activities.

(D) The mail is correspondence between offenders, including any former inmate regardless of current custodial status, that has not been authorized according to subsection (e). Correspondence between offenders may be inspected or read at any time.

(E) The mail contains sexually explicit material, as defined and proscribed by K.A.R. 44-12-313.

(2) If any communication to or from an inmate is censored, all of the following requirements shall be met:

(A) Each inmate shall be given a written notice of the censorship and the reason for the censorship, without disclosing the censored material.

(B) Each inmate shall be given the name and address of the sender of incoming mail, if known, or the addressee of outgoing mail and the date the item was received in the mail room. Notice of the censorship of correspondence by the facility shall be provided to the sender, if known, by staff in the facility's mail room within three business days of the decision to censor.

(C) The author or addressee of the censored correspondence shall have 15 business days from the date of the notice of censorship to protest that decision.

(D) All protests shall be forwarded to the secretary of corrections or the secretary's designee for final review and disposition.

(E) Each inmate shall have the option of having censored correspondence or other materials in their entirety either mailed out at the expense of the inmate or discarded.

(e) Offender correspondence with other offenders.

Offenders sentenced to the custody of the Kansas department of corrections shall not correspond with any person who is in the custody of or under the supervision of any state, federal, county, community corrections, or municipal law enforcement agency, or with any former inmate regardless of current custodial status, unless either of the following conditions is met:

(1) The proposed correspondents are members of the same immediate family or are parties in the same legal action, or one of the persons is a party and the other person is a witness in the same legal action.

(2) Permission for correspondence is granted due to exceptional circumstances. Verification and approval of offender correspondence shall be conducted pursuant to the internal policies and procedures of the department of corrections.

(f) Writing supplies and postage.

(1) Stationery and stamps shall be available for purchase from the inmate canteen.

(2) Indigent inmates, as defined by the internal management policies and procedures of the department of corrections, shall receive reasonable amounts of free writing paper, envelopes, and postage for first-class domestic mail weighing one ounce or less, not to exceed four letters per month.

(3) All postage for legal and official mail shall be paid by the inmate, unless the inmate is indigent, as defined by the internal management policies and procedures of the department of corrections. The cost of postage for legal or official mail paid by the facility on behalf of an indigent inmate shall be deducted from the inmate's funds, if available. Credit for postage for legal and official mail shall be extended to indigent inmates under the terms and conditions of the internal management policies and procedures of the department of corrections. Outgoing legal or official mail sent with

postage provided on credit shall be subject to inspection and a cursory reading in the presence of the inmate for the purpose of ascertaining that the mail is indeed legal or official mail, and the inmate shall then be permitted to seal the envelope containing the mail.

(4) The facility shall not pay postage for inmate groups or organizations.

(5) The mailing of postage stamps by an offender shall be prohibited.

(g) Publications.

(1) Inmates may receive books, newspapers, and periodicals as permitted by the internal management policies and procedures of the department of corrections. All books, newspapers, and periodicals shall be purchased through account withdrawal requests. Only books, newspapers, and periodicals received directly from a publisher or a vendor shall be accepted. However, an inmate shall be permitted to receive printed material, including newspaper and magazine clippings, if the material is included as part of a first-class letter that does not exceed one ounce in total weight.

(2) The procedures for censorship of mail listed in subsection (d) shall be used for censorship of publications.

(3) No publication that meets either of the following conditions shall be allowed into the facility:

(A) Contains sexually explicit material, as described in K.A.R. 44-12-313, or is otherwise illegal, in whole or in part; or

(B) meets, in whole or in part, the test for censorship of mail in subsection (d).

(4) Inmates shall have the option of having censored publications in their entirety either mailed out of the facility at their own expense or discarded.

(5) Before transferring between facilities, the inmate shall arrange for a change of address for the inmate's mail, including newspapers and periodicals. Mail, with the exception of legal mail or official mail, shall not be forwarded for more than 30 days after the date of transfer.

(h) Regulation violation. Each violation of this regulation shall be a class I offense. (Authorized by K.S.A. 2013 Supp. 75-5210, K.S.A. 2013 Supp. 75-5251; implementing K.S.A. 2013 Supp. 75-5210, K.S.A. 2013 Supp. 75-5251, and K.S.A. 75-5256; effective May 1, 1980; amended May 1, 1981; amended May 1, 1984; amended May 1, 1986; amended May 1, 1988; amended April 20, 1992; amended Jan. 3, 1995; amended April 17, 1998; amended Feb. 15, 2002; amended, T-44-

3-19-04, March 19, 2004; amended July 2, 2004; amended July 13, 2007; amended June 20, 2014.)

Article 15.—GRIEVANCE PROCEDURE FOR INMATES

44-15-204. Special procedures for sexual abuse grievances; sexual harassment grievances and grievances alleging retaliation for filing same; reports of sexual abuse or sexual harassment submitted by third parties. (a)

Definitions. For the purpose of this regulation, each of the following terms shall have the meaning specified in this subsection:

(1) "Sexual abuse of an inmate by another inmate" means any of the following acts if the victim does not consent, is coerced into the act by overt or implied threats of violence, or is unable to consent or refuse:

(A) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(B) contact between the mouth and the penis, vulva, or anus;

(C) penetration of the anal or genital opening of another person, however slight, by a hand, finger, or object; or

(D) any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

(2) "Sexual abuse of an inmate by a staff member, contractor, or volunteer" means any of the following acts, with or without the consent of the inmate:

(A) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(B) contact between the mouth and the penis, vulva, or anus;

(C) contact between the mouth and any body part if the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(D) penetration of the anal or genital opening, however slight, by a hand, finger, or object, that is unrelated to official duties or if the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(E) any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks,

that is unrelated to official duties or if the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(F) any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the acts described in paragraphs (a)(2)(A)-(E);

(G) any display by a staff member, contractor, or volunteer of that individual's uncovered genitalia, buttocks, or breast in the presence of an inmate; or

(H) voyeurism by a staff member, contractor, or volunteer.

(3) "Voyeurism by a staff member, contractor, or volunteer" means an invasion of privacy of an inmate by staff for reasons unrelated to official duties, including peering at an inmate who is using a toilet in the inmate's cell to perform bodily functions; requiring an inmate to expose the inmate's buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

(4) "Sexual harassment" means either of the following:

(A) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate directed to another; or

(B) repeated verbal comments or gestures of a sexual nature to an inmate by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

(b) Submission of grievances concerning sexual abuse.

(1) Each inmate submitting a grievance concerning sexual abuse alleged to have already occurred shall state that inmate's intentions by writing "Sexual Abuse Grievance" clearly on the grievance form.

(2) Inmates shall not be required to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse by a staff member, contractor, or volunteer, or a grievance in which it is alleged that sexual abuse by another inmate or by a staff member, contractor, or volunteer was the result of staff neglect or violation of responsibilities.

(3) Any inmate may submit a grievance to security staff, a unit team member, or administrative personnel in person or by utilizing the inmate internal mail system.

(4) Any inmate who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint. The grievance shall not be referred to a staff member who is the subject of the complaint.

(c) Warden's response.

(1) Upon receipt of each grievance report form alleging sexual abuse, a serial number shall be assigned by the warden or designee, and the date of receipt shall be indicated on the form by the warden or designee.

(2) Each grievance alleging sexual abuse shall be returned to the inmate, with an answer, within 10 working days from the date of receipt.

(3) Each answer shall contain findings of fact, conclusions drawn, the reasons for those conclusions, and the action taken by the warden. Each answer shall inform the inmate that the inmate may appeal by submitting the appropriate form to the secretary of corrections.

(4) In all cases, the original and one copy of the grievance report shall be returned by the warden to the inmate. The copy shall be retained by the inmate for the inmate's files. The original may be used for appeal to the secretary if the inmate desires. The necessary copies shall be provided by the warden.

(5) A second copy shall be retained by the warden.

(6) Each facility shall maintain a file for grievance reports alleging sexual abuse, with each grievance report indexed by inmate name and coded as a sexual abuse complaint. Grievance report forms shall not be placed in the inmate's institution file.

(7) If no response is received from the warden in the time allowed, any grievance may be sent by an inmate to the secretary of corrections with an explanation of the reason for the delay, if known, with a notation that no response from the warden was received.

(d) Appeal to the secretary of corrections.

(1) If the warden's answer is not satisfactory to the inmate, the inmate may appeal to the secretary's office by indicating on the grievance appeal form exactly what the inmate is displeased with and what action the inmate believes the secretary should take.

(2) The inmate shall send the appeal directly and promptly by U.S. mail to the department of corrections' central office in Topeka.

(3) If an appeal of the warden's decision is made to the secretary, the secretary shall have 20

working days from receipt to return the grievance report form to the inmate with an answer. The answer shall include findings of fact, conclusions made, and actions taken.

(4) If a grievance report form is submitted to the secretary without prior action by the warden, the form may be returned to the warden for further action, at the option of the secretary's designee.

(5) In all cases, a final decision on the merits of any portion of a grievance alleging sexual abuse, or an appeal thereof, shall be issued by the secretary within 90 days of the initial filing of the grievance.

(6) Computation of the 90-day time period shall not include time taken by inmates in preparing and submitting any administrative appeal.

(7) At any level of the administrative process, including the final level, if the inmate does not receive a response within the time allotted for reply, including any properly noticed extension, the inmate may consider the absence of a response to be a denial at that level and may proceed to the next level of appeal.

(8) An appropriate official may be designated by the secretary to prepare the answer.

(e) Imminent sexual abuse.

(1) Each inmate submitting a grievance concerning imminent sexual abuse shall state that inmate's intentions by writing "Emergency Sexual Abuse Grievance" clearly on the grievance form.

(2) Each grievance alleging that an inmate is subject to a substantial risk of imminent sexual abuse shall be treated as an emergency grievance under K.A.R. 44-15-106.

(3) After receiving an emergency grievance alleging imminent sexual abuse, the warden or designee shall provide an initial response within 48 hours and shall issue a final decision within five calendar days. The initial response and final decision shall document the determination whether the inmate is in substantial risk of imminent sexual abuse and the action taken in response to the emergency grievance.

(f) Submission of grievances concerning sexual harassment or concerning retaliation for submission of a report or grievance concerning sexual abuse or harassment.

(1) Each inmate shall be required to use the informal grievance process specified in K.A.R. 44-15-101 and 44-15-102 for grievances concerning sexual harassment or concerning retaliation for submission of a report or grievance concerning sexual abuse or harassment. These grievances shall otherwise be treated and processed accord-

ing to the ordinary grievance procedure specified in K.A.R. 44-15-101 and 44-15-102.

(2) Any inmate who alleges sexual harassment or retaliation may submit a grievance without submitting it to a staff member who is the subject of the complaint. The grievance shall not be referred to a staff member who is the subject of the complaint.

(3) Each facility shall maintain a file for grievance reports alleging sexual harassment or retaliation for submission of a report or grievance alleging sexual abuse or harassment, with each grievance report indexed by inmate name and coded accordingly. No grievance report form shall be placed in the inmate's institution file.

(g) Time limits.

(1) There shall be no time limit for submission of a grievance regarding an allegation of sexual abuse.

(2) The time limits for any grievance or portion thereof that does not allege an incident of sexual abuse or imminent sexual abuse shall be the limits specified in K.A.R. 44-15-101b.

(h) Third-party submissions.

(1) Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist any inmate in filing requests for administrative remedies relating to allegations of sexual abuse and shall also be permitted to file these requests on behalf of any inmate.

(2) If a third party files such a request on behalf of an inmate, the alleged victim shall agree to have the request filed on behalf of the alleged victim. The alleged victim shall personally pursue any subsequent steps in the administrative remedy process.

(3) If the inmate declines to have the request processed on that individual's behalf, the facility shall document the inmate's decision.

(i) Grievances in bad faith. Any inmate may be disciplined for filing a grievance related to alleged sexual abuse only if it can be demonstrated that the inmate filed the grievance in bad faith. In this instance, a disciplinary report alleging violation of K.A.R. 44-12-303 or 44-12-317, as appropriate, may be issued. (Authorized by and implementing K.S.A. 2012 Supp. 75-5210 and 75-5251; effective, T-44-6-28-13, June 28, 2013; effective Sept. 27, 2013.)

Agency 45

Kansas Prisoner Review Board

Editor's Note:

Pursuant to 2011 Executive Reorganization Order (ERO) No. 34, the Kansas Parole Board was abolished and the Prisoner Review Board was established within the Department of Corrections. See L. 2011, Ch. 130.

Articles

45-100. MEANING OF TERMS.

45-500. PAROLE VIOLATORS.

Article 100.—MEANING OF TERMS

45-100-1. (Authorized by and implementing K.S.A. 2001 Supp. 22-3701 and 22-3717, as amended by L. 2002, ch. 163, Sec. 5; effective Nov. 22, 2002; revoked March 23, 2012.)

Article 500.—PAROLE VIOLATORS

45-500-1. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, ch. 163, Sec. 5, and K.S.A. 2001 Supp. 75-5217; effective Nov. 22, 2002; revoked March 23, 2012.)

45-500-2. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L.

2002, ch. 163, Sec. 5, and K.S.A. 2001 Supp. 75-5217; effective Nov. 22, 2002; revoked March 23, 2012.)

45-500-3. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, ch. 163, Sec. 5, and K.S.A. 2001 Supp. 75-5217; effective Nov. 22, 2002; revoked March 23, 2012.)

45-500-4. (Authorized by and implementing K.S.A. 2001 Supp. 22-3717, as amended by L. 2002, ch. 163, Sec. 5, and K.S.A. 2001 Supp. 75-5217; effective Nov. 22, 2002; revoked March 23, 2012.)

Agency 47

Department of Health and Environment— Mined-Land Conservation and Reclamation

Editor's Note:

The Mined-Land Conservation and Reclamation Board was abolished on July 1, 1988. Powers, duties and functions under the Kansas Corporation Commission were transferred to the Department of Health and Environment. See L. 1988, Ch. 192, Sec. 1.

Articles

- 47-2. MEANING OF TERMS.
- 47-3. APPLICATION FOR MINING PERMIT.
- 47-5. CIVIL PENALTIES.
- 47-6. PERMIT REVIEW.
- 47-7. COAL EXPLORATION.
- 47-8. BONDING PROCEDURES.
- 47-9. PERFORMANCE STANDARDS.
- 47-10. UNDERGROUND MINING.
- 47-11. SMALL OPERATOR ASSISTANCE PROGRAM.
- 47-12. LANDS UNSUITABLE FOR SURFACE MINING.
- 47-13. TRAINING, CERTIFICATION, AND RESPONSIBILITIES OF BLASTERS AND OPERATORS.
- 47-14. EMPLOYEE FINANCIAL INTERESTS.
- 47-15. INSPECTIONS AND ENFORCEMENT.
- 47-16. RECLAMATION.

Article 2.—MEANING OF TERMS

47-2-75. Definitions; adoption by reference. The following federal regulations, as in effect on July 1, 2012, are adopted by reference, except as otherwise specified in this regulation: (a) The section titled definitions, 30 C.F.R. 700.5, shall be altered as follows:

(1) The following text shall be deleted from the definition of “anthracite”: “Notices of changes made to this publication will be periodically published by the Office of Surface Mining in the Federal Register. This ASTM standard is on file and available for inspection at the OSM Office, U.S. Department of the Interior, South Interior Building, Washington, D.C. 20240, at each OSM Regional Office, District Office and Field Office, and at the central office of the applicable State Regulatory Authority, if any. Copies of this publication may also be obtained by writing to the above locations. A copy of this publication will also be on file for public inspection at the National Archives and Records Administration (NARA). For information

on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. Incorporation by reference provisions approved by the Director of the Federal Register February 7, 1979. The Director's approval of this incorporation by reference expires on July 1, 1981.”

(2) “Department” means Kansas department of health and environment.

(3) “Director” means director, office of surface mining reclamation and enforcement, in the following instances:

(A) K.A.R. 47-3-42(a)(60), adopting by reference 30 C.F.R. 785.13;

(B) K.A.R. 47-14-7(a)(1), adopting by reference 30 C.F.R. 705.4(a);

(C) K.A.R. 47-14-7(a)(3), adopting by reference 30 C.F.R. 705.11(c) and (d);

(D) K.A.R. 47-14-7(a)(4), adopting by reference 30 C.F.R. 705.13;

(E) K.A.R. 47-14-7(a)(5), adopting by reference 30 C.F.R. 705.15;

(F) K.A.R. 47-14-7(a)(8), adopting by reference 30 C.F.R. 705.19(a); and

(G) K.A.R. 47-14-7(a)(9), adopting by reference 30 C.F.R. 705.21.

(H) K.A.R. 47-15-1a(a)(2), adopting by reference 30 C.F.R. 840.14(a). All other references to “the director” shall be replaced by “the secretary of the Kansas department of health and environment.”

(4) “Person” shall have the meaning specified in K.S.A. 49-403, and amendments thereto.

(5) “Regulatory authority” and “state regulatory authority” shall have the meaning specified in K.A.R. 47-2-53.

(6) “Regulatory program” shall have the meaning specified in K.A.R. 47-2-53a.

(7) “Secretary” means secretary of the Kansas department of health and environment.

(8) “Surface coal mining and reclamation operations” shall have the meaning specified in K.S.A. 49-403, and amendments thereto.

(9) “Surface coal mining operations” shall have the meaning specified in K.S.A. 49-403, and amendments thereto.

(b) The section titled “definitions,” 30 C.F.R. 701.5, shall be altered as specified in this subsection.

(1)(A) “Act” shall be replaced by “state act.”

(B) In the definitions of “Applicant/Violator System or AVS,” “Federal Program,” “State Program,” and the portion of the definition for “Permittee” that states “section 523 of the Act,” the word “Act” shall mean the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87. All other references to “Act” shall mean the “state act.”

(C) In the definition of “cumulative impact area,” the following text shall be deleted: “and (d) all operations required to meet diligent development requirements for leased Federal coal for which there is actual mine development information available.” The word “and” shall be placed immediately before subsection (c).

(D) In the definitions of “federal program” and “state program” in this subsection, “Secretary” shall mean the director, office of surface mining reclamation and enforcement. In the definition of “prime farmland” in this subsection, the term “Secretary” shall mean the secretary of agriculture. All other references to “Secretary” shall mean the secretary of the Kansas department of health and environment. In the definition of “federal program,” “Director” shall mean the director, office of surface mining reclamation and enforcement.

(E) “Imminent danger to the health and safety of the public” shall have the meaning specified in K.S.A. 49-403, and amendments thereto.

(F) “Operator” shall have the meaning specified in K.S.A. 49-403, and amendments thereto.

(G) The definition of “performance bond” shall be replaced with the following:

“Performance bond” means a surety bond, collateral bond or a combination thereof, by which a permittee assures faithful performance of all the requirements of the state act, these regulations, a state program, and the requirements of the permit and reclamation plan.”

(H) “Permit” shall have the meaning specified in K.S.A. 49-403, and amendments thereto.

(I) “Permit area” shall have the meaning specified in K.S.A. 49-403, and amendments thereto.

(J) In the definition of “permittee,” the phrase “by the Director pursuant to a Federal program, by the Director pursuant to a Federal lands program” shall be deleted. In the definition of “permittee,” “Director” shall mean the director, office of surface mining reclamation and enforcement.

(K) “Significant, imminent environmental harm to land, air or water resources” shall have the meaning specified in K.A.R. 47-2-58.

(L) “Subchapter J of this chapter” shall be replaced by “article 8 of these regulations.”

(M) “This chapter” shall be replaced by “these regulations.”

(N) In the definition of “Violation, failure, or refusal,” the text “(1) A failure to comply with a condition of a Federally-issued permit or of any other permit that OSM is directly enforcing under section 502 or 521 of the Act or the regulations implementing those sections” shall be replaced with the following text: “(1) A failure to comply with a condition of a permit issued by the Kansas department of health and environment under K.S.A. 49-405 and K.S.A. 49-406, and amendments thereto, or the regulations implementing those sections.”

(2) The following federal definitions shall be deleted:

(A) “Agricultural activities”;

(B) “alluvial valley floors”;

(C) “arid and semiarid area”;

(D) “essential hydrologic functions”;

(E) “farming”;

(F) “flood irrigation”;

(G) “materially damage the quality and quantity of water”;

(H) “special bituminous coal mines”;

(I) “subirrigation”;

(J) “undeveloped rangeland”; and

(K) “upland areas.”

(3)(A) “Part 845 or 846 of this chapter” and “parts 724 and 846 of this chapter” shall be replaced by “K.A.R. 47-5-5a.”

(B) “Parts 773, 774, and 778 of this chapter” shall be replaced by “articles 3 and 6 of these regulations and K.A.R. 47-3-42(a)(2) through (31).”

(C) “Section 404 or under section 402(g)(4) of the Act” shall be replaced by “K.S.A. 49-428, and amendments thereto.”

(D) “Section 502” shall be replaced by “K.S.A. 49-406, and amendments thereto.”

(E) “Section 518(b) or section 703 of the Act” shall be replaced by “K.S.A. 49-405c or K.S.A. 75-2973, and amendments thereto.”

(F) “Section 521 of the Act” shall be replaced by “K.S.A. 49-405, and amendments thereto.”

(G) “Sections 507 and 510(c) of the Act” shall be replaced by “K.S.A. 49-406 and K.S.A. 49-407(b), and amendments thereto.”

(4)(A) “30 CFR chapter VII” shall be replaced by “article 1 of these regulations.”

(B) “30 CFR parts 816 and 817” shall be replaced by “K.A.R. 47-9-1(c) and (d).”

(C) “30 CFR 785.17(c)(1)” shall be replaced by “K.A.R. 47-3-42(a)(61).”

(D) “30 CFR 816.49 and 816.56, 816.133 or 817.49, 817.56, and 817.133” shall be replaced by “K.A.R. 47-9-1(c)(12), (13), and (45) or K.A.R. 47-9-1(d)(12), (13), and (43).”

(5)(A) “§761.5 of this chapter” shall be replaced by “K.A.R. 47-12-4(a)(1).”

(B) “§773.13 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(9).”

(C) “§800.11(e) of this chapter” shall be replaced by “K.A.R. 47-8-9(a)(3).”

(D) “§800.50 of this chapter” and “§800.50(d)(1) of this chapter” shall be replaced by “K.A.R. 47-8-9(a)(14).”

(E) “§843.11 of this chapter” shall be replaced by “K.A.R. 47-15-1a(a)(8).”

(F) “§843.12 of this chapter” shall be replaced by “K.A.R. 47-15-1a(a)(9).”

(G) “§784.20 and 817.121 of this chapter” and “§§784.20 and 817.121” shall be replaced by “K.A.R. 47-10-1(a)(2)(K) and K.A.R. 47-9-1(d)(39).”

(H) “§§816.102(d) and 817.102(d) of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(35) and (d)(33).”

(c) The section titled “definitions,” 30 C.F.R. 705.5, shall be altered as follows:

(1) “Act” shall be replaced by “state act.”

(2) “Employee” shall have the meaning specified in K.A.R. 47-2-21.

(3) “State regulatory authority” shall have the meaning specified in K.A.R. 47-2-53. (Authorized by K.S.A. 49-404, K.S.A. 49-405, and K.S.A. 2018 Supp. 49-408; implementing K.S.A. 49-405 and K.S.A. 2018 Supp. 49-408; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended Dec. 1, 2006; amended Feb. 15, 2019.)

Article 3.—APPLICATION FOR MINING PERMIT

47-3-1. Application for mining permit.

Each person who conducts or expects to conduct surface or underground coal mining and reclamation operations shall file an original and three copies of a complete and accurate application for a permit for those operations with the secretary. (Authorized by K.S.A. 49-405 and K.S.A. 2018 Supp. 49-406; implementing K.S.A. 2018 Supp. 49-406; effective, E-71-4, Nov. 20, 1970; effective Jan. 1, 1972; amended May 1, 1975; amended May 1, 1980; amended Feb. 11, 1991; amended May 2, 1997; amended Feb. 15, 2019.)

47-3-2. Application for mining permit; adoption by reference.

(a) Each permit application submitted with a request for variances from the applicable regulations shall contain an outline of the proposed variances. The outline shall be indexed to the regulations and be placed at the beginning of the application documents.

(b) The following federal regulations as in effect on July 1, 2012 are adopted by reference, except as otherwise specified in this regulation:

(1) Format and contents, 30 C.F.R. 777.11;

(2) reporting of technical data, 30 C.F.R. 777.13;

(3) maps and plans: general requirements, 30 C.F.R. 777.14. The phrase “in accordance with §710.12 of this chapter” shall be deleted; and

(4) completeness, 30 C.F.R. 777.15.

(c) The following phrases shall be replaced with the phrases specified in this subsection wherever the phrases appear in the text of the federal regulations adopted by reference in this regulation:

(1) “This chapter” and “this subchapter” shall be replaced by “these regulations.”

(2)(A) “Part 785 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(60) through (66).”

(B) “Parts 778, 779, and 780 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(21) through (59).”

(C) “Parts 778, 783, and 784 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(21) through (31) and K.A.R. 47-10-1.” (Authorized by K.S.A. 49-405; implementing K.S.A. 2018 Supp. 49-406; effective May 1, 1980; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-3-42. Application for mining permit; adoption by reference. (a) The following federal regulations, as in effect on July 1, 2012, are adopted by reference, except for the additions and deletions specified:

(1) applicability, 30 C.F.R. 701.11 subsections (d) and (e) only. Subsections (a), (b), (c), and (f) shall be deleted, and the word “Act” shall be replaced by “state act”;

(2) public participation in permit processing, 30 C.F.R. 773.6. The phrase “developed in accordance with section 503(a)(6) or section 504(h) of the Act, or §773.5” in 30 C.F.R. 773.6(a)(3)(ii) and the sentence “The requirements of section 5 of the administrative procedure act, as amended (5 U.S.C. 554), shall not apply to the conduct of the informal conference.” in 30 C.F.R. 773.6(c)(2)(iv) shall be deleted;

(3) review of permit applications, 30 C.F.R. 773.7, except that the 60-day period for decision shall be replaced by a 30-day period;

(4) general provisions for review of permit application information and entry of information into AVS, 30 C.F.R. 773.8;

(5) review of applicant and operator information, 30 C.F.R. 773.9;

(6) review of permit history, 30 C.F.R. 773.10;

(7) review of compliance history, 30 C.F.R. 773.11, except that the word “Act” shall be replaced by “state act”;

(8) permit eligibility determination, 30 C.F.R. 773.12;

(9) unanticipated events or conditions at remining sites, 30 C.F.R. 773.13;

(10) eligibility for provisionally issued permits, 30 C.F.R. 773.14;

(11) written findings for permit application approval, 30 C.F.R. 773.15. In subsections (a) and (b), the word “Act” shall be replaced by “state act.” The phrases “parts 764 and 769 of this chapter” and “parts 762 and 764 or 769 of this chapter” shall be replaced by “K.A.R. 47-12-4”;

(12) performance bond submittal, 30 C.F.R. 773.16;

(13) permit issuance and right of renewal, 30 C.F.R. 773.19. The clause “unless the requirements of 778.17 of this chapter are met” shall be deleted;

(14) initial review and finding requirements for improvidently issued permits, 30 C.F.R. 773.21;

(15) notice requirements for improvidently issued permits, 30 C.F.R. 773.22;

(16) suspension or rescission requirements for improvidently issued permits, 30 C.F.R. 773.23;

(17) who may challenge ownership or control listings and findings, 30 C.F.R. 773.25;

(18) how to challenge an ownership or control listing or finding, 30 C.F.R. 773.26, except that in subsection (a), the phrase “as identified in the following table” and the table shall be deleted. The word “Act” shall be replaced by “state act”;

(19) burden of proof for ownership or control challenges, 30 C.F.R. 773.27;

(20) written agency decision on challenges to ownership or control listings or findings, 30 C.F.R. 773.28;

(21) Certifying and updating existing permit application information, 30 C.F.R. 778.9;

(22) providing applicant and operator information, 30 C.F.R. 778.11;

(23) providing permit history information, 30 C.F.R. 778.12;

(24) providing property interest information, 30 C.F.R. 778.13;

(25) providing violation information, 30 C.F.R. 778.14;

(26) right-of-entry information, 30 C.F.R. 778.15;

(27) status of unsuitability claims, 30 C.F.R. 778.16, except that the phrase “parts 762, 764, and 769 of this chapter” shall be replaced by “K.A.R. 47-12-4”;

(28) permit term, 30 C.F.R. 778.17;

(29) insurance, 30 C.F.R. 778.18;

(30) proof of publication, 30 C.F.R. 778.21;

(31) facilities or structures used in common, 30 C.F.R. 778.22;

(32) responsibilities, 30 C.F.R. 779.4. The phrase “this part” shall be replaced by “K.A.R. 47-3-42(a)(32) through (39)”;

(33) general requirements, 30 C.F.R. 779.11;

(34) general environmental resources information, 30 C.F.R. 779.12;

(35) climatological information, 30 C.F.R. 779.18;

(36) vegetation information, 30 C.F.R. 779.19, except that the phrase “if required by the regulatory authority” shall be deleted;

(37) soil resources information, 30 C.F.R. 779.21;

(38) maps: general requirements, 30 C.F.R. 779.24;

(39) cross sections, maps, and plans, 30 C.F.R. 779.25;

(40) responsibilities, 30 C.F.R. 780.4. The phrase “this part” shall be replaced by “K.A.R. 47-3-42(a)(40) through (59)”;

(41) operation plan: general requirements, 30 C.F.R. 780.11;

(42) operation plan: existing structures, 30 C.F.R. 780.12;

(43) operation plan: blasting, 30 C.F.R. 780.13;

(44) operation plan: maps and plans, 30 C.F.R. 780.14;

(45) air pollution control plan, 30 C.F.R. 780.15, except that the phrase “if required by the regulatory authority” shall be deleted;

(46) fish and wildlife information, 30 C.F.R. 780.16;

(47) reclamation plan: general requirements, 30 C.F.R. 780.18;

(48) hydrologic information, 30 C.F.R. 780.21;

(49) geologic information, 30 C.F.R. 780.22;

(50) reclamation plan: land use information, 30 C.F.R. 780.23;

(51) reclamation plan: siltation structures, impoundments, and refuse piles, 30 C.F.R. 780.25;

(52) reclamation plan: surface mining near underground mining, 30 C.F.R. 780.27;

(53) activities in or adjacent to perennial or intermittent streams, 30 C.F.R. 780.28;

(54) diversions, 30 C.F.R. 780.29;

(55) protection of publicly owned parks and historic places, 30 C.F.R. 780.31, except that the word “may” shall be changed to “shall”;

(56) relocation or use of public roads, 30 C.F.R. 780.33;

(57) disposal of excess spoil, 30 C.F.R. 780.35;

(58) road systems, 30 C.F.R. 780.37;

(59) support facilities, 30 C.F.R. 780.38;

(60) experimental practices mining, 30 C.F.R. 785.13, except that the word “Act” shall be replaced by “state act”;

(61) prime farmland, 30 C.F.R. 785.17. The last sentence in 30 C.F.R. 785.17(c)(1)(i) shall be deleted;

(62) variances for delay in contemporaneous reclamation requirement in combined surface and

underground mining activities, 30 C.F.R. 785.18, except that in subsections (b)(3) and (7), the word “Act” shall be replaced by “state act”;

(63) augering, 30 C.F.R. 785.20;

(64) coal preparation plants not located within the permit area of a mine, 30 C.F.R. 785.21, except that subsections (d) and (e) shall be deleted;

(65) in situ processing activities, 30 C.F.R. 785.22; and

(66) lands eligible for remining, 30 C.F.R. 785.25.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation.

(1)(A) “Act” shall be replaced by “state act.”

(B) “By a reviewing administrative or judicial tribunal” shall be replaced by “by an administrative or a judicial review of an agency action concerning the aforementioned Kansas department of health and environment determination.”

(C) “Central office of the applicable state regulatory authority, if any” shall be replaced by “the Kansas department of health and environment, surface mining section.”

(D) “Office of hearings and appeals or its state counterpart” shall be replaced by “office of administrative hearings.”

(E) “Rule 4 of the federal rules of civil procedure, or its state regulatory program counterparts” shall be replaced by “K.A.R. 47-4-14a.”

(F) “Subchapter B (Interim Program Standards) of this chapter” and “subchapter B of this chapter” shall be replaced by “K.A.R. 47-9-4.”

(G) “Subchapter B or K of this chapter” shall be replaced by “K.A.R. 47-9-4 or K.A.R. 47-9-1.”

(H) “Subchapter J of this chapter,” “subchapter J,” and “part 800 of this chapter” shall be replaced by “article 8 of these regulations.”

(I) “Subchapter K (Permanent Program Standards) of this chapter,” “subchapter K,” and “subchapter K of this chapter” shall be replaced by “K.A.R. 47-9-1.”

(J) “Subchapter R of this chapter” shall be replaced by “the office.”

(K) “The procedures at 43 CFR 4.1370 through 4.1377 (when OSM is the regulatory authority) or under the State regulatory program equivalent (when a State is the regulatory authority)” shall be replaced by “K.A.R. 47-4-14a.”

(L) “This chapter,” “this subchapter,” “this part,” and “subchapter G of this chapter” shall be replaced by “these regulations.”

(2)(A) “Part 775 of this chapter” and “part 775 of this subchapter” shall be replaced by “K.S.A. 49-407(d), 49-416a, and 49-422a, and amendments thereto, and article 4 of these regulations.”

(B) “Part 785 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(60) through (66).”

(C) “Part 816” and “part 816 of this chapter” shall be replaced by “K.A.R. 47-9-1(c).”

(D) “Part 823 of this chapter” and “30 CFR part 823” shall be replaced by “K.A.R. 47-9-1(f).”

(E) “Part 827 of this chapter” shall be replaced by “K.A.R. 47-9-1(g).”

(F) “Section 508 of the Act” shall be replaced by “K.S.A. 49-406, and amendments thereto.”

(G) “Section 510(c) of the Act” shall be replaced by “K.S.A. 49-407(b), and amendments thereto.”

(H) “Section 515 of the Act,” “section 515(b) of the Act,” “section 515 (b)(22) of the Act,” and “sections 515 and 516 of the Act” shall be replaced by “K.S.A. 49-405a, 49-408 through 49-413, and 49-429, and amendments thereto.”

(I) “Section 515(b)(16) of the Act” shall be replaced by “K.S.A. 49-429, and amendments thereto.”

(3)(A) “30 CFR 773.15” and “§773.15 of this part” shall be replaced by “K.A.R. 47-3-42 (a)(11).”

(B) “30 CFR 779.24 through 779.25” shall be replaced by “K.A.R. 47-3-42(a)(38) through (39).”

(C) “30 CFR 780.12 or 784.12” shall be replaced by “K.A.R. 47-3-42(a)(42) or K.A.R. 47-10-1(a)(2)(C).”

(D) “30 CFR 780.16” shall be replaced by “K.A.R. 47-3-42(a)(46).”

(E) “30 CFR 780.18 through 780.37” shall be replaced by “K.A.R. 47-3-42(a)(47) through (58).”

(F) “30 CFR 816.13 through 816.15” shall be replaced by “K.A.R. 47-9-1(c)(2) through (4).”

(G) “30 CFR 816.22,” “§816.22 of this chapter,” and “§816.22(b) of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(5).”

(H) “30 CFR 816.43 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(8).”

(I) “30 CFR 816.59” and “§816.59 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(15).”

(J) “30 CFR 816.71-816.74” and “§816.71 through 816.74 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(22) through (23).”

(K) “30 CFR 816.79” and “§816.79 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(24).”

(L) “30 CFR 816.89 through 816.102” shall be replaced by “K.A.R. 47-9-1(c)(29) through (35).”

(M) “30 CFR 816.95” shall be replaced by “K.A.R. 47-9-1(c)(30).”

(N) “30 CFR 816.102 through 816.107” shall be replaced by “K.A.R. 47-9-1(c)(35) through (38).”

(O) “30 CFR 816.111 through 816.116” shall be replaced by “K.A.R. 47-9-1(c)(39) through (42).”

(P) “30 CFR 816.116” shall be replaced by “K.A.R. 47-9-1(c)(42).”

(Q) “30 CFR part 819” shall be replaced by “K.A.R. 47-9-1(e).”

(R) “30 CFR part 828” shall be replaced by “K.A.R. 47-9-1(h).”

(S) “30 CFR parts 817 and 828” shall be replaced by “K.A.R. 47-9-1(d) and (h).”

(T) “43 CFR 4.1360 through 4.1369” shall be replaced by “K.A.R. 47-4-14a.”

(U) “43 CFR 4.1376 or the State regulatory program equivalent” shall be replaced by “K.A.R. 47-4-14a.”

(V) “43 CFR 4.1380 through 4.1387 or, when a state is the regulatory authority, the state regulatory program counterparts” shall be replaced by “K.A.R. 47-4-14a and K.S.A. 49-416a, and amendments thereto.”

(4)(A) “§701.5 of this chapter” shall be replaced by “K.A.R. 47-2-75(b).”

(B) “§701.11(d)” shall be replaced by “K.A.R. 47-3-42 (a)(1).”

(C) “§761.11 of this chapter” shall be replaced by “K.A.R. 47-12-4(a)(2).”

(D) “§761.12(d) of this chapter” shall be replaced by “K.A.R. 47-12-4(a)(3).”

(E) “§761.14(c) of this chapter” shall be replaced by “K.A.R. 47-12-4(a)(4).”

(F) “§761.14 or §761.15 of this chapter” shall be replaced by “K.A.R. 47-12-4(a)(4) or (5).”

(G) “§761.16 of this chapter” shall be replaced by “K.A.R. 47-12-4(a)(6).”

(H) “§761.17(d) of this chapter” shall be replaced by “K.A.R. 47-12-4(a)(7).”

(I) “§762.13(c) of this chapter” shall be replaced by “K.A.R. 47-12-4(a)(12).”

(J) “§773.6(d)(3)(ii) of this chapter,” “§773.6(a)(1) of this chapter,” and “§773.6 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(2).”

(K) “§773.12 of this part” and “§773.12” shall be replaced by “K.A.R. 47-3-42(a)(8).”

(L) “§773.13” and “§773.13(c)” shall be replaced by “K.A.R. 47-3-42(a)(9).”

(M) “§773.14(b) of this part” and “§773.14(c)(1) through (4)” shall be replaced by “K.A.R. 47-3-42(a)(10).”

(N) “§773.19 of this part” shall be replaced by “K.A.R. 47-3-42(a)(13).”

(O) “§773.21(d) of this part” and “paragraphs

(a) and (b) §773.21 of this part” shall be replaced by “K.A.R. 47-3-42(a)(14).”

(P) “§773.22(b) or (c) of this part” and “§773.22(e) of this part” shall be replaced by “K.A.R. 47-3-42(a)(15).”

(Q) “§773.23 of this part” shall be replaced by “K.A.R. 47-3-42(a)(16).”

(R) “§773.26(a) of this part” shall be replaced by “K.A.R. 47-3-42(a)(18).”

(S) “§773.27(b) of this part” shall be replaced by “K.A.R. 47-3-42(a)(19).”

(T) “§774.11(c) of this subchapter,” “§774.11(f) of this subchapter,” and “§774.11(g) of this subchapter” shall be replaced by “K.A.R. 47-6-11(a)(1).”

(U) “§774.13 of this chapter” and “§774.13” shall be replaced by “K.A.R. 47-6-2.”

(V) “§774.15” shall be replaced by “K.A.R. 47-6-3.”

(W) “§778.9(d) of this subchapter” shall be replaced by “K.A.R. 47-3-42(a)(21).”

(X) “§778.11 of this subchapter,” “§778.11(c)(5) and 778.11(d) of this subchapter,” and “§778.11(c)(5) of this subchapter” shall be replaced by “K.A.R. 47-3-42(a)(22).”

(Y) “§778.12 of this subchapter” shall be replaced by “K.A.R. 47-3-42(a)(23).”

(Z) “§778.14 of this subchapter” shall be replaced by “K.A.R. 47-3-42(a)(25).”

(AA) “§778.15(b) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(26).”

(BB) “§779.25 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(39).”

(CC) “§780.16(b) and 816.97(a) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(46) and K.A.R. 47-9-1(c)(31).”

(DD) “§780.21(h) and 816.41(d)(1) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(48) and K.A.R. 47-9-1(c)(6).”

(EE) “§780.25 of this part” shall be replaced by “K.A.R. 47-3-42(a)(51).”

(FF) “§780.29 of this part and §816.43” shall be replaced by “K.A.R. 47-3-42(a)(54) and K.A.R. 47-9-1(c)(8).”

(GG) “§780.35 of this part” shall be replaced by “K.A.R. 47-3-42(a)(57).”

(HH) “§785.13” shall be replaced by “K.A.R. 47-3-42(a)(60).”

(II) “§785.21 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(64).”

(JJ) “§785.25 of this subchapter” and “§785.25 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(66).”

(KK) “§800.60 of this chapter” shall be replaced by “K.A.R. 47-8-9(a)(15).”

(LL) “§816.46 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(10).”

(MM) “§816.49 of this chapter” and “§816.49(a)(4)(ii) of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(12).”

(NN) “§816.57(a)(1) of this chapter,” “paragraphs (b) and (c) of §816.57 of this chapter,” “paragraphs (b)(2) through (b)(4) of §816.57 of this chapter,” and “§816.57(a)(2) of this chapter,” shall be replaced by “K.A.R. 47-9-1(c)(14).”

(OO) “§816.67” shall be replaced by “K.A.R. 47-9-1(c)(20).”

(PP) “§816.71(d) of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(22).”

(QQ) “§816.74 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(23).”

(RR) “§816.97 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(31).”

(SS) “§816.100 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(33).”

(TT) “§816.106 or §817.106 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(38) or (d)(34).”

(UU) “§816.111(d) or §817.111(d)” shall be replaced by “K.A.R. 47-9-1(c)(39) or (d)(35).”

(VV) “§816.133” and “30 CFR 816.133” shall be replaced by “K.A.R. 47-9-1(c)(45).”

(WW) “§816.150(d)(1) of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(46).”

(XX) “§816.151(b) of this chapter,” “§816.151(c)(2) of this chapter,” “§816.151(d)(5) of this chapter,” and “§816.151(d)(6) of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(47).”

(YY) “§816.181 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(49).”

(ZZ) “§827.13 of this chapter” shall be replaced by “K.A.R. 47-9-1(g)(3).”

(AAA) “§842.16 of this chapter (when osm is the regulatory authority) or under §840.14 of this chapter (when a state is the regulatory authority)” shall be replaced by “K.A.R. 47-15-1a(a)(2).”

(BBB) “§843.12 of this chapter or the state regulatory equivalent” shall be replaced by “K.A.R. 47-15-1a(a)(9).”

(CCC) “§843.14 of this chapter, or the state regulatory program equivalent” shall be replaced by “K.A.R. 47-15-1a(a)(11).”

(DDD) “§§773.7 through 773.14 of this part” shall be replaced by “K.A.R. 47-3-42(a)(3) through (10).”

(EEE) “§§773.9 through 773.11 of this part” shall be replaced by “K.A.R. 47-3-42(a)(5) through (7).”

(FFF) “§§773.13 and 773.14 of this part” shall be replaced by “K.A.R. 47-3-42(a)(9) and (10).”

(GGG) “§§773.21 or 774.11(f) of this subchapter” shall be replaced by “K.A.R. 47-3-42(a)(14) and K.A.R. 47-6-11(a)(1).”

(HHH) “§§773.22 and 773.23 of this part” shall be replaced by “K.A.R. 47-3-42(a)(15) and (16).”

(III) “§§773.25 through 773.27 of this part” shall be replaced by “K.A.R. 47-3-42(a)(17) through (19).”

(JJJ) “§§773.26 and 773.27 of this part” shall be replaced by “K.A.R. 47-3-42(a)(18) and (19).”

(KKK) “§§773.27 and 773.28 of this part” shall be replaced by “K.A.R. 47-3-42(a)(19) and (20).”

(LLL) “§§778.11 and 778.12(c) of this subchapter” shall be replaced by “K.A.R. 47-3-42(a)(22) and (23).”

(MMM) “§§778.11 through 778.14 of this part” shall be replaced by “K.A.R. 47-3-42(a)(22) through (25).”

(NNN) “§§780.25(a)(2), 780.25(a)(3), 780.35, 816.73(c), 816.74(c), and 816.81(c) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(51) and (57) and K.A.R. 47-9-1(c)(23) and (25).”

(OOO) “§§816.41 through 816.43” shall be replaced by “K.A.R. 47-9-1(c)(6) through (8).”

(PPP) “§§816.61 through 816.68 of this chapter” shall be replaced by “K.A.R. 47-9-1 (c)(16) through (21).”

(QQQ) “§§816.81 and 816.83 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(25) and (26).”

(RRR) “§§816.81 and 816.84 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(25) and (27).” (Authorized by K.S.A. 49-405 and 49-427; implementing K.S.A. 49-405, K.S.A. 2018 Supp. 49-406, K.S.A. 49-407 and 49-427; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended Dec. 1, 2006; amended Feb. 15, 2019.)

Article 5.—CIVIL PENALTIES

47-5-5a. Civil penalties; adoption by reference. (a) Subject to the provisions of subsection (c), the following federal regulations, as in effect on July 1, 2012, are adopted by reference, except as otherwise specified:

- (1) How assessments are made, 30 C.F.R. 845.11;
- (2) when penalty will be assessed, 30 C.F.R. 845.12;
- (3) point system for penalties, 30 C.F.R. 845.13;

(4) determination of amount of penalty, 30 C.F.R. 845.14, except that the table shall be replaced by the following table:

“Points	Dollars
1	20
2	40
3	60
4	80
5	100
6	120
7	140
8	160
9	180
10	200
11	220
12	240
13	260
14	280
15	300
16	320
17	340
18	360
19	380
20	400
21	420
22	440
23	460
24	480
25	500
26	600
27	700
28	800
29	900
30	1,000
31	1,100
32	1,200
33	1,300
34	1,400
35	1,500
36	1,600
37	1,700
38	1,800
39	1,900
40	2,000
41	2,100
42	2,200
43	2,300
44	2,400
45	2,500
46	2,600

“Points	Dollars
47	2,700
48	2,800
49	2,900
50	3,000
51	3,100
52	3,200
53	3,300
54	3,400
55	3,500
56	3,600
57	3,700
58	3,800
59	3,900
60	4,000
61	4,100
62	4,200
63	4,300
64	4,400
65	4,500
66	4,600
67	4,700
68	4,800
69	4,900
70 and above	5,000”

(5) assessment of separate violations for each day, 30 C.F.R. 845.15, except that the statement “a civil penalty of not less than \$1,025 shall be assessed for each day during which such failure to abate continues” shall be replaced by “a civil penalty of not less than \$750 shall be assessed for each day during which such failure to abate continues”;

(6) waiver of use of formula to determine civil penalty, 30 C.F.R. 845.16;

(7) procedures for assessment of civil penalties, 30 C.F.R. 845.17;

(8) procedures for assessment conference, 30 C.F.R. 845.18. However, the following sentence shall be deleted: “The assessment conference shall not be governed by section 554 of title 5 of the United States Code, regarding requirements for formal adjudicatory hearings.” The following sentence shall be added: “The conference officer shall be selected by the department”;

(9) request for hearing, 30 C.F.R. 845.19. However, subsection (b) shall be replaced by the following text: “(b) The department shall hold all funds submitted under paragraph (a) of this section in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in K.A.R. 47-5-16”;

(10) when an individual civil penalty may be assessed, 30 C.F.R. 846.12;

(11) amount of individual civil penalty, 30 C.F.R. 846.14;

(12) procedure for assessment of individual civil penalty, 30 C.F.R. 846.17;

(13) payment of penalty, 30 C.F.R. 846.18. However, subsection (d) shall be replaced by the following text:

“(d)(1) Delinquent payment. Following the expiration of 30 days after the issuance of a final order assessing an individual civil penalty, any delinquent civil penalty shall be subject to interest at the rate established quarterly by the U.S. department of the treasury for use in applying late charges on later payments to the federal government, pursuant to the treasury financial manual 6-8020.20. The treasury current value of funds rate is published by the fiscal service in the notices section of the federal register. Interest on unpaid civil penalties will run from the date payment first was due until the date of payment. Failure to pay overdue civil penalties may result in one or more of the following actions, which are not exclusive:

“(i) Initiation of litigation;

“(ii) reporting to the internal revenue service;

“(iii) reporting to state agencies responsible for taxation;

“(iv) reporting to credit bureaus; or

“(v) referral to collection agencies.

“(2) If a civil penalty debt is greater than 91 days overdue, a six percent per annum penalty shall begin to accrue on the amount owed for fees and shall run until the date of payment. This penalty is in addition to the interest described in this regulation.

“(3) For all delinquent penalties and interest, the debtor shall be required to pay a processing and handling charge that shall be based on the following components:

“(i) For debts referred to a collection agency, the amount charged to the department by the collection agency;

“(ii) for debts processed and handled by the surface mining section, a standard amount set annually by the department based upon similar charges by collection agencies for debt collection;

“(iii) for debts referred to the office of legal services, Kansas department of health and environment, but paid before litigation, the estimated average cost to prepare the case for litigation at the time of payment;

“(iv) for debts referred to the office of legal services, Kansas department of health and environ-

ment, and litigated, the estimated cost to prepare and litigate a debt case at the time of payment;

“(v) if not otherwise provided for, all other administrative expenses associated with collection, including billing, recording payments, and follow-up actions; and

“(vi) no prejudgment interest accrues on any processing and handling charges.”;

(14) general provisions, 30 C.F.R. 847.2;

(15) criminal penalties, 30 C.F.R. 847.11. However, the term “Attorney General” shall be replaced with “Kansas attorney general”; and

(16) civil actions for relief, 30 C.F.R. 847.16.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1)(A) “Act” shall be replaced by “state act.”

(B) “Director” and “director or his designee” shall be replaced by “secretary of health and environment or secretary’s designee.” However, in 30 C.F.R. 846.12, the word “director” shall remain unchanged.

(C) “Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203 (Phone: 703-235-3800)” shall be replaced by “Office of administrative hearings.”

(D) “Office,” “State or field office,” and “office of hearings and appeals” shall be replaced by “department.”

(E) “Rule 65 of the Federal Rules of Civil Procedure” shall be replaced by “K.S.A. 60-901 et seq., and amendments thereto.”

(F) “Secretary” shall be replaced by “secretary of the Kansas department of health and environment.”

(2)(A) “Section 518(a) of the act” shall be replaced by “K.S.A. 49-405c(a).”

(B) “Section 518(e), 518(f), 521(a)(4), or 521(c) of the act” shall be replaced by “K.S.A. 49-405c(e), 49-405c(f), 49-405(m)(3), or 49-405(m)(4), and amendments thereto.”

(C) “Section 518(e) and (g) of the act” and “section 518(e) of the Act” shall be replaced by “K.S.A. 49-405c(e) and (g), and amendments thereto.”

(D) “Section 521 or 526 of the act” shall be replaced by “K.S.A. 49-405c, 49-405(m), 49-416a, and 49-422a, and amendments thereto.”

(E) “Section 521(a) of the act” shall be replaced by “K.S.A. 49-405(m)(2), and amendments thereto.”

(F) “Section 521(c) of the act” shall be replaced by “K.S.A. 49-405(m), and amendments thereto.”

(G) “Section 525(c) of the act” shall be replaced by “K.S.A. 49-416a(c), and amendments thereto.”

(H) “Section 526 of the act” and “section 526(c) of the act” shall be replaced by “K.S.A. 49-422a, and amendments thereto.”

(I) “Sections 518, 521(a)(4), and 525 of the act” shall be replaced by “K.S.A. 49-405c, 49-405(m)(3), and 49-416a, and amendments thereto.”

(3)(A) “30 CFR 816.11” shall be replaced by “K.A.R. 47-9-1(c)(1).”

(B) “30 CFR 843.16” shall be replaced by “K.A.R. 47-4-14a.”

(C) “30 CFR 845.12, 845.13, 845.14, 845.15 and 845.16” shall be replaced by “K.A.R. 47-5-5a(a)(2), (3), (4), (5), and (6).”

(D) “30 CFR 845.12(b)” shall be replaced by “K.A.R. 47-5-5a(a)(2).”

(E) “30 CFR 845.13,” “30 CFR 845.13(b),” and “§845.13(b)” shall be replaced by “K.A.R. 47-5-5a(a)(3).”

(F) “30 CFR 845.17(b)” shall be replaced by “K.A.R. 47-5-5a(a)(7).”

(G) “43 CFR 4.1300 *et seq.*” and “rule 4 of the Federal Rules of Civil Procedure” shall be replaced by “K.A.R. 47-4-14a.”

(4) “§846.12” shall be replaced by “K.A.R. 47-5-5a(a)(10).”

(c) Review of proposed assessments of civil penalties. If a request for hearing is made pursuant to paragraph (a)(9), the procedures in K.A.R. 47-4-14a and the following shall apply:

(1) Time for filing petition for a hearing.

(A)(i) If a timely request for an assessment conference has been made pursuant to paragraph (a)(8), a request for a hearing shall be made to the department within 30 days of service of notice, by the conference officer, that the conference is completed; or

(ii) a request for a hearing of a proposed assessment of a civil penalty shall be made to the department within 30 days of service of the proposed assessment.

(B) No extension of time shall be granted for filing a petition for review of a proposed assessment of a civil penalty as required by paragraph (c)(1)(A)(i) or (A)(ii). If a petition for review is not filed within the time period provided in paragraph (c)(1)(A)(i) or (A)(ii), all of the following shall apply:

(i) The appropriateness of the amount of the penalty and the fact of the violation if there is no proceeding pending under K.S.A. 49-416a, and amendments thereto, to review the notice of violation or cessation order involved shall be admitted.

(ii) The petition shall be dismissed.
(iii) The civil penalty assessed shall become a final order of the secretary.

(2) Contents of petition; payment required.

(A) The petition shall include the following:

(i) A short and plain statement indicating the reasons why either the amount of the penalty or the fact of the violation is being contested;

(ii) if the amount of penalty is being contested based upon a misapplication of the civil penalty formula, a statement indicating how the civil penalty formula in subsection (a), adopting by reference 30 C.F.R. Parts 845 and 846, was misapplied and a proposed civil penalty utilizing the civil penalty formula;

(iii) the identification by number of each violation being contested;

(iv) the identifying number of the cashier's check, certified check, bank draft, personal check, or bank money order accompanying the petition; and

(v) a request for a hearing.

(B) The petition for a hearing shall be accompanied by the following:

(i) Full payment of the proposed civil penalty in the form of a cashier's check, certified check, bank draft, personal check, or bank money order made payable to the Kansas department of health and environment, to be placed in an escrow account by the department pending final determination of the civil penalty; and

(ii) on the face of the payment, an identification by number of the violations for which payment is being tendered.

(C) As required by K.S.A. 49-405c and amendments thereto, failure to make timely payment of the proposed civil penalty in full shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(D) No extension of time shall be granted for full payment of the proposed civil penalty. If payment is not made within the time period provided in paragraph (c)(1)(A)(i) or (A)(ii), all of the following shall apply:

(i) The appropriateness of the amount of the civil penalty, the fact of the violation, and, if there is no review proceeding, the notice of violation or cessation order involved shall be deemed admitted.

(ii) The petition shall be dismissed.

(iii) The civil penalty assessed shall become a final order of the secretary.

(3) Answer. An answer may be filed by the secretary within 30 days of service of the petition.

(4) Review of waiver determination.

(A) Within 10 days of the filing of a petition, the petitioner may move the presiding officer to review the granting or denial of a waiver of the civil penalty pursuant to paragraph (a)(6).

(B) The motion shall contain a statement indicating all alleged facts relevant to the granting or denial of a waiver.

(C) Review shall be limited to the written determination of the presiding officer granting or denying the waiver, the motion, and responses to the motion. The standard of review shall be abuse of discretion.

(D) If the presiding officer finds that the secretary abused the secretary's discretion in granting or denying the waiver, the presiding officer shall hold a hearing on the petition for review of the proposed assessment and make a determination pursuant to paragraph (c)(7).

(5) Burden of proof in civil penalty proceedings. In civil penalty proceedings, the following shall apply:

(A) The department shall have the burden of establishing a prima facie case regarding the fact of the violation, the amount of the civil penalty, and the ultimate burden of persuasion regarding the amount of the civil penalty.

(B) The person who petitioned for review shall have the ultimate burden of persuasion regarding the fact of the violation.

(6) Summary disposition.

(A) In a civil penalty proceeding in which the person against whom the proposed civil penalty is assessed fails to comply on time with any pre-hearing order of a presiding officer, the presiding officer shall issue an order to show cause for the following conditions:

(i) That person should not be deemed to have waived the person's right to a hearing.

(ii) The proceedings should not be dismissed and the assessment should become final.

(B) If the order to show cause is not satisfied as required, the presiding officer shall order the proceedings dismissed and issue a final order.

(C) If the person against whom the proposed civil penalty is assessed fails to appear at a hearing, that person shall be deemed to have waived the person's right to a hearing, and the presiding officer may assume, for purposes of the assessment, the following:

(i) The occurrence of each violation listed in the notice of violation or order; and

(ii) the truth of any facts alleged in the notice or order.

(D) In order to issue an initial order assessing the appropriate civil penalty when the person against whom the proposed civil penalty is assessed fails to appear at the hearing, a presiding officer shall either conduct an ex parte hearing or require the department to furnish proposed findings of fact and conclusions of law.

(E) Nothing in this article shall be construed to deprive the person against whom the penalty is assessed of the person's opportunity to have the department prove the violations charged in open hearing with confrontation and cross-examination of witnesses, unless that person fails to comply with a prehearing order or fails to appear at the scheduled hearing.

(7) Initial order of the presiding officer.

(A) The presiding officer shall incorporate, in the presiding officer's decision concerning the civil penalty, findings of fact on each of the four criteria in paragraph (a)(3) and conclusions of law.

(B)(i) If the presiding officer finds that a violation occurred or that the fact of violation is uncontested, the presiding officer shall establish the amount of the penalty according to the point system and conversion table specified in paragraphs (a)(3) and (4).

(ii) The presiding officer may waive the use of the point system if the presiding officer determines that a waiver would further abatement of violations of the state act, except that the point system shall not be waived for abatement of other violations of the state act.

(iii) If the presiding officer finds that no violation occurred, the presiding officer shall issue an order that the proposed assessment be returned to the petitioner.

(C) If the presiding officer finds that no violation occurred or reduces the amount of the civil penalty, the presiding officer shall order the department to remit the appropriate amount to the petitioner who made the payment within 30 days of the department's receipt of the order. If a timely petition for review of the presiding officer's decision is filed with the secretary, no amount shall be remitted to the petitioner until a final determination has been made.

(D) If the presiding officer increases the amount of the civil penalty above that of the proposed assessment, the presiding officer shall order payment of the appropriate amount within 15 days after the order increasing the civil penalty is mailed.

(8) Appeals.

(A) Any party may petition the secretary to review and reconsider the initial order of a presiding officer concerning an assessment pursuant to K.A.R. 47-4-14a.

(B) Any party may appeal the final order of the secretary pursuant to the Kansas judicial review act, K.S.A. 77-601 et seq., and amendments thereto. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, 49-405c, and 49-416a; effective May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended Dec. 1, 2006; amended Feb. 15, 2019.)

Article 6.—PERMIT REVIEW

47-6-1. Permit review. (a) Each permit issued and outstanding during the term of the permit shall be reviewed by the secretary or secretary's designee not later than the middle of that term. Reasonable revision or modification of the permit provisions may be ordered at any time to ensure compliance with the laws and regulations. A copy of the order and the written findings shall be sent to the operator. The order shall be subject to K.S.A. 49-407 and K.S.A. 49-422a, and amendments thereto.

(b) Each permit authorizing one or more variances that is issued in accordance with K.A.R. 47-3-42(a)(62) shall be reviewed not later than three years from the date of issuance.

(c) Each permit authorizing one or more experimental practices that is issued in accordance with K.A.R. 47-3-42(a)(60) shall be reviewed as specified in the permit or at least every two and a half years from the date of issuance as required by the department, in accordance with K.A.R. 47-3-42(a)(60).

(d) After the review required by this regulation or at any time, the reasonable revision of any permit may be required by the secretary, by order, in accordance with K.A.R. 47-6-2 to ensure compliance with the state act and the regulatory program.

(e) Each order of the secretary requiring revision of a permit shall be based upon written findings and shall be subject to the provisions of administrative and judicial review in K.S.A. 49-407(d), K.S.A. 49-416a, and K.S.A. 49-422a, and amendments thereto, and article 4 of these regulations. A copy of each order shall be sent to the permittee.

(f) Any permit may be suspended or revoked in accordance with articles 5 and 15 of these regula-

tions. (Authorized by K.S.A. 49-405 and 49-410; implementing K.S.A. 2018 Supp. 49-406 and K.S.A. 49-410; effective May 1, 1980; amended Feb. 11, 1991; amended May 2, 1997; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-6-2. Permit revision. (a) Each application to revise an existing permit shall be submitted by the operator at least 60 days before the date on which the operator wants to have the approval of the secretary.

(b) Each application for a permit revision shall include the following:

(1) A map that meets the general map requirements of these regulations;

(2) a description of the permit revision with the technical data necessary to establish the impact and consequences of the proposed revision on the surface coal mining and reclamation operation, the environment, and public health and safety; and

(3) any additional information requested by the department.

(c) If the application for permit revision contains significant alterations or departures from the method of mining or reclamation operations covered by the original permit, the operator shall meet all the application requirements, which shall include all requests from the department for relevant information.

Whether a significant alteration or departure is involved shall be determined by the chief of the surface mining section on a case-by-case basis upon review, unless a determination is requested in writing by the operator upon or before filing the application. On receiving this request, the operator shall be advised by the chief of the surface mining section if a significant alteration or departure is involved for the purpose of submitting an application.

If the application for permit revision contains significant alterations or departures, the operator shall meet all of the requirements of K.A.R. 47-3-1 through 47-3-42, including all requests from the department for relevant information.

(d) No application for a permit revision shall be approved unless the applicant demonstrates and the regulatory authority finds that all of the following conditions are met:

(1) The reclamation required by the state act and the regulatory program can be accomplished.

(2) The applicable requirements of K.A.R. 47-3-42(a)(11) pertinent to the revision are met.

(3) The application for revision meets all requirements of the state act and the regulatory program.

(e) Each extension to the area covered by the permit, except incidental boundary revisions, shall be made through an application for a new permit. (Authorized by K.S.A. 49-405 and 49-410; implementing K.S.A. 2018 Supp. 49-406 and K.S.A. 49-410; effective May 1, 1980; amended Feb. 11, 1991; amended May 2, 1997; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-6-3. Permit renewals; adoption by reference. (a) The section titled “permit renewals,” 30 C.F.R. 774.15, as in effect on July 1, 2012, is hereby adopted by reference, except as otherwise specified in this regulation. Subsection (c)(3) of 30 C.F.R. 774.15 shall be deleted.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1)(A) “Act” shall be replaced by “state act.”

(B) “Subchapter J of this chapter” shall be replaced by “article 8 of these regulations.”

(2) “Part 775 of this chapter” shall be replaced by “K.S.A. 49-407(d), K.S.A. 49-416a, K.S.A. 49-422a, and amendments thereto, and article 4 of these regulations.”

(3)(A) “§773.19” shall be replaced by “K.A.R. 47-3-42(a)(13).”

(B) “§774.13” shall be replaced by “K.A.R. 47-6-2.”

(C) “§778.21 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(30).”

(D) “§800.60 of this chapter” shall be replaced by “K.A.R. 47-8-9(a)(15).”

(E) “§§773.6 and 773.19(b) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(2) and (13).” (Authorized by K.S.A. 49-405; implementing K.S.A. 2018 Supp. 49-406; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-6-4. Permit transfers, assignments, and sales; adoption by reference. (a) Each application for a new permit required for a person succeeding by transfer, sale, or assignment of rights granted under a permit shall be filed with the secretary not later than 30 days after that succession is approved by the secretary.

(b) Transfer, assignment, or sale of permit rights, 30 C.F.R. 774.17, as in effect on July 1, 2012, is adopted by reference, except as otherwise indicated in this regulation.

(c) The following phrases shall be replaced with the phrases specified in this subsection wherever the phrases appear in the federal regulations adopted by reference in this regulation:

(1)(A) "Act" shall be replaced by "state act."

(B) "Subchapter J of this chapter" shall be replaced by "article 8 of these regulations."

(C) "This subchapter" shall be replaced by "these regulations."

(2) "Part 778 of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(21) through (31)."

(3) "§773.12 and 773.14 of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(8) and (10)." (Authorized by K.S.A. 49-405; implementing K.S.A. 49-410; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-6-6. Permit conditions; adoption by reference. (a) The section titled "permit conditions," 30 C.F.R. 773.17, as in effect on July 1, 2012, is adopted by reference, except as otherwise specified in this regulation.

(b) The following phrases shall be replaced with the phrases specified in this subsection wherever the phrases appear in the federal regulation adopted by reference in this regulation:

(1)(A) "Act" shall be replaced by "state act."

(B) "Subchapter J of this chapter" shall be replaced by "article 8 of these regulations."

(C) "Subchapter R of this chapter" and "that subchapter" shall be replaced by "the office of surface mining reclamation and enforcement."

(2) "Parts 840 and 842" shall be replaced by "K.A.R. 47-15-1a."

(3)(A) "§701.11(d) and subchapter B or K of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(1) and either K.A.R. 47-9-4 or K.A.R. 47-9-1."

(B) "§§842.13 and 840.12 of this chapter" shall be replaced by "K.A.R. 47-15-1a(a)(4)." (Authorized by K.S.A. 49-405; implementing K.S.A. 2018 Supp. 49-406; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-6-8. Termination of jurisdiction; adoption by reference. (a) The section titled "applicability," 30 C.F.R. 700.11, as in effect on July 1, 2012, is adopted by reference, except as otherwise specified in this regulation, and subsections (a)(1), (a)(5), and (b) of 30 C.F.R. 700.11 shall be deleted.

(b) The following phrases shall be replaced with the phrases specified in this subsection wherever the phrases appear in the federal regulation adopted by reference in this regulation:

(1)(A) "Subchapter B of this chapter" shall be replaced by "K.A.R. 47-9-4."

(B) "The State or Federal program counterpart to part 800 of this chapter" shall be replaced by "article 8 of these regulations."

(C) "This chapter" shall be replaced by "these regulations."

(2)(A) "Part 702 of this chapter" shall be replaced by "K.A.R. 47-6-10."

(B) "Part 707 of this chapter" shall be replaced by "K.A.R. 47-6-9." (Authorized by and implementing K.S.A. 49-405; effective Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-6-9. Exemption for coal extraction incidental to government-financed highway or other construction; adoption by reference.

(a) The following federal regulations, as in effect on July 1, 2012, are adopted by reference, except as otherwise specified in this regulation:

(1) Responsibility, 30 C.F.R. 707.4;

(2) definitions, 30 C.F.R. 707.5;

(3) applicability, 30 C.F.R. 707.11, except that the phrase "Federal or Federal lands" shall be deleted; and

(4) information to be maintained on site, 30 C.F.R. 707.12.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1)(A) "Act" shall be replaced by "state act."

(B) "This chapter" shall be replaced by "these regulations."

(C) "Title IV" shall be replaced by "K.S.A. 49-428 and amendments thereto."

(2) "30 CFR 707.12" shall be replaced by "K.A.R. 47-6-9(a)(4)." (Authorized by and implementing K.S.A. 49-405; effective Feb. 11, 1991; amended May 2, 1997; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-6-10. Exemption for coal extraction incidental to the extraction of other minerals; adoption by reference. (a) The following federal regulations, as in effect on July 1, 2012, are adopted by reference, except as otherwise specified in this regulation:

- (1) Definitions, 30 C.F.R. 702.5;
 - (2) application requirements and procedures, 30 C.F.R. 702.11, except that subsection (b) shall be deleted. The text “after April 1, 1990, under a Federal program or on Indian lands, or after the effective date of counterpart provisions in a State program” shall be replaced by “under the state act”;
 - (3) contents of application for exemption, 30 C.F.R. 702.12;
 - (4) public availability of information, 30 C.F.R. 702.13;
 - (5) requirements for exemption, 30 C.F.R. 702.14;
 - (6) conditions of exemption and right of inspection and entry, 30 C.F.R. 702.15. However, “§702.11(b) or” and “for Federal programs and on Indian lands or in accordance with counterpart provisions when included in State programs” shall be deleted;
 - (7) stockpiling of minerals, 30 C.F.R. 702.16;
 - (8) revocation and enforcement, 30 C.F.R. 702.17; and
 - (9) reporting requirements, 30 C.F.R. 702.18.
- (b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:
- (1)(A) “Act” shall be replaced by “state act.”
 - (B) “Secretary” shall be replaced by “secretary of the Kansas department of health and environment.”
 - (C) The following text shall be replaced by “K.A.R. 47-4-14a”: “43 CFR 4.1280 when OSM is the regulatory authority or under corresponding State procedures when a State is the regulatory authority” and “43 CFR 4.1280 or under corresponding State procedures.”
 - (D) “The standards of this part for Federal programs and on Indian lands or in accordance with counterpart provisions when included in State programs” shall be replaced by “these regulations.”
 - (2)(A) “§702.5 of this part” shall be replaced by “K.A.R. 47-6-10(a)(2).”
 - (B) “§702.11(e)(3)” shall be replaced by “K.A.R. 47-6-10(a)(3).”
 - (C) “§702.12(g)” shall be replaced by “K.A.R. 47-6-10(a)(4).”

(D) “§702.16” shall be replaced by “K.A.R. 47-6-10(a)(8).”

(E) “§702.18 of this part” and “§702.18” shall be replaced by “K.A.R. 47-6-10(a)(10).” (Authorized by and implementing K.S.A. 49-405; effective Feb. 11, 1991; amended May 2, 1997; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-6-11. Post-permit issuance requirements; adoption by reference. (a) The following federal regulations, as in effect on July 1, 2012, are adopted by reference, except as otherwise specified in this regulation:

- (1) Post-permit issuance requirements for regulatory authorities and other actions based on ownership, control, and violation information, 30 C.F.R. 774.11; and
 - (2) post-permit issuance information requirements for permittees, 30 C.F.R. 774.12.
- (b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted in this regulation:
- (1) “Regulatory authority” shall be replaced by “Kansas department of health and environment.”
 - (2)(A) “Part 843, 846, or 847 of this chapter” shall be replaced by “K.A.R. 47-15-1a, K.A.R. 47-5-5a(a)(10) through (13), and K.A.R. 47-5-17.”
 - (B) “Section 510(c) of the Act” shall be replaced by “K.S.A. 49-407(b), and amendments thereto.”
 - (3) “43 CFR 4.1350 through 4.1356” shall be replaced by “article 4 of these regulations.”
 - (4)(A) “§778.11(c) of this subchapter,” “§778.11(d) of this subchapter,” and “§778.11 of this subchapter” shall be replaced by “K.A.R. 47-3-42(a)(22).”
 - (B) “§843.11” shall be replaced by “K.A.R. 47-15-1a(a)(8).”
 - (C) “§§773.12(a) and (b) of this subchapter” shall be replaced by “K.A.R. 47-3-42(a)(8).”
 - (D) “§§773.25, 773.26 and 773.27 of this subchapter” shall be replaced by “K.A.R. 47-3-42(a)(17), (18), and (19).” (Authorized by and implementing K.S.A. 49-405; effective Dec. 1, 2006; amended Feb. 15, 2019.)

Article 7.—COAL EXPLORATION

47-7-2. Coal exploration; adoption by reference. (a) The following federal regulations, as in effect on July 1, 2012, are adopted by reference, except as otherwise specified in this regulation:

(1) Notice requirements for exploration removing 250 tons of coal or less, 30 C.F.R. 772.11;

(2) permit requirements for exploration that will remove more than 250 tons of coal or that will occur on lands designated as unsuitable for surface coal mining operations, 30 C.F.R. 772.12;

(3) coal exploration compliance duties, 30 C.F.R. 772.13;

(4) commercial use or sale, 30 C.F.R. 772.14; and

(5) public availability of information, 30 C.F.R. 772.15.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation.

(1)(A) “Subchapter F of this chapter” shall be replaced by “article 12 of these regulations.”

(B) The phrase “section 518 of the Act, subchapter L of this chapter, and the applicable inspection and enforcement provisions of the regulatory program” shall be replaced by “K.S.A. 49-405c, and amendments thereto, and articles 5 and 15 of these regulations.”

(C) “This part,” “this part, part 815 of this chapter, and the applicable provisions of the regulatory program,” and “this part, part 815 of this chapter, the regulatory program” shall be replaced by “K.A.R. 47-7-2” and “K.A.R. 47-9-1(b).”

(2)(A) “Part 775 of this chapter” shall be replaced by “K.S.A. 49-407(d), K.S.A. 49-416a, K.S.A. 49-422a, and amendments thereto, and article 4 of these regulations.”

(B) “Part 815 of this chapter” shall be replaced by “K.A.R. 47-9-1(b).”

(C) “Parts 773 through 785 of this chapter” shall be replaced by “articles 3, 4, 6, and 10 of these regulations, K.S.A. 49-407(d), K.S.A. 49-416a, and K.S.A. 49-422a, and amendments thereto.”

(3)(A) “§761.11 of this chapter” shall be replaced by “K.A.R. 47-12-4(a)(2).”

(B) “§772.12” shall be replaced by “K.A.R. 47-7-2(a)(2).”

(C) “§772.13” shall be replaced by “K.A.R. 47-7-2(a)(3).”

(D) “§§772.13 and 772.14” shall be replaced by “K.A.R. 47-7-2(a)(3) and (4).”

(E) “§§772.14(b) and 700.11(a)(5)” shall be replaced by “K.A.R. 47-7-2(a)(4) and K.A.R. 47-6-8.” (Authorized by K.S.A. 49-405; implementing K.S.A. 49-427; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986;

amended May 1, 1988; amended Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended Dec. 1, 2006; amended Feb. 15, 2019.)

Article 8.—BONDING PROCEDURES

47-8-9. Bonding procedures; adoption by reference. (a) The following federal regulations, as in effect on July 1, 2012, are adopted by reference, except as otherwise specified in this regulation:

(1) Regulatory authority responsibilities, 30 C.F.R. 800.4, deleting subsection (d);

(2) definitions, 30 C.F.R. 800.5, deleting subsection (c);

(3) requirement to file a bond, 30 C.F.R. 800.11, deleting subsection (e);

(4) form of the performance bond, 30 C.F.R. 800.12, deleting subsection (c);

(5) period of liability, 30 C.F.R. 800.13;

(6) determination of bond amount, 30 C.F.R. 800.14;

(7) adjustment of amount, 30 C.F.R. 800.15;

(8) general terms and conditions of bond, 30 C.F.R. 800.16;

(9) bonding requirements for underground coal mines and long-term coal-related surface facilities and structures, 30 C.F.R. 800.17;

(10) surety bonds, 30 C.F.R. 800.20;

(11) collateral bonds, 30 C.F.R. 800.21;

(12) replacement of bonds, 30 C.F.R. 800.30;

(13) requirement to release performance bonds, 30 C.F.R. 800.40;

(14) forfeiture of bonds, 30 C.F.R. 800.50; and

(15) terms and conditions for liability insurance, 30 C.F.R. 800.60, deleting subsection (d).

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1)(A) “Act” shall be replaced by “state act.”

(B) “Application” shall be replaced by “complete and accurate application.”

(C) “Subchapter K of this chapter” shall be replaced by “article 9 of these regulations.”

(D) “This chapter” and “subchapter G of this chapter” shall be replaced by “these regulations.”

(E) “This subchapter” shall be replaced by “article 8 of these regulations.”

(F) “(Under parts 780 and 784 of this chapter)” shall be replaced by “[under K.A.R. 47-3-42(a) (40) through (59), and K.A.R. 47-10-1].”

(2)(A) “Part 823 of this chapter” shall be replaced by “K.A.R. 47-9-1(f).”

(B) “Section 507(b)(16) of the act” shall be replaced by “K.S.A. 49-407(c), and amendments thereto.”

(C) “Section 513(b) of the act” shall be replaced by “K.S.A. 49-407(d), and amendments thereto, and the regulations promulgated thereunder.”

(D) “Section 515 of the act” and “section 515(b)(10) of the act” shall be replaced by “K.S.A. 49-405a, K.S.A. 49-408 through K.S.A. 49-413, K.S.A. 49-429, and amendments thereto, and the regulations promulgated thereunder.”

(3)(A) “§800.11(b)” shall be replaced by “K.A.R. 47-8-9(a)(3).”

(B) “§800.13” shall be replaced by “K.A.R. 47-8-9(a)(5).”

(C) “§800.14” shall be replaced by “K.A.R. 47-8-9(a)(6).”

(D) “§800.15” shall be replaced by “K.A.R. 47-8-9(a)(7).”

(E) “§800.16(e)(2)” shall be replaced by “K.A.R. 47-8-9(a)(8).”

(F) “§800.17(b)(3)” shall be replaced by “K.A.R. 47-8-9(a)(9).”

(G) “§800.21(f)” shall be replaced by “K.A.R. 47-8-9(a)(11).”

(H) “§800.40,” “§800.40(c)(2),” “§800.40(f) and (h),” and “§800.40(a)(2)” shall be replaced by “K.A.R. 47-8-9(a)(13).”

(I) “§800.50” shall be replaced by “K.A.R. 47-8-9(a)(14).”

(J) “§800.60” shall be replaced by “K.A.R. 47-8-9(a)(15).”

(K) “§816.116 or §817.116 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(42) or K.A.R. 47-9-1(d)(38).”

(L) “§816.132 or §817.132 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(44) or K.A.R. 47-9-1(d)(42).”

(M) “§816.133 or §817.133 of this chapter” and “§§816.133(c) and 817.133(c)” shall be replaced by “K.A.R. 47-9-1(c)(45) or K.A.R. 47-9-1(d)(43).”

(N) “§817.121(c) of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(39).”

(O) “§§800.14 and 800.15” shall be replaced by “K.A.R. 47-8-9(a)(6) and (7).” (Authorized by K.S.A. 49-405; implementing K.S.A. 2018 Supp. 49-406, K.S.A. 49-407, and K.S.A. 49-429; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997;

amended July 31, 1998; amended Dec. 1, 2006; amended Feb. 15, 2019.)

Article 9.—PERFORMANCE STANDARDS

47-9-1. Adoption by reference. (a) The following portions of the “permanent program performance standards—general provisions,” 30 C.F.R. Part 810, as in effect on July 1, 2012, are hereby adopted by reference, except as specified in this subsection:

(1) Responsibility, 30 C.F.R. 810.4, except that subsection (a) shall be deleted; and

(2) applicability, 30 C.F.R. 810.11.

(b) The following portions of the “permanent program performance standards—coal exploration,” 30 C.F.R. Part 815, as in effect on July 1, 2012, are hereby adopted by reference:

(1) Required documents, 30 C.F.R. 815.13; and

(2) performance standards for coal exploration, 30 C.F.R. 815.15.

(c) The following portions of the “permanent program standards—surface mining activities,” 30 C.F.R. Part 816, as in effect on July 1, 2012, are hereby adopted by reference, except as specified in this subsection:

(1) Signs and markers, 30 C.F.R. 816.11. A subsection (g) shall be added to 30 C.F.R. 816.11 that reads as follows: “Increment boundary markers. As deemed necessary by the secretary or secretary’s designee to ensure the public health and safety, protect the environment, and ascertain increment boundaries, increment boundary markers shall be placed on each portion of a permit area on which a performance bond or other equivalent guarantee was or will be posted as provided by K.S.A. 49-406, and amendments thereto”;

(2) casing and sealing of drilled holes: general requirements, 30 C.F.R. 816.13;

(3) casing and sealing of drilled holes: temporary, 30 C.F.R. 816.14;

(4) casing and sealing of drilled holes: permanent, 30 C.F.R. 816.15;

(5) topsoil and subsoil, 30 C.F.R. 816.22. The first paragraph of subsection (d)(1) of 30 C.F.R. 816.22 shall be replaced by the following:

“Absent an approved schedule, topsoil and subsoil materials removed under paragraph (a) of this section shall be redistributed within 120 days following rough backfilling and grading in a manner that complies with the following:”;

(6) hydrologic-balance protection, 30 C.F.R. 816.41;

- (7) hydrologic balance: water quality standards and effluent limitations, 30 C.F.R. 816.42;
- (8) diversions, 30 C.F.R. 816.43;
- (9) hydrologic balance: sediment control measures, 30 C.F.R. 816.45;
- (10) hydrologic balance: siltation structures, 30 C.F.R. 816.46;
- (11) hydrologic balance: discharge structures, 30 C.F.R. 816.47;
- (12) impoundments, 30 C.F.R. 816.49;
- (13) postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities, 30 C.F.R. 816.56;
- (14) hydrologic balance: activities in or adjacent to perennial or intermittent streams, 30 C.F.R. 816.57, except that in the first sentence of subsection (c), the text “comply with paragraphs (b) (10)(B)(i) and (b)(24) of section 515 of the act and the regulations implementing those provisions of the act, including” shall be replaced by the following: “conduct surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow, or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable state or federal law, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, achieve enhancement of such resources where practicable, and comply with the following.”;
- (15) coal recovery, 30 C.F.R. 816.59;
- (16) use of explosives: general requirements, 30 C.F.R. 816.61, except that subsection (c)(1) shall be replaced by the following:
 “All blasting operations within the state shall be conducted under the direction of a Kansas-certified blaster”;
- (17) use of explosives: preblasting survey, 30 C.F.R. 816.62;
- (18) use of explosives: blasting schedule, 30 C.F.R. 816.64;
- (19) use of explosives: blasting signs, warnings, and access control, 30 C.F.R. 816.66;
- (20) use of explosives: control of adverse effects, 30 C.F.R. 816.67;
- (21) use of explosives: records of blasting operations, 30 C.F.R. 816.68;
- (22) disposal of excess spoil: general requirements, 30 C.F.R. 816.71, in (h)(3)(ii) deleting the phrase “in accordance with §816.73”;
- (23) disposal of excess spoil: preexisting benches, 30 C.F.R. 816.74;
- (24) protection of underground mining, 30 C.F.R. 816.79;
- (25) coal mine waste: general requirements, 30 C.F.R. 816.81;
- (26) coal mine waste: refuse piles, 30 C.F.R. 816.83;
- (27) coal mine waste: impounding structures, 30 C.F.R. 816.84;
- (28) coal mine waste: burning and burned waste utilization, 30 C.F.R. 816.87;
- (29) disposal of noncoal mine wastes, 30 C.F.R. 816.89;
- (30) stabilization of surface areas, 30 C.F.R. 816.95;
- (31) protection of fish, wildlife, and related environmental values, 30 C.F.R. 816.97;
- (32) slides and other damage, 30 C.F.R. 816.99;
- (33) contemporaneous reclamation, 30 C.F.R. 816.100;
- (34) backfilling and grading: time and distance requirements, 30 C.F.R. 816.101. This section shall be replaced by the following text:
 “(a) Except as provided in paragraph (b) of this section, rough backfilling and grading for surface mining activities shall be completed according to one of the following schedules:
 “(1) Contour mining. Within 60 days or 1,500 linear feet following coal removal;
 “(2) area mining. Within 180 days following coal removal, and not more than four spoil ridges behind the active pit being worked, the spoil from the active pit constituting the first ridge; or
 “(3) other surface mining methods. In accordance with the schedule established by the department.
 “(b) The time allowed for rough backfilling and grading for the entire permit area or for a specific portion of the permit area may be extended by the department if the permittee demonstrates, in accordance with K.A.R. 47-3-42(a)(47), adopting by reference 30 CFR 780.18(b)(3), that additional time is necessary”;
- (35) backfilling and grading: general requirements, 30 C.F.R. 816.102, deleting subsections (k)(3)(i) and (ii);
- (36) backfilling and grading: thin overburden, 30 C.F.R. 816.104;
- (37) backfilling and grading: thick overburden, 30 C.F.R. 816.105;
- (38) backfilling and grading: previously mined areas, 30 C.F.R. 816.106;
- (39) revegetation: general requirements, 30 C.F.R. 816.111;
- (40) revegetation: timing, 30 C.F.R. 816.113;

(41) revegetation: mulching and other soil stabilizing practices, 30 C.F.R. 816.114;

(42) revegetation: standards for success, 30 C.F.R. 816.116. A subsection (i) shall be added to 816.116(c)(4), and a subsection (3) shall be added to 816.116(a):

(A) Subsection (c)(4)(i) shall read as follows: “(i) The regulatory authority may allow 90 days after the issuance of a notice of violation for the repair of any rills or gullies, or both, that may occur. If the rills or gullies, or both, are repaired using normal husbandry practices, approved by the department in consultation with the state conservationist or the state conservationist’s designated representative and the repairs are approved by the department, the period of responsibility shall not be restarted. The normal husbandry practices used to repair gullies shall be approved in advance by the United States department of interior, office of surface mining reclamation and enforcement. If the rills or gullies, or both, are not repaired and approved within 90 days or if augmented seeding, fertilization, or irrigation was utilized to do the repairs, the regulatory authority will restart the period of liability, effective from the date the repair was completed and approved by the department.”

(B) Subsection (a)(3) shall read as follows: “(3) Data being used for bond release shall be submitted to the department annually. This shall include data for the last augmented seeding, which shall start the extended liability period. The following timetable for submissions shall be followed:

“(i) The planting reports, including soil tests, shall be submitted by March 31 of the year following the year in which the soil tests were performed;

“(ii) the production and ground cover data shall be submitted within 30 days of the date that the production and ground cover were sampled. Ground cover shall include species identification. Raw field data may be submitted at this time to fulfill this requirement. The tabulated results shall then be submitted by March 31 of the following year; and

“(iii) all data shall be clearly identified as to the bond release management area that it represents.”;

(43) cessation of operations: temporary, 30 C.F.R. 816.131;

(44) cessation of operations: permanent, 30 C.F.R. 816.132;

(45) postmining land use, 30 C.F.R. 816.133, deleting subsection (d)(1) and replacing the term “Act” with “state act”;

(46) roads: general, 30 C.F.R. 816.150;

(47) primary roads, 30 C.F.R. 816.151;

(48) utility installations, 30 C.F.R. 816.180;

(49) support facilities, 30 C.F.R. 816.181; and

(50) interpretative rules related to general performance standards, 30 C.F.R. 816.200.

(d) The following portions of the “permanent program performance standards—underground mining activities,” 30 C.F.R. Part 817, as in effect on July 1, 2012, are hereby adopted by reference, except as specified in this subsection:

(1) Signs and markers, 30 C.F.R. 817.11. A subsection (g) shall be added: “(g) Increment boundary markers. Increment boundary markers shall be placed on each portion of a permit area on which a performance bond or other equivalent guarantee was or will be posted as provided by K.S.A. 49-406(h), and amendments thereto”;

(2) casing and sealing of exposed underground openings: general requirements, 30 C.F.R. 817.13;

(3) casing and sealing of underground openings: temporary, 30 C.F.R. 817.14;

(4) casing and sealing of underground openings: permanent, 30 C.F.R. 817.15;

(5) topsoil and subsoil, 30 C.F.R. 817.22;

(6) hydrologic-balance protection, 30 C.F.R. 817.41;

(7) hydrologic balance: water quality standards and effluent limitations, 30 C.F.R. 817.42;

(8) diversions, 30 C.F.R. 817.43;

(9) hydrologic balance: sediment control measures, 30 C.F.R. 817.45;

(10) hydrologic balance: siltation structures, 30 C.F.R. 817.46;

(11) hydrologic balance: discharge structures, 30 C.F.R. 817.47;

(12) impoundments, 30 C.F.R. 817.49;

(13) postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities, 30 C.F.R. 817.56;

(14) hydrologic balance: surface activities in or adjacent to perennial or intermittent streams, 30 C.F.R. 817.57, except that in the first sentence of subsection (c), the text “comply with paragraphs (b)(9)(B) and (b)(11) of section 516 of the act and the regulations implementing those provisions of the act, including” shall be replaced by the following: “conduct surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow, or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable state or federal law, minimize disturbances and adverse impacts of the operation on

fish, wildlife, and related environmental values, achieve enhancement of such resources where practicable, and comply with the following.”;

(15) coal recovery, 30 C.F.R. 817.59;

(16) use of explosives: general requirements, 30 C.F.R. 817.61, except that subsection (c)(1) of 30 C.F.R. 817.61 shall be replaced by the following:

“All blasting operations within the state shall be conducted under the direction of a Kansas-certified blaster”;

(17) use of explosives: preblasting survey, 30 C.F.R. 817.62;

(18) use of explosives: general performance standards, 30 C.F.R. 817.64;

(19) use of explosives: blasting signs, warnings, and access control, 30 C.F.R. 817.66;

(20) use of explosives: control of adverse effects, 30 C.F.R. 817.67;

(21) use of explosives: records of blasting operations, 30 C.F.R. 817.68;

(22) disposal of excess spoil: general requirements, 30 C.F.R. 817.71, deleting the phrase “in accordance with §817.73”;

(23) disposal of excess spoil: preexisting benches, 30 C.F.R. 817.74;

(24) coal mine waste: general requirements, 30 C.F.R. 817.81;

(25) coal mine waste: refuse piles, 30 C.F.R. 817.83;

(26) coal mine waste: impounding structures, 30 C.F.R. 817.84;

(27) coal mine waste: burning and burned waste utilization, 30 C.F.R. 817.87;

(28) disposal of noncoal mine wastes, 30 C.F.R. 817.89;

(29) stabilization of surface areas, 30 C.F.R. 817.95;

(30) protection of fish, wildlife, and related environmental values, 30 C.F.R. 817.97;

(31) slides and other damage, 30 C.F.R. 817.99;

(32) contemporaneous reclamation, 30 C.F.R. 817.100;

(33) backfilling and grading: general requirements, 30 C.F.R. 817.102, deleting subsection (k)(1);

(34) backfilling and grading: previously mined areas, 30 C.F.R. 817.106;

(35) revegetation: general requirements, 30 C.F.R. 817.111;

(36) revegetation: timing, 30 C.F.R. 817.113;

(37) revegetation: mulching and other soil stabilizing practices, 30 C.F.R. 817.114;

(38) revegetation: standards for success, 30 C.F.R. 817.116. A subsection (3) shall be added

to 817.116(a). Subsection (a)(3) shall read as follows: “(3) Data being used for bond release shall be submitted to the department annually. This shall include data for the last augmented seeding, which shall start the extended liability period. The following timetable for submissions shall be followed:

“(i) The planting reports, including soil tests, shall be submitted by March 31 of the year following the year in which the soil tests were performed;

“(ii) The production and ground cover data shall be submitted within 30 days of the date that the production and ground cover were sampled. Ground cover shall include species identification. Raw field data may be submitted at this time to fulfill this requirement. The tabulated results shall then be submitted by March 31 of the following year; and

“(iii) All data shall be clearly identified as to the bond release management area that it represents.”;

(39) subsidence control, 30 C.F.R. 817.121, except that 30 C.F.R. 817.121(c)(4)(i)-(iv) shall be deleted;

(40) subsidence control: public notice, 30 C.F.R. 817.122;

(41) cessation of operations: temporary, 30 C.F.R. 817.131;

(42) cessation of operations: permanent, 30 C.F.R. 817.132;

(43) postmining land use, 30 C.F.R. 817.133, deleting subsection (d)(1) and replacing the term “Act” with “state act”;

(44) roads: general, 30 C.F.R. 817.150;

(45) primary roads, 30 C.F.R. 817.151;

(46) utility installations, 30 C.F.R. 817.180;

(47) support facilities, 30 C.F.R. 817.181; and

(48) interpretative rules related to general performance standards, 30 C.F.R. 817.200. The phrase “Office of Surface Mining Reclamation and Enforcement” shall be replaced by “Kansas department of health and environment.”

(e) The following portions of the “special permanent program performance standards—auger mining,” 30 C.F.R. Part 819, as in effect on July 1, 2012, are hereby adopted by reference:

(1) Auger mining: general, 30 C.F.R. 819.11;

(2) auger mining: coal recovery, 30 C.F.R. 819.13;

(3) auger mining: hydrologic balance, 30 C.F.R. 819.15;

(4) auger mining: subsidence protection, 30 C.F.R. 819.17;

(5) auger mining: backfilling and grading, 30 C.F.R. 819.19; and

(6) auger mining: protection of underground mining, 30 C.F.R. 819.21.

(f) The following portions of the “special permanent program performance standards—operations on prime farmland,” 30 C.F.R. Part 823, as in effect on July 1, 2012, are hereby adopted by reference, except as specified in this subsection:

(1) Responsibilities, 30 C.F.R. 823.4;

(2) applicability, 30 C.F.R. 823.11, deleting subsection (a);

(3) soil removal and stockpiling, 30 C.F.R. 823.12;

(4) soil replacement, 30 C.F.R. 823.14; and

(5) revegetation and restoration of soil productivity, 30 C.F.R. 823.15.

(g) The following portions of the “permanent program performance standards—coal preparation plants not located within the permit area of a mine,” 30 C.F.R. Part 827, as in effect on July 1, 2012, are hereby adopted by reference:

(1) General requirements, 30 C.F.R. 827.11;

(2) coal preparation plants: performance standards, 30 C.F.R. 827.12; and

(3) coal preparation plants: interim performance standards, 30 C.F.R. 827.13.

(h) The following portions of the “special permanent program performance standards—in situ processing,” 30 C.F.R. Part 828, as in effect on July 1, 2012, are hereby adopted by reference:

(1) In situ processing: performance standards, 30 C.F.R. 828.11; and

(2) in situ processing: monitoring, 30 C.F.R. 828.12.

(i) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1)(A) “Director” shall be replaced by “secretary.”

(B) “Every state program,” “every regulatory program,” and “the applicable regulatory program” shall be replaced by “the regulatory program.”

(C) “Subchapter B of this chapter” shall be replaced by “K.A.R. 47-9-4.”

(D) “Subchapter J of this chapter” shall be replaced by “article 8 of these regulations.”

(E) “This chapter,” “subchapter,” and “this section” shall be replaced by “these regulations.”

(F) “This part” shall be replaced by “K.A.R. 47-9-1.”

(G) “This title” shall be replaced by “the 30 CFR.”

(2)(A) “Part 815” shall be replaced by “K.A.R. 47-9-1(b).”

(B) “Part 816 of this chapter” shall be replaced by “K.A.R. 47-9-1(c).”

(C) “Part 816 or part 817” shall be replaced by “K.A.R. 47-9-1(c) or (d).”

(D) “Part 817,” “part 817 of this chapter,” and “30 CFR 817” shall be replaced by “K.A.R. 47-9-1(d).”

(E) “Part 823 of this chapter” shall be replaced by “K.A.R. 47-9-1(f).”

(F) “Parts 816 and 817” shall be replaced by “K.A.R. 47-9-1(c) and (d).”

(G) “Parts 818 through 828” shall be replaced by “K.A.R. 47-9-1(e) through (h).”

(H) “Section 816.150” shall be replaced by “K.A.R. 47-9-1(c)(46).”

(I) “Sections 817.61-817.68” shall be replaced by “K.A.R. 47-9-1(d)(16)-(21).”

(3)(A) “30 CFR part 773 and 775” shall be replaced by “K.A.R. 47-3-42(a)(2) through (20), and K.S.A. 49-407(d), 49-416a, 49-422a, and amendments thereto, and article 4 of these regulations.”

(B) “30 CFR 784.15(a)(2)” shall be replaced by “K.A.R. 47-10-1(a)(2)(F).”

(C) “30 CFR 785.22” shall be replaced by “K.A.R. 47-3-42(a)(65).”

(D) “30 CFR 817.133,” “§817.133,” and “30 CFR 817.133(a)” shall be replaced by “K.A.R. 47-9-1(d)(43).”

(4)(A) “§701.5 of this chapter” shall be replaced by “K.A.R. 47-2-75(b).”

(B) “§732.17 of this chapter” shall be replaced by “30 C.F.R. 732.17.”

(C) “§773.6(d) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(2).”

(D) “§773.15(m) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(11).”

(E) “§774.13 of this chapter” and “30 CFR 774.13” shall be replaced by “K.A.R. 47-6-2.”

(F) “§780.13 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(43).”

(G) “§780.21(h) of this chapter,” “§780.21(i) of this chapter,” and “§780.21(j) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(48).”

(H) “§780.25 of this chapter,” “§780.25(a) of this chapter,” and “§780.25(c)(3)” shall be replaced by “K.A.R. 47-3-42(a)(51).”

(I) “§780.28(d) of this chapter or §816.43(b)(1) of this part” shall be replaced by “K.A.R. 47-3-42(a)(53) or K.A.R. 47-9-1(c)(8).”

(J) “§780.28(e) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(53).”

(K) “§780.35(c) of this chapter” shall be replaced by “K.A.R. 47-3-42(c)(57).”

(L) “§780.37(c) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(58).”

(M) “§784.14(g) of this chapter,” “§784.14(h) of this chapter,” and “§784.14(i) of this chapter” shall be replaced by “K.A.R. 47-10-1(a)(2)(E).”

(N) “§784.16(a) of this chapter” and “§784.16(c)(3)” shall be replaced by “K.A.R. 47-10-1(a)(2)(G).”

(O) “§784.19 of this chapter” shall be replaced by “K.A.R. 47-10-1(a)(2)(J).”

(P) “§784.20 of this chapter” and “§784.20(a) of this chapter” shall be replaced by “K.A.R. 47-10-1(a)(2)(K).”

(Q) “§784.24(c)” shall be replaced by “K.A.R. 47-10-1(a)(2)(O).”

(R) “§784.25 of this chapter” shall be replaced by “K.A.R. 47-10-1(a)(2)(P).”

(S) “§784.28(d) of this chapter and §817.43(b)(1) of this part” shall be replaced by “K.A.R. 47-10-1(a)(2)(R) and K.A.R. 47-9-1(d)(8).”

(T) “§784.28(e) of this chapter” shall be replaced by “K.A.R. 47-10-1(a)(2)(R).”

(U) “§785.17 and subchapter J of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(61) and article 8 of these regulations.”

(V) “§785.17(a) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(61).”

(W) “§785.18 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(62).”

(X) “§785.21 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(64).”

(Y) “§800.40(c)(2) of this chapter” shall be replaced by “K.A.R. 47-8-9(a)(13).”

(Z) “§816.11” and “§816.11 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(1).”

(AA) “§816.13” shall be replaced by “K.A.R. 47-9-1(c)(2).”

(BB) “§816.22,” “§816.22 of this chapter,” “§816.22 of this part,” “§816.22(b) of this part,” “§816.22(e),” “30 CFR 816.22(e)(1)(i),” and “30 CFR 816.22(e)(1)(ii)” shall be replaced by “K.A.R. 47-9-1(c)(5).”

(CC) “§816.22 or §817.22 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(5) or K.A.R. 47-9-1(d)(5).”

(DD) “§816.41 of this part,” “§816.41,” “§§816.41(d)(1) of this part,” and “§816.41(i)” shall be replaced by “K.A.R. 47-9-1(c)(6).”

(EE) “§§816.41(b), 816.41(f), and 816.102(e) of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(6) and (35).”

(FF) “§816.42” shall be replaced by “K.A.R. 47-9-1(c)(7).”

(GG) “§816.43 of this chapter,” “§816.43(b) of this part,” and “816.43” shall be replaced by “K.A.R. 47-9-1(c)(8).”

(HH) “§816.45 through 816.47 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(9) through (11).”

(II) “§816.45(a) of this part” and “§816.45(a)” shall be replaced by “K.A.R. 47-9-1(c)(9).”

(JJ) “§816.46” shall be replaced by “K.A.R. 47-9-1(c)(10).”

(KK) “§816.49 of this chapter,” “§816.49(b) of this part,” and “§816.49(a)(9)” shall be replaced by “K.A.R. 47-9-1(c)(12).”

(LL) “§816.56 of this part” shall be replaced by “K.A.R. 47-9-1(c)(13).”

(MM) “§816.59 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(15).”

(NN) “§816.64” shall be replaced by “K.A.R. 47-9-1(c)(18).”

(OO) “§816.66(c)” shall be replaced by “K.A.R. 47-9-1(c)(19).”

(PP) “§816.67” and “§816.67(e)” shall be replaced by “K.A.R. 47-9-1(c)(20).”

(QQ) “§816.68(p)” shall be replaced by “K.A.R. 47-9-1(c)(21).”

(RR) “§816.71,” “§816.71 of this part,” and “§816.71(f)(3)” shall be replaced by “K.A.R. 47-9-1(c)(22).”

(SS) “§816.79 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(24).”

(TT) “§816.81” shall be replaced by “K.A.R. 47-9-1(c)(25).”

(UU) “§816.83” shall be replaced by “K.A.R. 47-9-1(c)(26).”

(VV) “§816.84 of this chapter” and “§816.84” shall be replaced by “K.A.R. 47-9-1(c)(27).”

(WW) “§816.95 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(30).”

(XX) “§816.97 of this chapter,” “§816.97(a) of this part,” and “§816.97(f) of this part” shall be replaced by “K.A.R. 47-9-1(c)(31).”

(YY) “§816.102,” “§§816.102(c), (e) through (h), and (j),” “§§816.102(a)(2) through (j) of this part,” and “§816.102(a)(1) and (2)” shall be replaced by “K.A.R. 47-9-1(c)(35).”

(ZZ) “§816.104” shall be replaced by “K.A.R. 47-9-1(c)(36).”

(AAA) “§816.105” shall be replaced by “K.A.R. 47-9-1(c)(37).”

(BBB) “§816.106” shall be replaced by “K.A.R. 47-9-1(c)(38).”

(CCC) “§816.111” and “§816.111(b)” shall be replaced by “K.A.R. 47-9-1(c)(39).”

(DDD) “§816.181 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(49).”

(EEE) “§817.11” shall be replaced by “K.A.R. 47-9-1(d)(1).”

(FFF) “§817.13” shall be replaced by “K.A.R. 47-9-1(d)(2).”

(GGG) “§817.22,” “§817.22 of this chapter,” “§817.22 of this part,” and “§817.22(b) of this part” shall be replaced by “K.A.R. 47-9-1(d)(5).”

(HHH) “§817.41 of this part,” “§817.41,” “§817.41(d)(1) of this part,” “§817.41(h),” and “§817.41(j)” shall be replaced by “K.A.R. 47-9-1(d)(6).”

(III) “§817.42” shall be replaced by “K.A.R. 47-9-1(d)(7).”

(JJJ) “§817.43” and “§817.43(b) of this part” shall be replaced by “K.A.R. 47-9-1(d)(8).”

(KKK) “§817.45(a) of this part” shall be replaced by “K.A.R. 47-9-1(d)(9).”

(LLL) “§817.46” shall be replaced by “K.A.R. 47-9-1(d)(10).”

(MMM) “§817.49 of this chapter,” “§817.49(a) (9),” “§817.49(b) of this part,” and “§817.49(a) and (c)” shall be replaced by “K.A.R. 47-9-1(d)(12).”

(NNN) “§817.56 of this part” shall be replaced by “K.A.R. 47-9-1(d)(13).”

(OOO) “§817.64(a)” shall be replaced by “K.A.R. 47-9-1(d)(18).”

(PPP) “§817.66(c)” shall be replaced by “K.A.R. 47-9-1(d)(19).”

(QQQ) “§817.67” and “§817.67(e)” shall be replaced by “K.A.R. 47-9-1(d)(20).”

(RRR) “§817.68(p)” shall be replaced by “K.A.R. 47-9-1(d)(21).”

(SSS) “§817.71,” “paragraphs (a) and (f) of §817.71 of this part,” and “§817.71(f)(3)” shall be replaced by “K.A.R. 47-9-1(d)(22).”

(TTT) “§817.81” shall be replaced by “K.A.R. 47-9-1(d)(24).”

(UUU) “§817.83” shall be replaced by “K.A.R. 47-9-1(d)(25).”

(VVV) “§817.84 of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(26).”

(WWW) “§817.97(a) of this part” and “§817.97(f) of this part” shall be replaced by “K.A.R. 47-9-1(d)(30).”

(XXX) “§817.102,” “§817.102(c), (e) through (h), and (j),” and “§817.102(a)(1) and (2)” shall be replaced by “K.A.R. 47-9-1(d)(33).”

(YYY) “§817.106” shall be replaced by “K.A.R. 47-9-1(d)(34).”

(ZZZ) “§817.111” and “§817.111(b)” shall be replaced by “K.A.R. 47-9-1(d)(35).”

(AAAA) “§817.116” shall be replaced by “K.A.R. 47-9-1(d)(38).”

(BBBB) “§817.121(a) and (c) of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(39).”

(CCCC) “§817.150” shall be replaced by “K.A.R. 47-9-1(d)(44).”

(DDDD) “§823.12(c)(2)” and “§823.12(c)(1)” shall be replaced by “K.A.R. 47-9-1(f)(3).”

(EEEE) “§823.14(b)” shall be replaced by “K.A.R. 47-9-1(f)(4).”

(FFFF) “§827.12” shall be replaced by “K.A.R. 47-9-1(g)(2).”

(GGGG) “§827.13 of this part” shall be replaced by “K.A.R. 47-9-1(g)(3).”

(HHHH) “§§773.17(e) and 784.14(g) of this chapter” shall be replaced by “K.A.R. 47-6-6(a) and K.A.R. 47-10-1(a)(2)(E).”

(IIII) “§§773.17(e) and 780.21(h) of this chapter” shall be replaced by “K.A.R. 47-6-6(a) and K.A.R. 47-3-42(a)(48).”

(JJJJ) “§§780.21 and 780.22 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(48) and (49).”

(KKKK) “§§780.21 and 784.14 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(48) and K.A.R. 47-10-1(a)(2)(E).”

(LLLL) “§§780.21 and 784.22 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(48) and K.A.R. 47-10-1(a)(2)(M).”

(MMMM) “§§780.28 and 816.57 of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(53) and K.A.R. 47-9-1(c)(14).”

(NNNN) “§§784.28 and 817.57 of this chapter” shall be replaced by “K.A.R. 47-10-1 (a)(2)(R) and K.A.R. 47-9-1(d)(14).”

(OOOO) “§§816.13 through 816.15 of this chapter” and “§§816.13 to 816.15” shall be replaced by “K.A.R. 47-9-1(c)(2) through (4).”

(PPPP) “§§816.22, 816.100, 816.102, 816.104, 816.106, 816.111, 816.113, 816.114, 816.116, and 816.133 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(5), (33), (35), (36), (38), (39), (40), (41), (42), and (45).”

(QQQQ) “§§816.22 and 816.111 through 816.116 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(5) and (39) through (42).”

(RRRR) “§§816.41 and 816.42 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(6) and (7).”

(SSSS) “§§816.41 through 816.43 and 816.57 of this chapter” and “§816.41 through 816.43 and 816.57 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(6) through (8) and (14).”

(TTTT) “§§816.41 through 816.49 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(6) through (12).”

(UUUU) “§§816.49 and 816.56” and “§§816.49 and 816.56 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(12) and (13).”

(VVVV) “§§816.71 through 816.74,” “§§816.71 through 816.74 of this part,” and “§§816.71-816.74 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(22) through (23).”

(WWWW) “§§816.81 and 816.83” shall be replaced by “K.A.R. 47-9-1(c)(25) and (26).”

(XXXX) “§§816.81, 816.83, 816.84, 816.87, 816.89, and 816.71 through 816.74 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(22), (23), (25), (26), (27), (28), and (29).”

(YYYY) “§§816.81(a), 816.83(a), and 816.84 of this part” shall be replaced by “K.A.R. 47-9-1(c)(25), (26), and (27).”

(ZZZZ) “§§816.102 and 816.104 through 816.106 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(35) and (36) through (38).”

(AAAA) “§§816.102 through 816.107 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(35) through (38).”

(BBBB) “§§816.111, 816.113, 816.114, and 816.116 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(39), (40), (41), and (42).”

(CCCC) “§§816.111 through 816.116 of this chapter” and “§§816.111 through 816.116” shall be replaced by “K.A.R. 47-9-1(c)(39) through (42).”

(DDDD) “§§816.131 and 816.132 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(43) and (44).”

(EEEE) “§§816.150 and 816.151 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(46) and (47).”

(FFFF) “§§816.150, 816.151, and 816.181 of this part” shall be replaced by “K.A.R. 47-9-1(c)(46), (47), and (49).”

(GGGG) “§§816.150(b) through (f), 816.180, and 816.181 of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(46), (48), and (49).”

(HHHH) “§§817.13 and 817.15” shall be replaced by “K.A.R. 47-9-1(d)(2) and (4).”

(IIII) “§§817.13 to 817.15” shall be replaced by “K.A.R. 47-9-1(d)(2) to (4).”

(JJJJ) “§§817.22 and 817.111 through 817.116 of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(5) and (35) through (38).”

(KKKK) “§§817.41 through 817.43 and 817.57 of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(6) through (8) and (14).”

(LLLL) “§§817.49 and 817.56” shall be replaced by “K.A.R. 47-9-1(d)(12) and (13).”

(MMMM) “§§817.71 through 817.74” and “§§817.71 through 817.74 of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(22) and (23).”

(NNNN) “§§817.81 and 817.83” shall be replaced by “K.A.R. 47-9-1(d)(24) and (25).”

(OOOO) “§§817.81(a), 817.83(a), and 817.84 of this part” shall be replaced by “K.A.R. 47-9-1(d)(24), (25), and (26).”

(PPPP) “§§817.102 through 817.107 of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(33) and (34).”

(QQQQ) “§§817.111, 817.113, 817.114, and 817.116 of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(35), (36), (37), and (38).”

(RRRR) “§§817.111 through 817.116 of this chapter” and “§§817.111 through 817.116” shall be replaced by “K.A.R. 47-9-1(d)(35) through (38).”

(SSSS) “§§817.150, 817.151, and 817.181 of this part” shall be replaced by “K.A.R. 47-9-1(d)(44), (45), and (47).” (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405, K.S.A. 2018 Supp. 49-408, and K.S.A. 49-409, 49-411, 49-413, 49-415, and 49-429; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-9-4. Interim performance standards; adoption by reference. (a) The following regulations as in effect on July 1, 2012 are adopted by reference, except as specified in this regulation:

- (1) Definitions, 30 C.F.R. 710.5;
- (2) applicability, 30 C.F.R. 710.11(a), deleting subsection (a)(1) and the phrase “except as provided in §710.12 of this part”;
- (3) signs and markers, 30 C.F.R. 715.12;
- (4) postmining use of land, 30 C.F.R. 715.13, deleting the second sentence in (d);
- (5) backfilling and grading, 30 C.F.R. 715.14, deleting subsections (b)(3) and (c);
- (6) disposal of excess spoil, 30 C.F.R. 715.15, deleting subsection (c);
- (7) topsoil handling, 30 C.F.R. 715.16;
- (8) protection of the hydrologic system, 30 C.F.R. 715.17, deleting subsection (j);
- (9) dams constructed of or impounding waste material, 30 C.F.R. 715.18;

- (10) revegetation, 30 C.F.R. 715.20;
 - (11) interpretative rules related to general performance standards, 30 C.F.R. 715.200; and
 - (12) prime farmland, 30 C.F.R. 716.7.
- (b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the federal regulations adopted by reference in this regulation:
- (1)(A) “Act” shall be replaced by “state act.”
 - (B) “Subchapter B of this chapter” shall be replaced by “K.A.R. 47-9-4.”
 - (C) “Subchapter K of this chapter” shall be replaced by “K.A.R. 47-9-1.”
 - (D) “This part,” “§716.2 of this chapter,” “part 715 of this chapter,” “this section,” and “this chapter” shall be replaced by “these regulations.”
 - (2)(A) “§715.12” shall be replaced by “K.A.R. 47-9-4(a)(3).”
 - (B) “§715.13” shall be replaced by “K.A.R. 47-9-4(a)(4).”
 - (C) “§715.14,” “§715.14(b)(2),” and “§715.14(j)” shall be replaced by “K.A.R. 47-9-4(a)(5).”
 - (D) “§715.15 of this part” shall be replaced by “K.A.R. 47-9-4(a)(6).”
 - (E) “§715.16,” “§715.16(c),” “§715.16(a)(4),” and “30 CFR 715.16(a)(4)(i)” shall be replaced by “K.A.R. 47-9-4(a)(7).”
 - (F) “§715.17,” “§715.17 of this part,” “§715.17(a),” and “§715.17(c)” shall be replaced by “K.A.R. 47-9-4(a)(8).”
 - (G) “§715.18” shall be replaced by “K.A.R. 47-9-4(a)(9).”
 - (H) “§715.20” and “§715.20(g)” shall be replaced by “K.A.R. 47-9-4(a)(10).”
 - (I) “§716.7” shall be replaced by “K.A.R. 47-9-4(a)(12).”
 - (J) “§§715.13 and 715.14” shall be replaced by “K.A.R. 47-9-4(a)(4) and (5).”
 - (K) “§§715.14 and 715.20” shall be replaced by “K.A.R. 47-9-4(a)(5) and (10).”
 - (L) “§§715.14, 715.16, and 715.20” shall be replaced by “K.A.R. 47-9-4(a)(5), (7), and (10).”
 - (c) Each operator shall comply with the interim performance standards in an interim permit area, unless the secretary has approved, in writing, that operator’s request to adhere to an applicable permanent program performance standard or other applicable substantive regulation. (Authorized by and implementing K.S.A. 49-405; effective May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997; amended Dec. 1, 2006; amended Feb. 15, 2019.)

Article 10.—UNDERGROUND MINING

47-10-1. Adoption by reference; underground mining. (a) The following federal regulations, as in effect on July 1, 2012, are adopted by reference, except as otherwise specified in this regulation:

- (1) Underground mining permit applications—minimum requirements for information on environmental resources, 30 C.F.R. Part 783:
 - (A) Responsibilities, 30 C.F.R. 783.4;
 - (B) general requirements, 30 C.F.R. 783.11;
 - (C) general environmental resources information, 30 C.F.R. 783.12;
 - (D) climatological information, 30 C.F.R. 783.18;
 - (E) vegetation information, 30 C.F.R. 783.19;
 - (F) soil resources information, 30 C.F.R. 783.21;
 - (G) maps: general requirements, 30 C.F.R. 783.24; and
 - (H) cross sections, maps, and plans, 30 C.F.R. 783.25;
- (2) underground mining permit applications—minimum requirements for reclamation and operation plan, 30 C.F.R. Part 784:
 - (A) Responsibilities, 30 C.F.R. 784.4;
 - (B) operation plan: general requirements, 30 C.F.R. 784.11;
 - (C) operation plan: existing structures, 30 C.F.R. 784.12;
 - (D) reclamation plan: general requirements, 30 C.F.R. 784.13;
 - (E) hydrologic information, 30 C.F.R. 784.14;
 - (F) reclamation plan: land use information, 30 C.F.R. 784.15;
 - (G) reclamation plan: siltation structures, impoundments, and refuse piles, 30 C.F.R. 784.16;
 - (H) protection of publicly owned parks and historic places, 30 C.F.R. 784.17;
 - (I) relocation or use of public roads, 30 C.F.R. 784.18;
 - (J) disposal of excess spoil, 30 C.F.R. 784.19;
 - (K) subsidence control plan, 30 C.F.R. 784.20, deleting the phrase “as described in §817.121(c) (4) of this chapter”;
 - (L) fish and wildlife information, 30 C.F.R. 784.21;
 - (M) geologic information, 30 C.F.R. 784.22;
 - (N) operation plan: maps and plans, 30 C.F.R. 784.23;
 - (O) road systems, 30 C.F.R. 784.24;
 - (P) return of coal processing waste to abandoned underground workings, 30 C.F.R. 784.25;

(Q) air pollution control plan, 30 C.F.R. 784.26;
 (R) surface activities in or adjacent to perennial or intermittent streams, 30 C.F.R. 784.28;
 (S) diversions, 30 C.F.R. 784.29;
 (T) support facilities, 30 C.F.R. 784.30; and
 (U) interpretive rules related to general performance standards, 30 C.F.R. 784.200, except that "office of surface mining reclamation and enforcement" shall be replaced by "Kansas department of health and environment."

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1)(A) "Paragraphs (b)(2) through (b)(4) of §817.57 of this chapter," "paragraphs (b) and (c) of §817.57 of this chapter," "§817.57(a)(1) of this chapter," "§817.57(a)(2) of this chapter," and "§817.57(a)(2) of this chapter" shall be replaced by "K.A.R. 47-9-1(d)(14)."

(B) "Subchapter B (Interim Program Standards) of this chapter" shall be replaced by "K.A.R. 47-9-4."

(C) "Subchapter J of this chapter" shall be replaced by "article 8 of these regulations."

(D) "Subchapter K of this chapter" and "subchapter K (Permanent Program Standards) of this chapter" shall be replaced by "K.A.R. 47-9-1."

(E) "This chapter," "this section," "subchapter," "subchapter G of this chapter," and "this part" shall be replaced by "these regulations."

(F) "This title" shall be replaced by "the 30 CFR."

(2)(A) "Part 784 of this chapter" shall be replaced by "K.A.R. 47-10-1(a)(2)."

(B) "Part 817 of this chapter" shall be replaced by "K.A.R. 47-9-1(d)."

(C) "Sections 515 and 516 of the Act" shall be replaced by "K.S.A. 49-405a, 49-408 through 49-413, and 49-429."

(3)(A) "30 CFR Parts 773 and 775" shall be replaced by "K.A.R. 47-3-42(a)(2) through (20), K.A.R. 47-6-6, K.S.A. 49-407(d), K.S.A. 49-416a, and K.S.A. 49-422a, and amendments thereto, and article 4 of these regulations."

(B) "30 CFR 783.24 and 783.25" shall be replaced by "K.A.R. 47-10-1(a)(1)(G) and (H)."

(C) "30 CFR 784.13 through 784.26" shall be replaced by "K.A.R. 47-10-1(a)(2)(D) through (Q)."

(D) "30 CFR 784.16 of this part" shall be replaced by "K.A.R. 47-10-1(a)(2)(G)."

(E) "30 CFR 784.19 of this part" shall be replaced by "K.A.R. 47-10-1(a)(2)(J)."

(F) "30 CFR 784.21" shall be replaced by "K.A.R. 47-10-1(a)(2)(L)."

(G) "30 CFR 817.13-817.15" shall be replaced by "K.A.R. 47-9-1(d)(2) and (4)."

(H) "30 CFR 817.22," "§817.22 of the chapter," and "§817.22(b) of this chapter" shall be replaced by "K.A.R. 47-9-1(d)(5)."

(I) "30 CFR 817.59" and "§817.59 of this chapter" shall be replaced by "K.A.R. 47-9-1(d)(15)."

(J) "30 CFR 817.81(f)" shall be replaced by "K.A.R. 47-9-1(d)(24)."

(K) "30 CFR 817.89 and 817.102" shall be replaced by "K.A.R. 47-9-1(d)(28) and (33)."

(L) "30 CFR 817.95" shall be replaced by "K.A.R. 47-9-1(d)(29)."

(M) "30 CFR 817.102 through 817.107" shall be replaced by "K.A.R. 47-9-1(d)(33) and (34)."

(N) "30 CFR 817.111 through 817.116" shall be replaced by "K.A.R. 47-9-1(d)(35) through (38)."

(O) "30 CFR 817.116" shall be replaced by "K.A.R. 47-9-1(d)(38)."

(4)(A) "§701.5 of this chapter" shall be replaced by "K.A.R. 47-2-75(b)."

(B) "§761.14 of this chapter" shall be replaced by "K.A.R. 47-12-4(a)(4)."

(C) "§761.16 of this chapter" shall be replaced by "K.A.R. 47-12-4(a)(6)."

(D) "§761.17(d) of this chapter" shall be replaced by "K.A.R. 47-12-4(a)(7)."

(E) "§774.13" shall be replaced by "K.A.R. 47-6-2."

(F) "§783.25 of this chapter" shall be replaced by "K.A.R. 47-10-1(a)(1)(H)."

(G) "§784.15" and "§784.15(a)(2)" shall be replaced by "K.A.R. 47-10-1(a)(2)(F)."

(H) "§784.20" shall be replaced by "K.A.R. 47-10-1(a)(2)(K)."

(I) "§784.29 of this part and §817.43 of this chapter" shall be replaced by "K.A.R. 47-10-1(a)(2)(S) and K.A.R. 47-9-1(d)(8)."

(J) "§785.21 of this chapter" shall be replaced by "K.A.R. 47-3-42(a)(64)."

(K) "§817.43 of this chapter" shall be replaced by "K.A.R. 47-9-1(d)(8)."

(L) "§817.46 of this chapter" shall be replaced by "K.A.R. 47-9-1(d)(10)."

(M) "§817.49 of this chapter," "paragraphs (a) and (c) of §817.49 of this chapter," and "§817.49(a)(4)(ii) of this chapter" shall be replaced by "K.A.R. 47-9-1(d)(12)."

(N) "§817.71(d) of this chapter" shall be replaced by "K.A.R. 47-9-1(d)(22)."

(O) "§817.74 of this chapter" shall be replaced by "K.A.R. 47-9-1(d)(23)."

(P) “§817.97 of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(30).”

(Q) “§817.121(c) of this chapter” and “§817.121 of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(39).”

(R) “§817.133,” “30 CFR 817.133,” and “§817.133(a)” shall be replaced by “K.A.R. 47-9-1(d)(43).”

(S) “§817.150(d)(1) of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(44).”

(T) “§817.151(c)(2) of this chapter,” “§817.151(d)(5) of this chapter,” “§817.151(d)(6) of this chapter,” and “§817.151(b) of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(45).”

(U) “§817.181 of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(47).”

(V) “§§784.14(g) and 817.41(d)(1) of this chapter” shall be replaced by “K.A.R. 47-10-1(a)(2)(E) and K.A.R. 47-9-1(d)(6).”

(W) “§§784.16(a)(2), 784.16(a)(3), 784.19, 817.73(c), 817.74(c), and 817.81(c) of this chapter” shall be replaced by “K.A.R. 47-10-1(a)(2)(G) and (J), and K.A.R. 47-9-1(d)(22), (23), and (24).”

(X) “§§784.21(b) and 817.97(a) of this chapter” shall be replaced by “K.A.R. 47-10-1 (a)(2)(L) and K.A.R. 47-9-1(d)(30).”

(Y) “§§817.41 to 817.43” shall be replaced by “K.A.R. 47-9-1(d)(6) through (8).”

(Z) “§§817.41(j) and 817.121(c) of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(6) and (39).”

(AA) “§§817.71 through 817.74” shall be replaced by “K.A.R. 47-9-1(d)(22) and (23).”

(BB) “§§817.81 and 817.83 of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(24) and (25).”

(CC) “§§817.81 and 817.84 of this chapter” shall be replaced by “K.A.R. 47-9-1(d)(24) and (26).”

(DD) “§§817.81 through 817.84 of this chapter” and “30 CFR 817.81 through 817.84” shall be replaced by “K.A.R. 47-9-1(d)(24) through (26).” (Authorized by K.S.A. 49-405; implementing K.S.A. 49-429; effective May 1, 1980; amended, E-81-30, Oct. 8, 1980; amended May 1, 1981; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991; amended May 2, 1997; amended Dec. 1, 2006; amended Feb. 15, 2019.)

Article 11.—SMALL OPERATOR ASSISTANCE PROGRAM

47-11-8. Small operator assistance program; adoption by reference. (a) The following federal regulations, as in effect on July 1, 2012, are

adopted by reference, except as otherwise specified in this regulation:

- (1) Definitions, 30 C.F.R. 795.3;
- (2) eligibility for assistance, 30 C.F.R. 795.6, deleting subsection (b);
- (3) filing for assistance, 30 C.F.R. 795.7;
- (4) application approval and notice, 30 C.F.R. 795.8;
- (5) program services and data requirements, 30 C.F.R. 795.9;
- (6) qualified laboratories, 30 C.F.R. 795.10;
- (7) assistance funding, 30 C.F.R. 795.11; and
- (8) applicant liability, 30 C.F.R. 795.12.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

- (1)(A) “Act” shall be replaced by “state act.”
- (B) “This chapter” and “this section” shall be replaced by “these regulations.”
- (C) “This part” shall be replaced by “K.A.R. 47-11-8.”
- (2)(A) “§773.6(d) of this chapter” shall be replaced by “K.A.R. 47-3-42 (a)(2).”
- (B) “§780.13” shall be replaced by “K.A.R. 47-3-42(a)(43).”
- (C) “§795.6” shall be replaced by “K.A.R. 47-11-8(a)(2).”
- (D) “§795.9” and “§795.9(b)” shall be replaced by “K.A.R. 47-11-8(a)(5).”
- (E) “§795.10” shall be replaced by “K.A.R. 47-11-8(a)(6).”
- (F) “§§779.12(b) and 783.12(b) and §§780.31 and 784.17” shall be replaced by “K.A.R. 47-3-42(a)(34) and K.A.R. 47-10-1(a)(1)(C) and K.A.R. 47-3-42(a)(55) and K.A.R. 47-10-1(a)(2)(H).”
- (G) “§§779.25 and 783.25” shall be replaced by “K.A.R. 47-3-42(a)(39) and K.A.R. 47-10-1(a)(1)(H).”
- (H) “§§780.16 and 784.21” shall be replaced by “K.A.R. 47-3-42(a)(46) and K.A.R. 47-10-1(a)(2)(L).”
- (I) “§§780.21, 780.22, 784.14, and 784.22” shall be replaced by “K.A.R. 47-3-42(a)(48) and (49), and K.A.R. 47-10-1(a)(2)(E) and (M).”
- (J) “§§780.21(f), 784.14(e)” shall be replaced by “K.A.R. 47-3-42(a)(48) and K.A.R. 47-10-1(a)(2)(E).”
- (K) “§§780.22(b) and 784.22(b)” shall be replaced by “K.A.R. 47-3-42(a)(49) and K.A.R. 47-10-1(a)(2)(M).” (Authorized by K.S.A. 49-405; implementing K.S.A. 2018 Supp. 49-406; effec-

tive, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997; amended Dec. 1, 2006; amended Feb. 15, 2019.)

Article 12.—LANDS UNSUITABLE FOR SURFACE MINING

47-12-4. Lands unsuitable for surface mining; adoption by reference. (a) The following federal regulations, as in effect on July 1, 2012, are adopted by reference, except as otherwise specified in this regulation:

(1) Definitions, 30 C.F.R. 761.5, except that the statement “*we, us, and our* refer to the office of surface mining reclamation and enforcement” shall be replaced by “*‘we,’ ‘us,’ and ‘our’* refer to the Kansas department of health and environment” and the phrase “or its State program counterpart” shall be deleted;

(2) areas where surface coal mining operations are prohibited or limited, 30 C.F.R. 761.11, deleting subsection (b);

(3) exception for existing operations, 30 C.F.R. 761.12, deleting subsection (b);

(4) procedures for relocating or closing a public road or waiving the prohibition on surface coal mining operations within the buffer zone of a public road, 30 C.F.R. 761.14;

(5) procedures for waiving the prohibition on surface coal mining operations within the buffer zone of an occupied dwelling, 30 C.F.R. 761.15;

(6) submission and processing of requests for valid existing rights determinations, 30 C.F.R. 761.16;

(7) regulatory authority obligations at time of permit application review, 30 C.F.R. 761.17;

(8) interpretive rule related to subsidence due to underground coal mining in areas designated by act of congress, 30 C.F.R. 761.200;

(9) definitions, 30 C.F.R. 762.5;

(10) criteria for designating lands as unsuitable, 30 C.F.R. 762.11;

(11) additional criteria, 30 C.F.R. 762.12. “Secretary” shall mean the “secretary of the United States department of interior” and “subchapter C of this chapter” shall mean “30 C.F.R. Parts 730, 731, 732, 733, 735, and 736”;

(12) land exempt from designation as unsuitable for surface coal mining operations, 30 C.F.R. 762.13;

(13) applicability to lands designated as unsuitable by congress, 30 C.F.R. 762.14;

(14) exploration on land designated as unsuitable for surface coal mining operations, 30 C.F.R. 762.15;

(15) petitions, 30 C.F.R. 764.13;

(16) initial processing, recordkeeping, and notification requirements, 30 C.F.R. 764.15;

(17) hearing requirements, 30 C.F.R. 764.17;

(18) decision, 30 C.F.R. 764.19;

(19) data base and inventory system requirements, 30 C.F.R. 764.21;

(20) public information, 30 C.F.R. 764.23; and

(21) regulatory authority responsibility for implementation, 30 C.F.R. 764.25.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1)(A) “Act” shall be replaced by “state act.”

(B) “Federal Register” shall be replaced by “Kansas Register.”

(C) “Subchapter B of this chapter” shall be replaced by “K.A.R. 47-9-4.”

(D) “Subchapter G of this chapter” shall be replaced by “K.A.R. 47-3-42, K.A.R. 47-6-2, K.A.R. 47-6-3, K.A.R. 47-6-4, and K.A.R. 47-7-2.”

(E) “This chapter” shall be replaced by “these regulations.”

(F) “This part” and “this subchapter” shall be replaced by “K.A.R. 47-12-4.”

(2)(A) “Part 761, 762, or 764 of this chapter” shall be replaced by “K.A.R. 47-12-4.”

(B) “Part 772 of this chapter” shall be replaced by “K.A.R. 47-7-2.”

(C) “Section 522 of the Act” and “section 522(e) of the Act” shall be replaced by “K.S.A. 49-405b, and amendments thereto.”

(D) “Section 526(e) of the Act and §775.13 of this chapter” shall be replaced by “K.S.A. 49-422a and K.S.A. 49-426, and amendments thereto.”

(E) “Section 701(28) of the act” shall be replaced by “K.S.A. 49-403(r), and amendments thereto.”

(F) “Section 701(28) of the Act and §700.5 of this chapter” shall be replaced by “K.S.A. 49-403(r), and amendments thereto, and K.A.R. 47-2-75(a).”

(G) “Parts 764 and 769 of this chapter” shall be replaced by “K.A.R. 47-12-4(a)(15) through (21).”

(H) “Sections 522(a)(2) and (3) of the Act” shall be replaced by “K.S.A. 49-405b(a)(1) and (2), and amendments thereto.”

(3)(A) “30 U.S.C. 1272(e) and §761.11” shall be replaced by “K.S.A. 49-405b and 49-406(f), and amendments thereto, and K.A.R. 47-12-4(a)(2).”

(B) “30 U.S.C. 1272(e) or §761.11” shall be replaced by “K.S.A. 49-405b and 49-406(f), and amendments thereto, or K.A.R. 47-12-4(a)(2).”

(4)(A) “§700.5 of this chapter” shall be replaced by “K.A.R. 47-2-75(a).”

(B) “§761.5,” “paragraph (a) of the definition of valid existing rights in §761.5,” “paragraph (b) of the definition of valid existing rights in §761.5,” “paragraph (b)(1) of the definition of valid existing rights in §761.5,” “paragraph (c)(2) of the definition of valid existing rights in §761.5,” “paragraphs (a), (c)(1) and (c)(2) of the definition of valid existing rights in §761.5,” “paragraphs (b), (c)(1) and (c)(2) of the definition of valid existing rights in §761.5,” and “paragraphs (c)(1) through (c)(3) of the definition of valid existing rights in §761.5” shall be replaced by “the definition of valid existing rights in K.A.R. 47-12-4(a)(1).”

(C) “§761.11,” “§761.11 of this chapter,” “§761.11(d)(1),” “§761.11(e)(2),” “§761.11(a) or (b),” “§761.11(c),” “§761.11(a),” and “§761.11(f) or (g)” shall be replaced by “K.A.R. 47-12-4(a)(2).”

(D) “§761.11 and 30 U.S.C. 1272(e)” shall be replaced by “K.A.R. 47-12-4(a)(2) and K.S.A. 49-405b and 49-406(f), and amendments thereto.”

(E) “§761.12” shall be replaced by “K.A.R. 47-12-4(a)(3).”

(F) “§761.14” shall be replaced by “K.A.R. 47-12-4(a)(4).”

(G) “§761.15” shall be replaced by “K.A.R. 47-12-4(a)(5).”

(H) “§761.16” shall be replaced by “K.A.R. 47-12-4(a)(6).”

(I) “§761.17(d)” shall be replaced by “K.A.R. 47-12-4(a)(7).”

(J) “§762.11(b) of this chapter,” “§762.11(a) of this chapter,” and “§762.11 of this chapter” shall be replaced by “K.A.R. 47-12-4(a)(10).”

(K) “§764.13(b) or (c)” and “§764.13(a)” shall be replaced by “K.A.R. 47-12-4(a)(15).”

(L) “§764.17” and “§764.17(e)” shall be replaced by “K.A.R. 47-12-4(a)(17).”

(M) “§764.21” shall be replaced by “K.A.R. 47-12-4(a)(19).”

(N) “§773.13(d) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(9).”

(O) “§779.24(c) or §783.24(c) of this chapter” shall be replaced by “K.A.R. 47-3-42(a)(38) or K.A.R. 47-10-1(a)(1)(G).”

(P) “§840.14 or §842.16 of this chapter” shall be replaced by “K.A.R. 47-15-1a(a)(2).”

(Q) “§§761.13 through 761.15” shall be replaced by “K.A.R. 47-12-4(a)(4) and (5).”

(R) “§§775.11 and 775.13 of this chapter” shall be replaced by “K.S.A. 49-407(d), K.S.A. 49-416a, K.S.A. 49-422a, and amendments thereto, and article 4 of these regulations.” (Authorized by K.S.A. 49-405; implementing K.S.A. 49-405b, K.S.A. 2018 Supp. 49-422a, and K.S.A. 49-426; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended May 1, 1986; amended May 1, 1988; amended Feb. 11, 1991; amended May 2, 1997; amended Dec. 1, 2006; amended Feb. 15, 2019.)

Article 13.—TRAINING, CERTIFICATION, AND RESPONSIBILITIES OF BLASTERS AND OPERATORS

47-13-4. Training and certification of blasters; adoption by reference. (a) The following portions of the “permanent regulatory program requirements—standards for certification of blasters,” 30 C.F.R. part 850, as in effect on July 1, 2012, are hereby adopted by reference, except as specified in this regulation:

(1) Definition, 30 C.F.R. 850.5;

(2) training, 30 C.F.R. 850.13;

(3) examination, 30 C.F.R. 850.14, except that for the purposes of this section only, the term “regulatory authority” shall be replaced by “secretary-approved blaster training program director”; and

(4) certification, 30 C.F.R. 850.15, except that for the purposes of 30 C.F.R. 850.15(a) only, “regulatory authority” shall be replaced by “state fire marshal.”

(b) The following phrase and citation shall be replaced with the phrase and citation specified in this subsection wherever the phrase and citation appear in the text of the federal regulations adopted by reference in this regulation:

(1) “This part” shall be replaced by “these regulations.”

(2) “§850.13(b)” shall be replaced by “K.A.R. 47-13-4(a)(2).”

(c) The term “secretary-approved blaster training program director” shall mean the person who is in charge of a given blaster training program that has been specifically approved by the secretary as being in accordance with the state act, these regulations, and the state program. (Authorized by and implementing K.S.A. 49-405 and 49-405a; effective May 1, 1985; amended Feb. 11, 1991; amended May 2, 1997; amended Dec. 1, 2006; amended Feb. 15, 2019.)

Article 14.—EMPLOYEE FINANCIAL INTERESTS

47-14-7. Employee financial interest; adoption by reference. (a) The following federal regulations, as in effect on July 1, 2012, are adopted by reference, except as otherwise specified in this regulation:

- (1) Responsibility, 30 C.F.R. 705.4(a) and (c), deleting subsection (b);
- (2) penalties, 30 C.F.R. 705.6(b), deleting subsection (a);
- (3) who shall file, 30 C.F.R. 705.11(a), (b), (c), and (d), deleting subsection (e);
- (4) when to file, 30 C.F.R. 705.13;
- (5) where to file, 30 C.F.R. 705.15;
- (6) what to report, 30 C.F.R. 705.17;
- (7) gifts and gratuities, 30 C.F.R. 705.18;
- (8) resolving prohibited interests, 30 C.F.R. 705.19(a), deleting subsection (b); and
- (9) appeals procedures, 30 C.F.R. 705.21.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1)(A) “Act” shall be replaced by the term “state act,” except in 30 C.F.R. 705.6(b), where the term “Act” shall mean “the surface mining control and reclamation act of 1977, Pub. L. 95-87.”

(B) “Head of each State Regulatory Authority” and “Head of the State Regulatory Authority” shall be replaced by the term “secretary of the Kansas department of health and environment.”

(C) “This section” and “this part” shall be replaced by “these regulations.”

(2) “Section 517(g) of the Act” and “section 517(g)” shall be replaced by “K.S.A. 49-404, and amendments thereto.”

(3)(A) “§705.6(a)” shall be replaced by “K.S.A. 49-404.”

(B) “§705.11” and “§705.11(b), (c), and (d)” shall be replaced by “K.A.R. 47-14-7(a)(3).”

(C) “§705.13(a)” shall be replaced by “K.A.R. 47-14-7(a)(4).”

(D) “§705.19” shall be replaced by “K.A.R. 47-14-7(a)(8).” (Authorized by K.S.A. 49-404; implementing K.S.A. 49-405; effective, E-81-30, Oct. 8, 1980; effective May 1, 1981; amended Feb. 11, 1991; amended May 2, 1997; amended Dec. 1, 2006; amended Feb. 15, 2019.)

Article 15.—INSPECTIONS AND ENFORCEMENT

47-15-1a. Inspection and enforcement; adoption by reference. (a) The following regulations as in effect on July 1, 2012 are adopted by reference, except as otherwise specified in this regulation:

- (1) Inspections by state regulatory authority, 30 C.F.R. 840.11;
- (2) availability of records, 30 C.F.R. 840.14;
- (3) definitions, 30 C.F.R. 843.5;
- (4) right of entry, 30 C.F.R. 840.12;
- (5) compliance conference, 30 C.F.R. 840.16;
- (6) review of adequacy and completeness of inspections, 30 C.F.R. 842.14, except that “director or his or her designee” shall be replaced by “secretary or secretary’s designee”;
- (7) review of decision not to inspect or enforce, 30 C.F.R. 842.15, except that “OSM” shall be replaced with “Kansas department of health and environment”;
- (8) cessation orders, 30 C.F.R. 843.11;
- (9) notices of violations, 30 C.F.R. 843.12, except for the following:

(A) In subsection (a) of 30 C.F.R. 843.12, the following phrase shall be deleted: “carried out during the enforcement of a federal program or federal lands program or during federal enforcement of a state program under sections 504(b) or 521(b) of the act and part 733 of this chapter”; and

(B) paragraph (a)(2) of 30 C.F.R. 843.12 shall be deleted;

(10) suspension or revocation of permits: pattern of violations, 30 C.F.R. 843.13, except that the phrase “or a federal lands program” in paragraph (a)(4)(i)(A) of 30 C.F.R. 843.13 shall be deleted, and paragraphs (a)(4)(i)(B) and (C) of 30 C.F.R. 843.13 shall be deleted;

(11) service of notices of violation, cessation orders, and show cause orders, 30 C.F.R. 843.14, except that the first sentence in subsection (c) shall be deleted and, in the second sentence, the word “office” shall be replaced with “Kansas department of health and environment”;

(12) informal public hearing, 30 C.F.R. 843.15. However, the following sentence in subsection (e) shall be deleted: “Section 554 of title 5 of the United States code, regarding requirements for formal adjudicatory hearings, shall not govern public hearings”;

(13) formal review of citations, 30 C.F.R. 843.16;

(14) inability to comply, 30 C.F.R. 843.18; and

(15) compliance conference, 30 C.F.R. 843.20.

(b) The following phrases and citations shall be replaced with the phrases and citations specified in this subsection wherever the phrases and citations appear in the text of the federal regulations adopted by reference in this regulation:

(1)(A) “Act” shall be replaced by “state act.”

(B) “Director” shall be replaced by “director of OSM.”

(C) “Federal” shall be replaced by “state.”

(D) “Freedom of Information Act or other Federal law” shall be replaced by “Kansas Open Records Act or other State law.”

(E) “Office” shall be replaced by “secretary or secretary’s designee.”

(F) “Office of hearings and appeals” shall be replaced by “department.”

(G) “Office of Surface Mining” shall be replaced by “Kansas department of health and environment.”

(H) “Rule 4 of the Federal Rules of Civil Procedure” shall be replaced by “K.A.R. 47-4-14a.”

(I) “Secretary” shall be replaced by “secretary of KDHE.”

(J) “This chapter,” “this part,” and “this section” shall be replaced by “these regulations.”

(2)(A) “Section 517 of the Act and §840.11” shall be replaced by “K.S.A. 49-404, K.S.A. 49-405, and K.S.A. 49-405d, and amendments thereto, and K.A.R. 47-15-1a(a)(1).”

(B) “Section 517 of the Act and §842.11” shall be replaced by “K.S.A. 49-404, K.S.A. 49-405, and K.S.A. 49-405d, and amendments thereto.”

(C) “Section 518(b), 521(a)(4), or 525 of the Act” shall be replaced by “K.S.A. 49-405c(b), K.S.A. 49-405(m)(3), or K.S.A. 49-416a and amendments thereto.”

(D) “Section 518(e), 518(f), 521(a)(4), or 521(c) of the Act or their regulatory program counterparts” shall be replaced by “K.S.A. 49-405c(e) and (f) and K.S.A. 49-405(m), and amendments thereto.”

(E) “Section 520 of the Act” shall be replaced by “K.S.A. 49-426, and amendments thereto.”

(F) “Section 521(a)(2) of the Act” shall be replaced by “K.S.A. 49-405(m)(1), and amendments thereto.”

(G) “Section 521(a)(5) of the Act and §843.15” shall be replaced by “K.S.A. 49-405(m)(4), and amendments thereto, and K.A.R. 47-15-1a(a)(12).”

(H) “Section 525 of the Act” shall be replaced by “K.S.A. 49-416a, and amendments thereto.”

(3)(A) “30 CFR Part 845” and “part 845 of this chapter” shall be replaced by “article 5 of these regulations.”

(B) “43 CFR part 4” shall be replaced by “K.A.R. 47-4-14a.”

(C) “43 CFR 4.1281” shall be replaced by “K.A.R. 47-4-14a(a)(1)-(8).”

(4)(A) “§701.5 of this chapter” shall be replaced by “K.A.R. 47-2-75(b).”

(B) “§772.15 and 773.6(d) of this chapter” shall be replaced by “K.A.R. 47-7-2(a)(5) and K.A.R. 47-3-42(a)(2).”

(C) “§800.40 of this chapter” shall be replaced by “K.A.R. 47-8-9(a)(13).”

(D) “§816.131(b) or §817.131(b) of this chapter” shall be replaced by “K.A.R. 47-9-1(c)(43) or (d)(41).”

(E) “§842.12” shall be replaced by “K.A.R. 47-15-7 and K.A.R. 47-15-8.”

(F) “§843.11” and “§843.11(b)” shall be replaced by “K.A.R. 47-15-1a(a)(8).”

(G) “§843.11 or §843.12” shall be replaced by “K.A.R. 47-15-1a(a)(8) and (9).”

(H) “§843.12(a)” and “§843.12(c) and (f)” shall be replaced by “K.A.R. 47-15-1a(a)(9).”

(I) “§843.13(c)” shall be replaced by “K.A.R. 47-15-1a(a)(10).”

(J) “§845.15(b)(2) of this chapter” shall be replaced by “K.A.R. 47-5-5a(a)(5).” (Authorized by K.S.A. 49-405; implementing K.S.A. 49-404, 49-405, 49-405c, and 49-405d, K.S.A. 2018 Supp. 49-406, K.S.A. 49-416, 49-416a, and 49-427; effective May 1, 1985; amended May 1, 1986; amended Feb. 11, 1991; amended May 2, 1997; amended Dec. 1, 2006; amended Feb. 15, 2019.)

Article 16.—RECLAMATION

47-16-6. Liens. (a) A lien may be placed by the secretary on land reclaimed if the reclamation results in a significant increase in the fair market value based on the pre- and post-reclamation appraisals, except that the lien may be waived by the secretary or the secretary’s designee if at least one of the following conditions is met:

(1) The lien amount would be less than the cost of filing the lien.

(2) The reclamation work primarily improves the health, safety, or condition of the environment of the community or area affected.

(3) The reclamation is necessitated by an unforeseen occurrence, and the work performed to restore the land will not significantly increase the

market value of the land as it existed immediately before the occurrence.

(b) A lien shall not be placed against land reclaimed if the current owner of the property acquired title before May 2, 1977 and did not consent to, participate in, or exercise control over the mining operation that caused or contributed to the unreclaimed conditions.

(c) If a lien is to be filed, within six months after completion of the reclamation work, a statement shall be filed by the secretary in the office having responsibility under applicable law for recording judgments and placing liens against land. The statement shall include the following:

(1) An account of monies expended for the reclamation work; and

(2) a notarized summary of the appraisal report.

(d) The increase in the appraised value of the property shall constitute the amount of the lien recorded and shall have priority second only to a real estate tax lien. The landowner shall be afforded the following:

(1) Notified before the time of filing the lien of the amount of the proposed lien; and

(2) allowed a reasonable time to pay that amount in lieu of filing the lien. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective May 1, 1983; amended Feb. 11, 1991; amended May 2, 1997; amended July 31, 1998; amended Feb. 15, 2019.)

47-16-9. Contractor responsibility. (a) Each successful bidder for an abandoned mined-land reclamation project contract shall be eligible under 30 C.F.R. 773.12(a), as adopted by reference in K.A.R. 47-3-42(a)(8), at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations.

(b) Before any contract may be awarded to a bidder, that bidder's eligibility shall be confirmed by the office of surface mining's automated applicant violator system. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective May 2, 1997; amended July 31, 1998; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-16-10. Exclusion of certain noncoal reclamation sites. (a) Money from the abandoned mined-land fund shall not be used for either of the following:

(1) The reclamation of sites and areas designated for remedial action pursuant to the urani-

um mill tailings radiation control act of 1978, 42 U.S.C. 7901 et seq. as amended; or

(2) sites listed for remedial action pursuant to the comprehensive environmental response compensation and liability act of 1980, 42 U.S.C. 9601 et seq. as amended.

(b)(1) Each successful bidder for an abandoned mined-land contract for noncoal reclamation shall be eligible under 30 C.F.R. 773.12(a), as adopted by reference in K.A.R. 47-3-42(a)(8), at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations.

(2) Bidder eligibility shall be confirmed by the office of surface mining's automated applicant violator system for each contract to be awarded. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective May 2, 1997; amended July 31, 1998; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-16-12. Surface mining section's procedures for reclamation projects receiving less than 50 percent government funding.

30 C.F.R. 874.17, as in effect on July 1, 2012, is adopted by reference, except that the following terms shall be replaced with the terms specified:

(a) "Title V" and "Title V of SMCRA" shall be replaced by "K.S.A. 49-401 et seq."

(b) "Part 707 of this chapter" and "the part 707 exemption or counterpart State/Indian Tribe laws and regulations" shall be replaced by "K.A.R. 47-6-9."

(c) "30 CFR subchapter R" shall be replaced by "Article 12 of these regulations." (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; amended Dec. 1, 2006; amended Feb. 15, 2019.)

47-16-13. Reclamation of non-coal-mined lands and associated waters. (a) Non-coal-mined lands and associated waters shall be eligible for reclamation if all of the following conditions are met:

(1) The lands and waters were mined or affected by mining processes.

(2) The lands and waters were left or abandoned in an unreclaimed or inadequately reclaimed condition before August 3, 1977.

(3) There is no ongoing responsibility for reclamation by the operator, permittee, or agent of the permittee under state or federal statutes or by the state as a result of bond forfeiture. Bond forfeiture shall render the lands and waters ineligible if the amount forfeited is sufficient to pay the total cost of necessary reclamation. If the forfeited bond is insufficient to pay the total cost of

reclamation, moneys sufficient to complete the reclamation may be used from the abandoned mined-land fund.

(4) The reclamation has been requested by the governor.

(5) The reclamation is necessary to protect public health, safety, general welfare, and property from extreme danger of adverse effects of non-coal-mining practices.

(b) Each successful bidder for a contract for a non-coal-reclamation project under this regulation shall be eligible under 30 C.F.R. 773.12, as adopted by reference in K.A.R. 47-3-42, at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. (Authorized by K.S.A. 49-405; implementing K.S.A. 49-428; effective Feb. 15, 2019.)

Agency 48

Department of Labor— Employment Security Board of Review

Editor's Note:

The Department of Human Resources was renamed the 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 chal-

lenges. 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. (Autho-

rized 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. (Au-

thorized 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 arti-

cle, 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 inter-

ested 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 Department of Human Resources was renamed the 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 of the department's regulations shall apply to all amusement rides, as defined in K.S.A. 2016 Supp. 44-1601 and amendments thereto, within the state. (Authorized by and implementing K.S.A. 2016 Supp. 44-1614, as amended by 2017 H Sub for SB 86, sec. 13; effective May 28, 2010; amended, T-49-6-27-17, July 1, 2017; amended Oct. 13, 2017.)

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 results of nondestructive testing;
- (4) each amusement ride manufacturer's operational manual;
- (5) each amusement ride manufacturer's non-destructive testing recommendations;
- (6) each amusement ride manufacturer's inspection guidelines; and
- (7) the records required to be maintained in accordance with K.S.A. 2016 Supp. 44-1603, and amendments thereto.

(c) "Permanent amusement ride" means an amusement ride, as defined in K.S.A. 2016 Supp. 44-1601 and amendments thereto, that is 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) "Reasonable period of time to comply with the provisions of K.S.A. 2016 Supp. 44-1601 et seq., and amendments thereto, and K.S.A. 40-4801 et seq., and amendments thereto" means 30 days after publication of the regulations adopted by the secretary pursuant to K.S.A. 2016 Supp. 44-1614(b), and amendments thereto.

(e) "Temporary amusement ride" means an amusement ride, as defined in K.S.A. 2016 Supp. 44-1601 and amendments thereto, that is movable from location to location without significant physical alteration of the location and the amusement ride. (Authorized by and implementing K.S.A. 2016 Supp. 44-1614, as amended by 2017 H Sub for SB 86, sec. 13; effective May 28, 2010; amended, T-49-6-27-17, July 1, 2017; amended Oct. 13, 2017.)

49-55-3. (Authorized by K.S.A. 2009 Supp. 44-1614; implementing K.S.A. 2009 Supp. 44-1602; effective May 28, 2010; revoked, T-49-6-27-17, July 1, 2017; revoked Oct. 13, 2017.)

49-55-4. Permit application; certificate of inspection. Each application for a permit shall include the following:

- (a) The name of the owner and operator of the amusement ride;
- (b) the location of the amusement ride or the location where the amusement ride is stored when not in use;
- (c) proof of insurance;
- (d) certification that the amusement ride meets the applicable standards of the American society

for testing and materials (ASTM) international F24 committee; and

(e) a copy of a valid certificate of inspection for that amusement ride. Each certificate of inspection shall provide an expiration date. (Authorized by K.S.A. 2016 Supp. 44-1614, as amended by 2017 H Sub for SB 86, sec. 13; implementing K.S.A. 2016 Supp. 44-1602, as amended by 2017 H Sub for SB 86, sec. 7, and 2017 H Sub for SB 86, sec. 1; effective May 28, 2010; amended, T-49-6-27-17, July 1, 2017; amended Oct. 13, 2017.)

49-55-5. (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; revoked, T-49-6-27-17, July 1, 2017; revoked Oct. 13, 2017.)

49-55-6. Record retention. The owner of each amusement ride shall retain all amusement ride records for a period of three years, which shall be grouped according to amusement 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 in accordance with K.S.A. 2016 Supp. 44-1603 and amendments thereto, each person who contracts with the owner for the amusement ride's operation, and each operator. (Authorized by K.S.A. 2016 Supp. 44-1614, as amended by 2017 H Sub for SB 86, sec. 13; implementing K.S.A. 2016 Supp. 44-1603, as amended by 2017 H Sub for SB 86, sec. 8, and K.S.A. 2016 Supp. 44-1605; effective May 28, 2010; amended, T-49-6-27-17, July 1, 2017; amended Oct. 13, 2017.)

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 compliance audit. (a) Amusement rides shall be randomly selected each quarter by the department for compliance audit by location. Random selection for compliance audit shall include selecting amusement rides from a list of amusement rides that have been issued a valid permit by the department and amuse-

ment rides that are identified on location reports submitted to the department in accordance with K.A.R. 49-55-10.

(b) A compliance audit may also be conducted for amusement rides that are determined to be in need of a compliance audit by the secretary or the secretary's designee. (Authorized by K.S.A. 2016 Supp. 44-1614, as amended by 2017 H Sub for SB 86, sec. 13; implementing K.S.A. 2016 Supp. 44-1602, as amended by 2017 H Sub for SB 86, sec. 7; effective May 28, 2010; amended, T-49-6-27-17, July 1, 2017; amended Oct. 13, 2017.)

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; notification of death. (a) Except as provided in subsection (b), each report and any other document required by these regulations or the act shall be submitted to the department's director of industrial safety and health by mail, facsimile, hand delivery, or electronic mail.

(b) For each serious injury that results in the death of a patron, notification by the owner shall be made initially by telephone, with a written notifica-

tion sent within 24 hours after the initial notification. (Authorized by and implementing K.S.A. 2016 Supp. 44-1614, as amended by 2017 H Sub for SB 86, sec. 13; effective May 28, 2010; amended, T-49-6-27-17, July 1, 2017; amended Oct. 13, 2017.)

49-55-12. Violations; reporting violations to the attorney general, county attorney, or district attorney. (a) Each notice of violation issued by the department for a violation of the act or these regulations 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) Each notice of violation shall be reported by the department to the attorney general, county attorney, or district attorney. (Authorized by K.S.A. 2016 Supp. 44-1614, as amended by 2017 H Sub for SB 86, sec. 13; implementing K.S.A. 2016 Supp. 44-1610, as amended by 2017 H Sub for SB 86, sec. 11, and K.S.A. 2016 Supp. 44-1611; effective May 28, 2010; amended, T-49-6-27-17, July 1, 2017; amended Oct. 13, 2017.)

49-55-13. Nationally recognized organizations that issue certificates or other evidence of qualification to inspect amusement rides. The nationally recognized organizations that issue certifications or other evidence of qualification to inspect amusement rides and that require education, experience, and training at least equivalent to that required for a level II certification from NAARSO as of July 1, 2017, shall include the following:

- (a) The national association of amusement ride safety officials (NAARSO), for level II certification;
- (b) the amusement industry manufacturers and suppliers international (AIMS), for level II certification;

(c) the association for challenge course technology (ACCT), for qualified inspector certification; and

(d) Pennsylvania department of agriculture, for general qualified inspector status. (Authorized by and implementing K.S.A. 2016 Supp. 44-1614, as amended by 2017 H Sub for SB 86, sec. 13; effective, T-49-6-27-17, July 1, 2017; effective Oct. 13, 2017.)

Agency 50

Department of Labor— Division of Employment

Editor's Note:

The Department of Human Resources was renamed the 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 cal-

endar 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 Department of Human Resources was renamed the 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

- 51-1. FORMS.
- 51-3. TERMINATION OF COMPENSABLE CASES.
- 51-7. MEASUREMENT OF DISABILITY.
- 51-9. MEDICAL AND HOSPITAL.
- 51-17. TIME, COMPUTATION AND EXTENSION.

ARTICLE 1.—FORMS

51-1-1. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-505, 44-508, 44-510b, 44-527, 44-532, 44-534, 44-534a, 44-542a, 44-543, 44-557, 44-567; effective Jan. 1, 1966; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended May 1, 1983; revoked Nov. 26, 2018.)

51-1-26. Submissions; electronic filing (E-filing) system. Except as otherwise specified in the Kansas workers compensation act and the implementing regulations, all forms and other submissions required to be filed with the director or the division of workers compensation (division) in the Kansas department of labor shall be filed through the electronic filing (E-filing) system. Forms filed with the division shall be the forms prescribed or approved by the director.

(a) On and after November 30, 2018, in all workers compensation claims before the division, use of the division's electronic filing system, which is known as the online system for claims administration research and regulation (OSCAR), shall be required for all parties represented by legal counsel. Self-represented parties may file through the E-filing system but shall not be required to do so, as specified in K.A.R. 51-17-2.

(b) Electronic filing shall mean the process by which documents and submissions are created online and by which paper documents are scanned,

uploaded, and filed with the division and served upon parties by electronic transmission using the E-filing system. This shall include any documents that become part of the case record, whether submitted by the division or by the litigants. Document service using the E-filing system upon a party represented by legal counsel or a self-represented party choosing to use the E-filing system shall constitute valid service. Document service by or on parties who are not represented by legal counsel and who have not chosen to use the E-filing system shall be performed as otherwise specified in K.A.R. 51-17-2.

(c) Access to the E-filing system shall be through the division's web site. In order to register as a user for an account with the E-filing system, the user shall agree to register and to be bound by and adhere to the terms and conditions of use.

(d) Each submission shall be considered filed when received by the E-filing system. (Authorized by K.S.A. 44-573; implementing K.S.A. 2017 Supp. 44-508, K.S.A. 2017 Supp. 44-532, K.S.A. 2017 Supp. 44-534, K.S.A. 2017 Supp. 44-536a; effective Nov. 26, 2018.)

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 disability 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, compensa-

tion 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 following:

(a) The usual and customary charge of the health care provider, hospital, or other entity providing the health care services; or

(b) the amount allowed by the "2019 schedule of medical fees" published by the Kansas department of labor, effective on March 29, 2019, and

approved by the director of workers compensation on November 21, 2018, including the ground rules for each type of medical treatment or service within the schedule and the appendix, which is hereby adopted by reference.

This regulation shall be effective on and after March 29, 2019. (Authorized by and implementing K.S.A. 2018 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; amended Jan. 1, 2014; amended Jan. 1, 2015; amended Jan. 1, 2017; amended March 29, 2019.)

51-9-15. (Authorized by K.S.A. 74-717, 44-557a, 44-573; implementing K.S.A. 44-557a, 74-716; effective Aug. 9, 2002; revoked July 19, 2013.)

51-9-17. Release 3.1 standards for trading partner profiles; submission of data; first reports of injury. (a) Each insurer, group-funded workers compensation pool, and self-insured employer shall participate in the electronic data interchange (EDI) program and shall submit to the director a completed EDI trading partner profile at least 30 days before submitting claim information pursuant to the international association of industrial accident boards and commissions' (IAIABC's) release 3.1 standards, as provided in K.S.A. 44-557a and amendments thereto. The EDI trading partner profile shall be completed according to the "Kansas EDI release 3.1 guide for reporting first (FROI) and subsequent (SROI) reports of injury" as revised on July 16, 2018 by the Kansas department of labor and hereby adopted by reference. This document shall be referred to as the "Kansas EDI release 3.1 guide" in this regulation.

(b) Each insurer, group-funded workers compensation pool, and self-insured employer shall report to the director within five days any changes to information submitted in the EDI trading partner profile.

(c) All claim information submitted pursuant to K.S.A. 44-557a, and amendments thereto, by electronic data interchange shall be submitted according to the Kansas EDI release 3.1 guide.

(d) All claim information submitted pursuant to K.S.A. 44-557a, and amendments thereto, and the Kansas EDI release 3.1 guide's first report of injury, commonly called "FROI 00," shall be considered the filing of an accident report pursuant to K.S.A. 44-557, and amendments thereto. This information shall not be open to public inspection, except as provided in K.S.A. 44-550b and amendments thereto.

(e) All claim information submitted pursuant to K.S.A. 44-557a, and amendments thereto, shall be considered a medical record to the extent that the information refers to an individual worker's identity. No references in the claim information to an individual worker's identity shall be open to public inspection, except as provided in K.S.A. 44-550b and amendments thereto. For purposes of this regulation, the claim number used by an insurance carrier, self-insured employer, or group-funded workers compensation pool to identify an individual worker's claim shall be considered a reference to the individual worker's identity.

(f) On or before the compliance date specified in subsection (g), each insurer shall file claim information for all "lost time/indemnity" and "denied" cases through EDI rather than by submitting paper forms. The insurer shall file the electronic form in accordance with the Kansas EDI release 3.1 guide.

(g) Each insurer shall comply on or before the implementation date of November 29, 2018 for reporting electronic FROI or SROI. Each claim administrator submitting claims as EDI filings in production status using the IAIABC's release 3 national standard shall convert to release 3.1 and shall be in production status by the implementation date. (Authorized by K.S.A. 44-573 and K.S.A. 74-717; implementing K.S.A. 2018 Supp. 44-550b, K.S.A. 2018 Supp. 44-557, K.S.A. 2018 Supp. 44-557a, and K.S.A. 74-716; effective Jan. 1, 2004; amended June 17, 2005; amended Feb. 8, 2013; amended, T-51-11-15-18, Nov. 15, 2018; amended March 15, 2019.)

Article 17.—TIME, COMPUTATION AND EXTENSION

51-17-2. Methods of filing; service. On and after November 30, 2018, each party represented by legal counsel shall file workers compensation case documents through the electronic filing (E-filing) system of the division of workers compensation (division) in the Kansas department of la-

bor, as specified in K.A.R. 51-1-26. Any party not represented by legal counsel may file using the division's electronic filing system. If a party not represented by legal counsel chooses not to use the division's electronic filing system, the party shall file by facsimile, by mail, or by hand-delivery directly to the division and shall serve a copy of each document on the parties.

(a) Definitions. Each of the following terms as used in this regulation, unless the context requires otherwise, shall have the meaning specified in this subsection:

(1) "Document" shall include not more than one pleading and corresponding exhibits.

(2) "Facsimile filing" and "filing by fax" mean the facsimile transmission of a document to the division for filing with the division.

(3) "Facsimile machine" means a machine that can send a facsimile transmission.

(4) "Facsimile transmission" means the transmission of a copy of a document by a system that encodes a document into electronic signals, transmits the signals over a telephone line or other communications medium, and reconstructs the signals to print a duplicate of the document at the receiving end.

(5) "Fax" is an abbreviation for "facsimile" and means, as indicated by the context, the facsimile transmission or document so transmitted.

(6) "Filing" means the act of submitting a document to the division for the division's consideration and action. A document is filed by delivering it to the division by one of the means specified in this regulation.

(7) "Filing by hand-delivery" means submitting a document to the division by delivery in person to the division. Proof of filing by hand-delivery is established by retention of a copy of the hand-delivered document that has been date-stamped by an employee of the division at the time of the hand-delivery.

(8) "Filing by mail" means submitting a document to the division through the United States postal service, or other service or system by which letters and parcels are collected and delivered for a fee, addressed to an office of the division of workers compensation. Filing by mail is complete upon receipt by the division.

(9) "Serve" means to deliver a document, or copy thereof, by a party in a legal action or proceeding in which the party is involved, to another person, entity or party, electronically, by fax, by mail, or by hand-delivery.

(10) "Service by fax" means the transmission of a document by facsimile machine. Service by fax shall be complete upon generation of a transmission record by the transmitting machine indicating the successful transmission of the entire document. Service that occurs after midnight, central standard time, shall be deemed to have occurred on the next day.

(11) "Service by hand-delivery" means the delivery in person of a document to the party upon whom service is required or, if the party is a nonperson entity, by handing the document to a person in charge or person designated for this purpose at an office of the party.

(12) "Service by mail" means the delivery of a document by United States postal service, or other service or system by which letters and parcels are collected and delivered for a fee, addressed to the party's last known address. Service by mail shall be presumed if a person fills out and signs a written certificate of service.

(13) "Transmission record" means the document printed by the sending facsimile machine stating the telephone number of the receiving machine, the number of pages sent, the transmission time, and an indication of any errors in transmission.

(b) Form of documents.

(1) The document placed in the transmitting fax machine shall comply with all applicable requirements on the form, format, and signature of papers.

(2) The first page of each document filed by fax shall include the words "by fax." Each page shall be numbered and shall include an abbreviated caption of the case and an abbreviated title of the document. The party shall also include the party's name, address, telephone number, and fax number on the document.

(c) Methods of filing by a party not represented by legal counsel.

(1) If a party not represented by legal counsel chooses not to use the division's electronic filing system, the party may file by fax directly to the division of workers compensation, at the facsimile numbers authorized, or by mail or hand-delivery to the division.

(2) The division's facsimile machine shall be available on a 24-hour basis. This provision shall not prevent the division from sending documents by fax or providing for normal repair and maintenance of the fax machine. Facsimile filings received in the division shall be deemed filed at the time printed by the division facsimile machine on the final page of the facsimile document received.

(3) Each facsimile document filed shall be accompanied by the facsimile transmission cover sheet, which shall contain the date, the docket number, case caption, party name, address, telephone and fax numbers, and the name of the document. The cover sheet shall be the first page transmitted.

(4) Each party filing by fax shall cause the transmitting facsimile machine to print a transmission record of each filing by fax. If the facsimile filing is not filed with the division due to an error in the transmission of the document the occurrence of which was unknown to the sender, any other failure not within the sender's control, or a failure to process the facsimile filing when received by the division, the sender may move the administrative law judge or the workers compensation board for an order to accept the timely filing of the document. The motion shall be accompanied by the transmission record, a copy of the document transmitted, and an affidavit of transmission by fax as set forth in a form specified by the director.

(5) Filing of documents by mail, properly addressed with postage or delivery fees paid, or by hand-delivery to the division's office in Topeka, Kansas shall be complete upon receipt by the division.

(d) Possession of documents. Each party not represented by legal counsel who files by fax shall retain the original document in the party's possession or control during the pendency of the action and shall produce this document upon request by the division, administrative law judge, workers compensation board, or any party to the action. Upon failure to produce the document, the fax may be stricken, and the party may be subject to sanctions under K.S.A. 44-5,120(d)(20), and amendments thereto.

(e) Signatures. Each signature reproduced by facsimile transmission shall be considered an original signature.

(f) Service by the division by electronic transmission and by mail.

The division shall serve documents and notices requiring service electronically upon any party represented by legal counsel and upon any party not represented by legal counsel who has elected to use the division's electronic filing system. Documents and notices requiring service shall be served by mail on a party not represented by legal counsel who has not elected to use the division's electronic filing system.

(g) Certificates of service.

(1) Each electronically filed document shall include a certificate of service if service is required. Each certificate of service by electronic transmission shall include the following:

(A) The date of electronic transmission;

(B) a statement that the service was made by electronic transmission;

(C) the name and electronic-mail address of each party served; and

(D) the signature of the person serving the document by electronic transmission.

(2) Each certificate of service by fax shall include the following:

(A) The date of transmission;

(B) the name and facsimile machine telephone number of each party served;

(C) a statement that the document was served by facsimile transmission and that the transmission was reported as complete and without error; and

(D) the signature of the person serving the document by facsimile transmission.

(3) Each certificate of service by mail shall include the following:

(A) The date of mailing;

(B) the name and mailing address of each party served;

(C) a statement that the document was served by depositing it in the mail; and

(D) the signature of the person serving the document by mail. (Authorized by K.S.A. 44-573; implementing K.S.A. 2017 Supp. 44-534, K.S.A. 2017 Supp. 44-551; effective May 22, 1998; amended Nov. 26, 2018.)

Agency 54

State Library

Articles

54-4. CHILDREN'S INTERNET PROTECTION; PUBLIC LIBRARY REQUIREMENTS.

Article 4.—CHILDREN'S INTERNET PROTECTION; PUBLIC LIBRARY REQUIREMENTS

54-4-1. Public library internet access policy; adoption and review. (a) The governing body of each public library shall adopt an internet access policy that meets the applicable requirements of subsection (b) and K.S.A. 2013Supp. 75-2589, and amendments thereto.

(b) Each internet access policy shall meet the following requirements:

(1) State that the purpose of the policy is to restrict access to those materials that are child pornography, are harmful to minors, or are obscene;

(2) state how the public library will meet the

applicable requirements of K.S.A. 2013 Supp. 75-2589, and amendments thereto;

(3) require the public library to inform its patrons of the procedures that library employees follow to enforce the applicable requirements of K.S.A. 2013 Supp. 75-2589, and amendments thereto; and

(4) require the public library to inform its patrons that procedures for the submission of complaints about the policy, the enforcement of the policy, and observed patron behavior have been adopted and are available for review.

(c) The governing body of each public library shall review its internet access policy at least once every three years. (Authorized by and implementing K.S.A. 2013 Supp. 75-2589; effective March 14, 2014.)

Agency 60

State Board of Nursing

Articles

- 60-2. REQUIREMENTS FOR APPROVED NURSING PROGRAMS.
- 60-3. REQUIREMENTS FOR LICENSURE AND STANDARDS OF PRACTICE.
- 60-4. FEES.
- 60-7. REQUIREMENTS FOR LICENSURE AND STANDARDS OF PRACTICE.
- 60-8. FEES.
- 60-9. CONTINUING EDUCATION FOR NURSES.
- 60-11. ADVANCED PRACTICE REGISTERED NURSES (APRN).
- 60-12. CONTINUING EDUCATION FOR MENTAL HEALTH TECHNICIANS.
- 60-13. FEES; REGISTERED NURSE ANESTHETIST.
- 60-15. PERFORMANCE OF SELECTED NURSING PROCEDURES IN SCHOOL SETTINGS.
- 60-16. INTRAVENOUS FLUID THERAPY FOR LICENSED PRACTICAL NURSE.
- 60-17. ADVANCED NURSING EDUCATION PROGRAM.

Article 2.—REQUIREMENTS FOR APPROVED NURSING PROGRAMS

60-2-101. Requirements for initial approval. (a) Administration and organization.

(1) The nursing education program or the institution of which it is a part shall be a legally constituted body. The controlling body shall be responsible for general policy and shall provide for the financial support of the nursing education program.

(2) Authority and responsibility for administering the nursing education program shall be vested in the nurse administrator of the nursing education program.

(3) The program shall be accredited, be part of an institution that is accredited, or be in the process of being accredited by an agency that is approved by the United States department of education.

(b) Application. Each new or converted nursing education program shall submit an initial application 60 days before a scheduled board meeting. The application shall include the following:

- (1) The course of study and credential to be conferred;
- (2) the name and title of the administrator of the nursing education program;
- (3) the name of the controlling body;
- (4) the name and title of the administrator of the controlling body;
- (5) all sources of financial support;

(6) a proposed curriculum with the total number of hours of both theoretical and clinical instruction;

(7) the number, qualifications, and assignments of faculty members;

(8) a proposed date of initial admission of students to the program;

(9) the number of admissions each year and the number of students per admission;

(10) the admission requirements;

(11) a description of clinical facilities;

(12) copies of the current school bulletin or catalog;

(13) the name of each hospital and affiliating agency providing facilities for clinical experience. Each such hospital and affiliating agency shall be licensed or approved by the appropriate entity or entities; and

(14) signed contracts or letters from clinical facilities stating that they will provide clinical experiences for the program's students.

(c) Surveys. Each nursing education program shall be surveyed for initial approval by the board. An on-site visit shall be conducted by the board to validate information submitted in the program's initial application before granting initial approval.

(1) During an initial survey, the nurse administrator of the program shall make available the following:

(A) Administrators, prospective faculty and students, clinical facility representatives, and support services personnel to discuss the nursing education program;

(B) minutes of faculty meetings;
 (C) faculty and student handbooks;
 (D) policies and procedures;
 (E) curriculum materials;
 (F) a copy of the nursing education program's budget; and

(G) affiliating agency contractual agreements.

(2) The nurse administrator of the nursing education program or designated personnel shall take the survey team to inspect the nursing educational facilities, including satellite program facilities and library facilities.

(3) Upon completion of the survey, the nurse administrator shall be asked to correct any inaccurate statements contained in the survey report, limiting comments to errors, unclear statements, and omissions.

(d) Approval. Each nursing education program seeking approval shall perform the following:

(1) Submit a progress report that includes the following:

(A) Updated information in all areas identified in the initial application;

(B) the current number of admissions and enrollments;

(C) the current number of qualified faculty; and

(D) detailed course syllabi; and

(2) have a site visit conducted by the board's survey team after the first graduation.

(e) Denial of approval. If a nursing education program fails to meet the requirements of the board within a designated period of time, the program shall be notified by the board's designee of the board's intent to deny approval. (Authorized by K.S.A. 65-1129; implementing K.S.A. 65-1119; effective Jan. 1, 1966; amended Jan. 1, 1968; amended Jan. 1, 1972; amended Jan. 1, 1973; amended, E-74-29, July 1, 1974; modified L. 1975, Ch. 302, Sec. 2; modified, L. 1975, Ch. 396, Sec. 1, May 1, 1975; amended May 1, 1987; amended April 4, 1997; amended June 14, 2002; amended Jan. 24, 2003; amended Nov. 7, 2008; amended April 29, 2016.)

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 num-

ber 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 3.—REQUIREMENTS FOR LICENSURE AND STANDARDS OF PRACTICE

60-3-102. Duplicate of initial license.

When an individual's initial license has been lost or destroyed, a duplicate may be issued by the board upon payment of the fee specified in K.S.A. 65-1118, and amendments thereto. (Authorized by K.S.A. 65-1129; implementing K.S.A. 2015 Supp. 74-1106; effective Jan. 1, 1966; amended Jan. 1, 1972; modified, L. 1975, Ch. 302, Sec. 11, May 1, 1975; amended Nov. 21, 1994; amended April 29, 2016.)

60-3-103. Change of name. If an applicant for licensure or a licensee changes that individual's name after submitting an application or obtaining a license, the applicant or licensee shall submit legal documentation or an affidavit indicating the change of name upon a form approved by the board. The applicant or licensee shall submit the document to the board within 30 days of the change, pursuant to K.S.A. 65-1117 and amendments thereto. (Authorized by K.S.A. 65-1129; implementing K.S.A. 2015 Supp. 65-1117; effective Jan 1, 1966; amended May 1, 1975; amended April 29, 2016.)

60-3-110. Unprofessional conduct. Any of the following shall constitute "unprofessional conduct":

(a) Performing acts beyond the authorized scope of the level of nursing for which the individual is licensed;

(b) assuming duties and responsibilities within the practice of nursing without making or obtaining adequate preparation or maintaining competency;

(c) failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard each patient;

(d) inaccurately recording, falsifying, or altering any record of a patient or agency or of the board;

(e) physical abuse, which shall be defined as any act or failure to act performed intentionally or carelessly that causes or is likely to cause harm to a patient. This term may include any of the following:

(1) The unreasonable use of any physical restraint, isolation, or medication that harms or is likely to harm a patient;

(2) the unreasonable use of any physical or chemical restraint, medication, or isolation as punishment, for convenience, in conflict with a physician's order or a policy and procedure of the facility or a state statute or regulation, or as a substitute for treatment, unless the use of the restraint, medication, or isolation is in furtherance of the health and safety of the patient;

(3) any threat, menacing conduct, or other non-therapeutic or inappropriate action that results in or might reasonably be expected to result in a patient's unnecessary fear or emotional or mental distress; or

(4) failure or omission to provide any goods or services that are reasonably necessary to ensure safety and well-being and to avoid physical or mental harm;

(f) commission of any act of sexual abuse, sexual misconduct, or sexual exploitation related to the licensee's practice;

(g) verbal abuse, which shall be defined as any word or phrase spoken inappropriately to or in the presence of a patient that results in or might reasonably be expected to result in the patient's unnecessary fear, emotional distress, or mental distress;

(h) delegating any activity that requires the unique skill and substantial specialized knowledge derived from the biological, physical, and behavioral sciences and judgment of the nurse to an unlicensed individual in violation of the Kansas nurse practice act or to the detriment of patient safety;

(i) assigning the practice of nursing to a licensed individual in violation of the Kansas nurse practice act or to the detriment of patient safety;

(j) violating the confidentiality of information or knowledge concerning any patient;

(k) willfully or negligently failing to take appropriate action to safeguard a patient or the public from incompetent practice performed by a registered professional nurse or a licensed practical nurse. "Appropriate action" may include reporting to the board of nursing;

(l) leaving an assignment that has been accepted, without notifying the appropriate authority and allowing reasonable time for replacement;

(m) engaging in conduct related to licensed nursing practice that is likely to deceive, defraud, or harm the public;

(n) diverting drugs, supplies, or property of any patient or agency;

(o) exploitation, which shall be defined as misappropriating a patient's property or taking unfair advantage of a patient's physical or financial resources for the licensee's or another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false pretense, or false representation;

(p) solicitation of professional patronage through the use of fraudulent or false advertisements, or profiting by the acts of those representing themselves to be agents of the licensee;

(q) advertising nursing superiority or advertising the performance of nursing services in a superior manner;

(r) failing to comply with any disciplinary order of the board;

(s) failing to submit to a mental or physical examination or an alcohol or drug screen, or any combination of these, when so ordered by the board pursuant to K.S.A. 65-4924 and amendments thereto, that the individual is unable to practice nursing with reasonable skill and safety by reason of a physical or mental disability or condition, loss of motor skills or the use of alcohol, drugs, or controlled substances, or any combination of these;

(t) failing to complete the requirements of the impaired provider program of the board;

(u) failing to furnish the board, its investigators, or its representatives with any information legally requested by the board;

(v) engaging in nursing practice while using a false or assumed name or while impersonating another person licensed by the board;

(w) practicing without a license or while the license has lapsed;

(x) allowing another person to use the licensee's license to practice nursing; or

(y) knowingly aiding or abetting another in any act that is a violation of any health care licensing act. (Authorized by K.S.A. 65-1129; implementing K.S.A. 2015 Supp. 65-1120; effective May 1, 1982; amended Sept. 27, 1993; amended Sept. 6, 1994; amended Oct. 25, 2002; amended April 29, 2016.)

60-3-113. Reporting of certain misdemeanor convictions by the licensee. Pursuant to K.S.A. 65-1117 and amendments thereto, each licensee shall report to the board any misdemeanor or conviction for any of the following substances or types of conduct, within 30 days from the date the conviction becomes final:

- (a) Alcohol;
- (b) any drugs;
- (c) deceit;
- (d) dishonesty;
- (e) endangerment of a child or vulnerable adult;
- (f) falsification;
- (g) fraud;
- (h) misrepresentation;
- (i) physical, emotional, financial, or sexual exploitation of a child or vulnerable adult;
- (j) physical or verbal abuse;
- (k) theft;
- (l) violation of a protection from abuse order or protection from stalking order; or

(m) any action arising out of a violation of any state or federal regulation. (Authorized by K.S.A. 2015 Supp. 65-1117 and K.S.A. 65-1129; implementing K.S.A. 2015 Supp. 65-1117; effective Nov. 7, 2008; amended April 29, 2016.)

Article 4.—FEES

60-4-101. Payment of fees. The following fees shall be charged by the board of nursing:

- (a) Fees for professional nurses.
 - (1) Application for single-state license by endorsement to Kansas \$100.00
 - (2) Application for single-state license by examination..... 100.00
 - (3) Biennial renewal of single-state license..... 85.00
 - (4) Application for reinstatement of single-state license without temporary permit... 150.00
 - (5) Application for reinstatement of single-state license with temporary permit 150.00
 - (6) Certified copy of Kansas license 25.00
 - (7) Inactive license 10.00
 - (8) Verification of licensure..... 30.00
 - (9) Application for exempt license..... 50.00
 - (10) Renewal of exempt license 50.00
 - (11) Application for multistate license by endorsement..... 125.00

(12) Application for multistate license by examination.....	125.00
(13) Biennial renewal of multistate license.....	85.00
(14) Application for reinstatement of multistate license.....	150.00
(15) Application for reinstatement of multistate license with temporary permit	150.00
(b) Fees for practical nurses.	
(1) Application for single-state license by endorsement to Kansas	75.00
(2) Application for single-state license by examination.....	75.00
(3) Biennial renewal of single-state license.....	85.00
(4) Application for reinstatement of single-state license without temporary permit...	150.00
(5) Application for reinstatement of single-state license with temporary permit.....	150.00
(6) Certified copy of Kansas license	25.00
(7) Inactive license	10.00
(8) Verification of licensure.....	30.00
(9) Application for exempt license.....	50.00
(10) Renewal of exempt license.....	50.00
(11) Application for multistate license by endorsement.....	125.00
(12) Application for multistate license by examination.....	125.00
(13) Biennial renewal of multistate license.....	85.00
(14) Application for reinstatement of multistate license.....	150.00
(15) Application for reinstatement of multistate license with temporary permit	150.00

This regulation shall become effective on July 1, 2019. (Authorized by K.S.A. 65-1129; implementing K.S.A. 65-1118; effective Jan. 1, 1966; amended Jan. 1, 1972; amended, E-74-29, July 1, 1974; modified, L. 1975, Ch. 302, Sec. 5, May 1, 1975; amended, E-77-8, March 19, 1976; amended Feb. 15, 1977; amended, E-79-8, March 16, 1978; amended May 1, 1979; amended May 1, 1980; amended May 1, 1983; amended March 9, 1992; amended May 17, 1993; amended May 9, 1994; amended Feb. 6, 1995; amended April 3, 1998; amended July 1, 2001; amended April 20, 2007; amended July 1, 2014; amended May 12, 2017; amended July 1, 2019.)

60-4-103. Fees and travel expenses for school approval and approval of continuing education providers. (a) The fees for school approval and approval of continuing nursing education providers shall be the following:

(1) Application for approval — schools of nursing.....	\$1,000.00
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(2) Annual report of approval — schools of nursing.....	200.00
(3) Application for approval of continuing nursing education providers	200.00
(4) Annual report for continuing nursing education providers.....	50.00
(5) Approval of single continuing nursing education offerings.....	100.00
(6) Consultation by request, per day on site ...	300.00

(b) All fees prescribed in subsection (a) shall be due at the time of application.

(c) The person, firm, corporation, or institution requesting the board's consultation services shall pay each consultant's travel expenses. (Authorized by K.S.A. 65-1129; implementing K.S.A. 65-1118a; effective, E-82-18, Sept. 30, 1981; effective May 1, 1982; amended Sept. 14, 1992; amended May 17, 1993; amended May 9, 1994; amended June 14, 2002; amended April 17, 2015.)

Article 7.—REQUIREMENTS FOR LICENSURE AND STANDARDS OF PRACTICE

60-7-102. Duplicate of initial license.

When an individual's initial license has been lost or destroyed, a duplicate may be issued by the board upon payment of the fee specified in K.S.A. 65-4208, and amendments thereto. (Authorized by K.S.A. 65-4203; implementing K.S.A. 65-4208; modified, L. 1975, Ch. 302, Sec. 9, May 1, 1975; amended April 20, 2001; amended April 29, 2016.)

60-7-106. Unprofessional conduct. Any of the following shall constitute “unprofessional conduct”:

(a) Performing acts beyond the authorized scope of mental health technician practice for which the individual is licensed;

(b) assuming duties and responsibilities within the practice of mental health technology without adequate preparation or without maintaining competency;

(c) failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient;

(d) inaccurately recording, falsifying, or altering any record of a patient, an agency, or the board;

(e) physical abuse, which shall be defined as any act or failure to act performed intentionally or carelessly that causes or is likely to cause harm to a patient. This term may include any of the following:

(1) The unreasonable use of any physical restraints, isolation, or medication that harms or is likely to harm a patient;

(2) the unreasonable use of any physical or chemical restraint, medication, or isolation as a punishment, for convenience, in conflict with a physician's order or a policy and procedure of the facility or a statute or regulation, or as a substitute for treatment, unless the use of the restraint, medication, or isolation is in furtherance of the health and safety of the patient;

(3) any threat, menacing conduct, or other non-therapeutic or inappropriate action that results in or might reasonably be expected to result in a patient's unnecessary fear or emotional or mental distress; or

(4) any failure or omission to provide any goods or services that are reasonably necessary to ensure safety and well-being and to avoid physical or mental harm;

(f) the commission of any act of sexual abuse, sexual misconduct, or sexual exploitation related to the licensee's practice;

(g) verbal abuse, which shall be defined as any word or phrase spoken inappropriately to or in the presence of a patient that results in or might reasonably be expected to result in the patient's unnecessary fear, emotional distress, or mental distress;

(h) delegating any activity that requires the unique skill and substantial specialized knowledge derived from the biological, physical, and behavioral sciences and judgment of the mental health technician to an unlicensed individual in violation of the mental health technician's licensure act or to the detriment of patient safety;

(i) assigning the practice of mental health technology to a licensed individual in violation of the mental health technician's licensure act or to the detriment of patient safety;

(j) violating the confidentiality of information or knowledge concerning any patient;

(k) willfully or negligently failing to take appropriate action to safeguard a patient or the public from incompetent practice performed by a licensed mental health technician. "Appropriate action" may include reporting to the board of nursing;

(l) leaving an assignment that has been accepted, without notifying the appropriate authority and without allowing reasonable time for the licensee's replacement;

(m) engaging in conduct related to mental health technology practice that is likely to deceive, defraud, or harm the public;

(n) diverting drugs, supplies, or property of any patient or agency or violating any law or regulation relating to controlled substances;

(o) exploitation, which shall be defined as misappropriating a patient's property or taking unfair advantage of a patient's physical or financial resources for the licensee's or another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false pretense, or false representation;

(p) solicitation of professional patronage through the use of fraudulent or false advertisements, or profiting by the acts of those representing themselves to be agents of the licensee;

(q) failing to comply with any disciplinary order of the board;

(r) if the licensee is participating in an impaired provider program approved by the board, failing to complete the requirements of the program;

(s) failing to submit to a mental or physical examination or an alcohol or drug screen, or any combination of these, when so ordered by the board pursuant to K.S.A. 65-4924 and amendments thereto, that the individual is unable to practice mental health technology with reasonable skill and safety by reason of a physical or mental disability or condition, loss of motor skills or the use of alcohol, drugs, or controlled substances, or any combination of these;

(t) failing to furnish the board of nursing, or its investigators or representatives, with any information legally requested by the board of nursing;

(u) engaging in mental health technology practice while using a false or assumed name or while impersonating another person licensed by the board;

(v) practicing without a license or while the individual's license has lapsed;

(w) allowing another person to use the licensee's license to practice mental health technology;

(x) knowingly aiding or abetting another in any act that is a violation of any health care licensing act;

(y) having a mental health technician license from a licensing authority of another state, agency of the United States government, territory of the United States, or country denied, revoked, limited, or suspended or being subject to any other disciplinary action. A certified copy of the record or order of denial, suspension, limitation, revocation, or any other disciplinary action issued by the licensing authority of another state, agency of the United States government, territory of the United

States, or country shall constitute prima facie evidence of such a fact;

(z) failing to report to the board of nursing any adverse action taken against the licensee by another state or licensing jurisdiction, a peer review body, a health care facility, a professional association or society, a governmental agency, a law enforcement agency, or a court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under this regulation; or

(aa) cheating on or attempting to subvert the validity of the examination for a license. (Authorized by K.S.A. 65-4203 implementing K.S.A. 2015 Supp. 65-4209; effective, T-88-48, Dec. 16, 1987; effective Sept. 27, 1993; amended Sept. 6, 1994; amended April 20, 2007; amended April 29, 2016.)

Article 8.—FEES

60-8-101. Payment of fees. The following fees shall be charged by the board of nursing:

(a) Mental health technician programs.

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|---|----------|
| (1) Annual renewal of program approval..... | \$100.00 |
| (2) Survey of a new program..... | 200.00 |
| (3) Application for approval of continuing education providers..... | 200.00 |
| (4) Annual renewal for continuing education providers..... | 50.00 |

(b) Mental health technicians.

- | | |
|--|-------|
| (1) Application for licensure | 50.00 |
| (2) Examination | 40.00 |
| (3) Biennial renewal of license | 55.00 |
| (4) Application for reinstatement of license without temporary permit..... | 70.00 |
| (5) Application for reinstatement of license with temporary permit | 75.00 |
| (6) Certified copy of Kansas license | 12.00 |
| (7) Inactive license | 10.00 |
| (8) Verification of licensure..... | 10.00 |
| (9) Duplicate license | 12.00 |
| (10) Application for exempt license..... | 50.00 |
| (11) Renewal of exempt license | 50.00 |

This regulation shall be effective on and after July 1, 2014. (Authorized by K.S.A. 65-4203; implementing K.S.A. 65-4208; effective May 1, 1980; amended May 1, 1983; amended, T-85-49, Dec. 19, 1984; amended May 1, 1985; amended June 3, 1991; amended May 17, 1993; amended May 9, 1994; amended Feb. 6, 1995; amended April 3, 1998; amended July 1, 2001; amended April 20, 2007; amended Oct. 18, 2013; amended July 1, 2014.)

Article 9.—CONTINUING EDUCATION FOR NURSES

60-9-105. Definitions. For the purposes of these regulations, each of the following terms shall have the meaning specified in this regulation:

(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 that meets the definition of continuing nursing education (CNE), as defined in K.S.A. 65-1117 and amendments thereto, and is 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 state-wide 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 each renewal period.

(d) “Behavioral objectives” means the intended outcome of instruction stated as measurable learning 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 CNE offerings. Each CE transcript shall be maintained by a CNE provider.

(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, as described in K.S.A. 65-1119 and amendments thereto, 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 total minutes of participation in a learning experience that meets the definition of CNE in K.S.A. 65-1117, and amendments thereto. Fractions of hours over 30 minutes to be computed towards a contact hour shall be accepted.

(k) “Distance learning” means the acquisition of knowledge and skills through information and instruction delivered by means of 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 shall include self-study programs, distance learning, and authorship.

(m) “Individual offering approval” and “IOA” mean a request for approval of an education offering meeting the definition of CNE, pursuant to K.S.A. 65-1117 and amendments thereto, but not presented by an approved provider or other acceptable approving body, as described in K.S.A. 65-1119 and amendments thereto.

(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 professionalism related to nursing. Each offering shall consist of at least 30 minutes to be computed towards a 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 a plan 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 CNE program in order to make subsequent decisions. (Authorized by and implementing K.S.A. 2015 Supp. 65-1117 and K.S.A. 65-1119; 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; amended May 10, 2013; amended April 29, 2016.)

60-9-106. Continuing nursing education for license renewal. (a) At the time of license renewal, any licensee may be required to submit proof of completion of 30 contact hours of approved continuing nursing education (CNE). This proof shall be documented as follows:

(1) For each approved CNE offering, a certificate or a transcript that clearly designates the number of hours of approved CNE that have been successfully completed, showing the following:

(A) Name of CNE offering;

(B) provider name or name of the accrediting organization;

(C) provider number or number of the accrediting organization, if applicable;

(D) offering date;

(E) number of contact hours awarded; and

(F) the licensee’s name and license number as shown on the course roster; or

(2) an approved Kansas state board of nursing IOA, which shall include approval of college courses that meet the definition of continuing education in K.S.A. 65-1117, and amendments thereto.

(b) The required 30 contact hours of approved CNE shall have been completed during the most recent prior licensing period between the first date of the licensing period and the date that the licensee submits the renewal application as required in K.S.A. 65-1117, and amendments thereto, and K.A.R. 60-3-108. Contact hours accumulated in excess of the 30-hour requirement shall not be carried over to the next renewal period.

(c) Acceptable CNE may include any of the following:

(1) An offering presented by an approved long-term or single provider;

(2) an offering as designated in K.S.A. 65-1119, and amendments thereto;

(3) an offering for which a licensee has submitted an IOA, which may include credit request-

ed for a college course that meets the definition of continuing education in K.S.A. 65-1117, and amendments thereto. Before licensure renewal, the licensee may submit an application for an IOA to the board, accompanied by the following:

(A) An agenda representing exact learning time in minutes;

(B) official documentation of successfully completed hours, which may include a certificate of completion or an official college transcript; and

(C) learning or behavior objectives describing learning outcomes;

(4) a maximum of 15 contact hours for the first-time preparation and presentation as an instructor of an approved offering to licensed nurses. Two contact hours of instructor credit shall be granted for each hour of presentation;

(5) an offering utilizing a board-approved curriculum developed by the American heart association, emergency nurses association, or Mandt, which may include the following:

- (A) Advanced cardiac life support;
 - (B) emergency nursing pediatric course;
 - (C) pediatric advanced life support;
 - (D) trauma nurse core course;
 - (E) neonatal resuscitation program; or
 - (F) Mandt program;
- (6) independent study;
- (7) distance learning offerings;

(8) a board-approved refresher course if required for licensure reinstatement as specified in K.A.R. 60-3-105 and K.A.R. 60-11-116;

(9) participation as a member of a nursing organization board of directors or the state board of nursing, including participation as a member of a committee reporting to the board. The maximum number of allowable contact hours shall be six and shall not exceed three contact hours each year. A letter from an officer of the board confirming the dates of participation shall be accepted as documentation of this type of CNE; or

(10) any college courses in science, psychology, sociology, or statistics that are prerequisites for a nursing degree.

(d) Fractions of hours over 30 minutes to be computed towards a contact hour shall be accepted.

(e) Contact hours shall not be recognized by the board for any of the following:

(1) Identical offerings completed within a renewal period;

(2) offerings containing the same content as courses that are part of basic preparation at the level of current licensure or certification;

(3) in-service education, on-the-job training, orientation, and institution-specific courses;

(4) an incomplete or failed college course or any college course in literature and composition, public speaking, basic math, algebra, humanities, or other general education requirements unless the course meets the definition of CNE;

(5) offerings less than 30 minutes in length; or

(6) a board-approved refresher course for license renewal. (Authorized by and implementing K.S.A. 2015 Supp. 65-1117; effective Sept. 2, 1991; amended April 3, 1998; amended April 20, 2001; amended July 20, 2007; amended May 10, 2013; amended April 29, 2016.)

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 CNE by the Kansas State Board of Nursing. This course offering is approved for contact hours applicable for APRN, RN, or LPN 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 CNE offering, as specified in subsection (i).

(c) (1) Long-term provider. The program coordinator 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 in nursing, except those individuals exempted under K.S.A. 65-1119 (e)(6) and amendments thereto.

(2) Single offering provider. If the program 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 30 minutes to be computed towards a contact hour;

(3) instructor credit, which shall be twice the length of the first-time 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) (1) 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.

(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. 2011 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; amended May 10, 2013.)

Article 11.—ADVANCED PRACTICE REGISTERED NURSES (APRN)

60-11-101. Definition of expanded role; limitations; restrictions. (a) Each “advanced practice registered nurse” (APRN), 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 APRN’s role of advanced practice. Each APRN 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 APRN. Each APRN shall be directly accountable and responsible to the consumer.

(b) “Authorization for collaborative practice” shall mean that an APRN 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 APRN and one or more physicians. Each APRN 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 APRN and the physician, their signatures, and the date of review by the APRN and the physician. Each authorization for collaborative practice shall be maintained in either hard copy or electronic format at the APRN’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, as amended by L. 2011, ch. 114, sec.

39, and K.S.A. 65-1130, as amended by L. 2011, ch. 114, sec. 44; effective May 1, 1984; amended March 31, 2000; amended Sept. 4, 2009; amended May 18, 2012.)

60-11-102. Roles of advanced practice registered nurses. The four roles of advanced practice registered nurses licensed 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, as amended by L. 2011, ch. 114, sec. 39, and K.S.A. 65-1130, as amended by L. 2011, ch. 114, sec. 44; effective May 1, 1984; amended Sept. 4, 2009; amended May 18, 2012.)

60-11-103. Educational requirements for advanced practice registered nurses. (a) To be issued a license as an advanced practice registered nurse in any of the roles 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 could 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 license to practice as an advanced practice registered nurse in the role for which application is made and that meets the following criteria:

(A) Was issued by a nursing licensing authority of another jurisdiction; 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 role 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 license as an advanced practice registered nurse in a role 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 license as an advanced practice registered nurse in the role 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 license as an advanced practice registered nurse in the role 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) have been 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 license 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 license to practice as

an advanced practice registered nurse. 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 practice registered nurse program after January 1, 1997 shall have completed three college hours in advanced pharmacology or the equivalent.

(g) Each applicant who completes an advanced practice registered nurse program after January 1, 2001 in a role 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 practice registered nurse 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 license as an advanced practice registered nurse 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, as amended by L. 2011, ch. 114, sec. 44; 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; amended May 18, 2012.)

60-11-104. Functions of the advanced practice registered nurse in the role of nurse practitioner. Each advanced practice registered nurse in the role of nurse practitioner shall function in an advanced role at a specialized level, through the application of advanced 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, as amended by L. 2011, ch. 114, sec. 39, and K.S.A. 65-1130, as amended by L. 2011, ch. 114, sec. 44; effective May 1, 1984; amended, T-85-16, June 5, 1984; amended May 1, 1985; amended Sept. 4, 2009; amended May 18, 2012.)

60-11-104a. Protocol requirements; prescription orders. (a) Each written protocol that an advanced practice registered nurse is to follow when prescribing, administering, or supplying a prescription-only drug shall meet the following requirements:

(1) Specify for each classification of disease or injury the corresponding class of drugs that the advanced practice registered nurse is permitted to prescribe;

(2) be maintained in either a loose-leaf notebook or a book of published protocols. The notebook or book of published protocols shall include a cover page containing the following data:

(A) The names, telephone numbers, and signatures of the advanced practice registered nurse and a responsible physician who has authorized the protocol; and

(B) the date on which the protocol was adopted or last reviewed; and

(3) be kept at the advanced practice registered nurse's principal place of practice.

(b) Each advanced practice registered nurse shall ensure that each protocol is reviewed by the advanced practice registered nurse and physician at least annually.

(c) Each prescription order in written form shall meet the following requirements:

(1) Include the name, address, and telephone number of the practice location of the advanced practice registered nurse;

(2) include the name, address, and telephone number of the responsible physician;

(3) be signed by the advanced practice registered nurse with the letters A.P.R.N.;

(4) be from a class of drugs prescribed pursuant to protocol; and

(5) contain the D.E.A. registration number issued to the advanced practice registered nurse when a controlled substance, as defined in K.S.A. 65-4101(e) and amendments thereto, is prescribed.

(d) Nothing in this regulation shall be construed to prohibit any registered nurse or licensed practical nurse or advanced practice registered nurse from conveying a prescription order orally or administering a drug if acting under the lawful direction of a person licensed to practice either medicine and surgery or dentistry or licensed as an advanced practice registered nurse.

(e) When used in this regulation, terms shall be construed to have the meanings specified in K.S.A. 65-1626, and amendments thereto. (Authorized by and implementing K.S.A. 65-1130, as amended by L. 2011, ch. 114, sec. 44; effective, T-60-9-12-88, Sept. 12, 1988; effective Feb. 13, 1989; amended May 7, 1990; amended Jan. 3, 1995; amended March 31, 2000; amended May 18, 2012.)

60-11-105. Functions of the advanced practice registered nurse in the role of nurse-midwife. Each advanced practice registered nurse in the role of nurse-midwife shall function in an advanced 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, as amended by L. 2011, ch. 114, sec. 39, and K.S.A. 65-1130, as amended by L. 2011, ch. 114, sec. 44; effective May 1, 1984; amended, T-85-16, June 5, 1984; amended May 1, 1985; amended Sept. 4, 2009; amended May 18, 2012.)

60-11-106. Functions of the advanced practice registered nurse; nurse anesthetist.

The functions that may be performed by any advanced practice registered nurse functioning in the advanced role of registered nurse anesthetist shall be those functions defined in K.S.A. 65-1158, and amendments thereto. (Authorized by and implementing K.S.A. 65-1113, as amended by L. 2011, ch. 114, sec. 39, and K.S.A. 65-1130, as amended by L. 2011, ch. 114, sec. 44; effective May 1, 1984; amended, T-85-16, June 5, 1984; amended May 1, 1985; amended March 31, 2000; amended May 18, 2012.)

60-11-107. Functions of the advanced practice registered nurse in the role of clinical nurse specialist.

Each advanced practice registered nurse in the role of clinical nurse specialist shall function in an advanced 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, as amended by L. 2011, ch. 114, sec. 39, and K.S.A. 65-1130, as amended by L. 2011, ch. 114, sec. 44; effective May 1, 1984; amended, T-85-16, June 5, 1984; amended May 1, 1985; amended Sept. 4, 2009; amended May 18, 2012.)

60-11-113. License renewal. (a) Advanced practice registered nurse licenses shall be renewed on the same biennial cycle as the cycle for the registered professional nurse licensure renewal, as specified in K.A.R. 60-3-108.

(b) On and after January 1, 2013, each individual renewing a license shall have completed the required 30 contact hours of approved continuing nursing education (CNE) related to the advanced practice registered nurse role during the most recent prior license period. Proof of completion of 30 contact hours of approved CNE in the advanced practice nurse role may be requested by the board. Contact hours accumulated in excess of the 30-hour requirement shall not be carried over to the next renewal period.

(c) The number of contact hours assigned to any offering that includes a recognized standard curriculum shall be determined by the board.

(d) Any individual attending any offering not previously approved by the board may submit

an application for an individual offering approval (IOA). Credit may be given for offerings that the licensee demonstrates as having a relationship to the practice of the advanced practice registered nursing role. Each separate offering shall be approved before the individual submits the license renewal application.

(e) Approval shall not be granted for identical offerings completed within the same license renewal period.

(f) Any individual renewing a license may accumulate 15 contact hours of the required CNE from instructor credit. Each presenter shall receive instructor credit only once for the preparation and presentation of each course. The provider shall issue a certificate listing the number of contact hours earned and clearly identifying the hours as instructor credit.

(g) Fractions of contact hours may be accepted for offerings over 30 minutes.

(h) All CNE accumulated for APRN license renewal shall also be applicable to the renewal of the registered professional nurse license. (Authorized by K.S.A. 2011 Supp. 65-1117 and K.S.A. 65-1129; implementing K.S.A. 2011 Supp. 65-1117 and K.S.A. 2011 Supp. 65-1132; effective Sept. 2, 1991; amended May 9, 1994; amended July 29, 2005; amended May 18, 2012.)

60-11-116. Reinstatement of inactive or lapsed license. (a) Each nurse anesthetist whose Kansas APRN license is inactive or has lapsed and who wants to obtain a reinstatement of APRN licensure shall meet the same requirements as those in K.A.R. 60-13-110.

(b) Any nurse practitioner, clinical nurse specialist, or nurse-midwife whose Kansas APRN license is inactive or has lapsed may, within five years of its expiration date, reinstate the license by submitting proof that the individual has met either of the following requirements:

(1) Obtained 30 hours of continuing nursing education related to the advanced practice registered nurse role within the preceding two-year period; or

(2) been licensed in another jurisdiction and, while licensed in that jurisdiction, has accumulated 1,000 hours of advanced practice registered nurse practice within the preceding five-year period.

(c) Any nurse practitioner, clinical nurse specialist, or nurse-midwife whose Kansas APRN license is inactive or has lapsed for more than five years beyond its expiration date may reinstate the

license by submitting evidence of having attained either of the following:

(1) A total of 1,000 hours of advanced practice registered nurse practice in another jurisdiction within the preceding five-year period and 30 hours of continuing nursing education related to the advanced practice registered nurse role; or

(2) completion of a refresher course approved by the board. (Authorized by K.S.A. 2019 Supp. 65-1117 and K.S.A. 65-1129; implementing K.S.A. 2019 Supp. 65-1117 and K.S.A. 65-1132; effective Sept. 2, 1991; amended March 22, 2002; amended May 18, 2012; amended Aug. 21, 2020.)

60-11-118. Temporary permit to practice. (a) A temporary permit to practice as an advanced practice registered nurse may be issued by the board for a period of not more than 180 days to an applicant for licensure as an advanced practice registered nurse who meets the following requirements:

(1) Was previously licensed in this state; and

(2) is enrolled in a refresher course required by the board for reinstatement of a license that has lapsed for more than five years.

(b) A one-time temporary permit to practice as an advanced practice registered nurse may be issued by the board for a period of not more than 180 days pending completion of the application for a license. (Authorized by K.S.A. 65-1129; implementing K.S.A. 2010 Supp. 65-1132, as amended by L. 2011, ch. 114, sec. 45; effective Sept. 2, 1991; amended April 26, 1993; amended May 18, 2012.)

60-11-119. Payment of fees. Payment of fees for advanced practice registered nurses shall be as follows:

- (a) Initial application for license \$50.00
- (b) Biennial renewal of license..... 55.00
- (c) Application for reinstatement of
license without temporary permit 75.00
- (d) Application for license with
temporary permit 100.00
- (e) Application for exempt license 50.00
- (f) Renewal of exempt license 50.00
- (g) Inactive license..... 20.00
- (h) Renewal of inactive license..... 20.00

(Authorized by K.S.A. 65-1129 and K.S.A. 65-1131; implementing K.S.A. 2019 Supp. 65-1118 and 65-1131; effective Sept. 2, 1991; amended May 17, 1993; amended Feb. 6, 1995; amended

April 3, 1998; amended July 1, 2001; amended April 20, 2007; amended May 18, 2012; amended July 1, 2014; amended Aug. 21, 2020.)

60-11-120. Expiration dates of licenses; applications. The expiration dates of all licenses and applications shall be in accordance with K.A.R. 60-3-107 and 60-3-108. (Authorized by and implementing K.S.A. 65-1131, as amended by L. 2011, ch. 114, sec. 45, and K.S.A. 2010 Supp. 65-1132, as amended by L. 2011, ch. 114, sec. 46; effective April 3, 1998; amended July 29, 2005; amended May 18, 2012.)

60-11-121. Exempt license. (a) An exempt license shall be granted only to an advanced practice registered nurse who meets these requirements:

(1) Is not regularly engaged as an advanced practice registered nurse in Kansas, but volunteers advanced practice registered nurse services or is a charitable health care provider, as defined by K.S.A. 75-6102 and amendments thereto; and

(2) (A) Has been licensed in Kansas for the five years previous to applying for an exempt license; or

(B) has been licensed, authorized, or certified in another jurisdiction for the five years previous to applying for an exempt license and meets all requirements for endorsement into Kansas.

(b) The expiration date of the exempt license shall be in accordance with K.A.R. 60-3-108.

(c) Each application for renewal of an exempt license shall be submitted upon a form furnished by the board and shall be accompanied by the fee in accordance with K.A.R. 60-11-119. (Authorized by and implementing K.S.A. 65-1131, as amended by L. 2011, ch. 114, sec. 45; effective April 3, 1998; amended Oct. 25, 2002; amended July 29, 2005; amended May 18, 2012.)

Article 12.—CONTINUING EDUCATION FOR MENTAL HEALTH TECHNICIANS

60-12-106. License renewal. (a) Each licensee shall submit a renewal application and the renewal fee specified in K.A.R. 60-8-101 no later than December 31 in each even-numbered year.

(b) Any licensed mental health technician may be required to submit proof of completion of 30 contact hours during the most recent prior licensing period. Contact hours accumulated in excess of the 30-hour requirement shall not be

carried over to the next license renewal period. This proof of completion shall be documented as follows:

(1) (A) Name of the continuing mental health technician education (CMHTE) offering or college course;

(B) provider name or name of the accrediting organization;

(C) provider number or number of the accrediting organization, if applicable;

(D) offering date; and

(E) number of contact hours; or

(2) approved IOA.

(c) Any individual attending an offering not previously approved by the board may submit an application for an individual offering approval (IOA). Credit may be given for offerings that the licensee demonstrates to be relevant to the licensee's practice of mental health technology. Each separate offering shall be approved before the licensee submits the license renewal application.

(d) Approval shall not be granted for identical offerings completed within a license renewal period.

(e) Any licensed mental health technician may acquire 30 contact hours of CMHTE from independent study, as defined in K.S.A. 65-4202 and amendments thereto.

(f) Any licensed mental health technician may accumulate 15 contact hours of the required CMHTE from instructor credit. Each presenter shall receive instructor credit only once for preparation and presentation of each course. The provider shall issue a certificate listing the number of contact hours earned and clearly identifying the hours as instructor credit.

(g) Fractions of hours may be accepted for offerings over 30 minutes to be computed towards a contact hour. (Authorized by K.S.A. 65-4203; implementing K.S.A. 2011 Supp. 65-4205; effective Sept. 2, 1991; amended Feb. 16, 1996; amended Oct. 12, 2001; amended May 10, 2013.)

Article 13.—FEES; REGISTERED NURSE ANESTHETIST

60-13-101. Payment of fees. Payment of fees for registered nurse anesthetists shall be as follows:

- (a) Initial application for authorization
as a registered nurse anesthetist..... \$75.00
- (b) Biennial renewal of authorization
as a registered nurse anesthetist..... 55.00

- (c) Application for reinstatement of authorization as a registered nurse anesthetist without temporary permit..... 60.00
- (d) Application for reinstatement of authorization with temporary permit as a registered nurse anesthetist..... 70.00
- (e) Initial application with temporary authorization to practice as a registered nurse anesthetist 110.00
- (f) Certified copy of authorization to practice as a registered nurse anesthetist..... 20.00

This regulation shall be effective on and after July 1, 2014. (Authorized by K.S.A. 65-1129 and 65-1164; implementing K.S.A. 2013 Supp. 65-1118, 65-1154, 65-1155; effective, T-87-38, Nov. 19, 1986; effective May 1, 1987; amended May 17, 1993; amended Feb. 6, 1995; amended July 1, 2001; amended July 1, 2014.)

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.)

60-13-110. Reinstatement of inactive or lapsed authorization. (a) Any nurse anesthetist whose Kansas authorization is inactive or has lapsed may, within five years of its expiration date, reinstate the authorization by submitting proof that the individual has met either of the following requirements:

(1) Obtained 30 hours of continuing nursing education related to nurse anesthesia within the preceding two-year period; or

(2) been authorized in another jurisdiction and, while authorized in that jurisdiction, has accumulated 1,000 hours of nurse anesthesia practice within the preceding five-year period.

(b) Any nurse anesthetist whose Kansas authorization is inactive or has lapsed for more than five years beyond its expiration date may reinstate the authorization by submitting evidence of having attained either of the following:

(1) A total of 1,000 hours of nurse anesthesia practice in another jurisdiction within the preceding five-year period and 30 hours of continuing nursing education related to nurse anesthesia within the preceding two-year period; or

(2) satisfactory completion of a refresher course approved by the board. (Authorized by K.S.A. 65-1164; implementing K.S.A. 65-1155; effective Sept. 2, 1991; amended May 9, 1994; amended March 22, 2002; amended Aug. 21, 2020.)

60-13-112. License renewal. (a) Each license to practice as a registered nurse anesthetist (RNA) in Kansas shall be subject to the same biennial expiration dates as those specified in K.A.R 60-3-108 for the registered professional nurse license in Kansas.

(b) Each individual renewing a license shall have completed the required 30 contact hours of approved continuing nursing education (CNE) related to nurse anesthesia during the most recent prior licensure period. Proof of completion of 30 contact hours of approved CNE in the nurse anesthesia role may be requested by the board. Contact hours accumulated in excess of the 30-hour requirement shall not be carried over to the next renewal period.

(c) The number of contact hours assigned to any offering that includes a recognized standard curriculum shall be determined by the board.

(d) Any individual attending any offering not previously approved by the board may submit an application for an individual offering approval (IOA). Credit may be given for offerings that the licensee demonstrates as having a relationship to the practice of nurse anesthesia. Each separate offering shall be approved before the individual submits the license renewal application.

(e) Approval shall not be granted for identical offerings completed within the same license renewal period.

(f) Any individual renewing a license may accumulate 15 contact hours of the required CNE from instructor credit. Each presenter shall receive instructor credit only once for the preparation and presentation of each course. The provider shall issue a certificate listing the number of contact hours earned and clearly identifying the hours as instructor credit.

(g) Fractions of contact hours may be accepted for offerings over 30 minutes.

(h) All CNE accumulated for RNA license renewal shall also be applicable to the renewal of the registered professional nurse license. (Authorized by K.S.A. 65-1164; implementing K.S.A. 65-1159; effective Sept. 2, 1991; amended Feb. 16, 1996; amended Oct. 12, 2001; amended July 29, 2005; amended May 18, 2012.)

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 non-public school environment.

(o) “Supervision” means the provision of guidance by a nurse as necessary to accomplish a nursing 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

60-16-101. Definitions. Each of the following terms, as used in this article of the board's regulations, shall have the meaning specified in this regulation:

(a) "Administration of intravenous (IV) fluid therapy" means utilization of the nursing process to deliver the therapeutic infusion or injection of substances through the venous system.

(b) "Admixing" means the addition of a diluent to a medication or a medication to an intravenous solution.

(c) "Calculating" means mathematically determining the flow rate and medication dosages.

(d) "Clock-hour" means 60 continuous minutes.

(e) "Competency examination" means a written examination and demonstration of mastery of clinical components of IV fluid therapy.

(f) "Discontinuing" means stopping the intravenous flow or removing the intravenous access device, or both, based on an authorized order or nursing assessment.

(g) "Evaluating" means analyzing, on an ongoing basis, the monitored patient response to the prescribed IV fluid therapy.

(h) "Initiating" means starting IV fluid therapy based on an authorized order by a licensed individual. Initiating shall include the following:

(1) Assessing the patient;

(2) selecting and preparing materials;

(3) calculating; and

(4) inserting and stabilizing the cannula.

(i) "Intravenous push" means direct injection of medication into the venous circulation.

(j) "IV" means intravenous.

(k) "Maintaining" means adjusting the control device for continuance of the prescribed IV fluid therapy administration rate.

(l) "Monitoring" means, on an ongoing basis, assessing, observing, and communicating each patient's response to prescribed IV fluid therapy. The infusion equipment, site, and flow rate shall be included in the monitoring process.

(m) "Stand-alone," when used to describe a course, means an IV fluid therapy course offered by a provider that has been approved by the board to offer the course independently of an approved practical nursing program.

(n) "Titration of medication" means an adjustment of the dosage of a medication to the amount required

to bring about a given reaction in the individual receiving the medication. (Authorized by and implementing K.S.A. 65-1136; effective Nov. 21, 1994; amended June 12, 1998; amended Oct. 29, 1999; amended June 14, 2002; amended Jan. 17, 2020.)

60-16-102. Scope of practice for licensed practical nurse performing intravenous fluid therapy. (a) A licensed practical nurse under the supervision of a registered professional nurse may engage in a limited scope of intravenous fluid treatment, including the following:

- (1) Monitoring;
- (2) maintaining basic fluids;
- (3) discontinuing intravenous flow and an intravenous access device not exceeding three inches in length in peripheral sites only; and

- (4) changing dressings for intravenous access devices not exceeding three inches in length in peripheral sites only.

(b) Any licensed practical nurse who has met one of the requirements under K.S.A. 65-1136, and amendments thereto, may perform, in addition to the functions specified in subsection (a) of this regulation, the following procedures relating to the expanded administration of intravenous fluid therapy under the supervision of a registered professional nurse:

- (1) Calculating;
- (2) adding parenteral solutions to existing patent central and peripheral intravenous access devices or administration sets;
- (3) changing administration sets;
- (4) inserting intravenous access devices that meet these conditions:
 - (A) Do not exceed three inches in length; and
 - (B) are located in peripheral sites only;
- (5) adding designated premixed medications to existing patent central and peripheral intravenous access devices or administration sets either by continuous or intermittent methods;

- (6) maintaining the patency of central and peripheral intravenous access devices and administration sets with medications or solutions as allowed by policy of the facility;

- (7) changing dressings for central venous access devices;

- (8) administering continuous intravenous drip analgesics and antibiotics; and

- (9) performing the following procedures in any facility having continuous on-site registered professional nurse supervision:

- (A) Admixing intravenous medications; and

- (B) administering by direct intravenous push any drug in a drug category that is not specifically listed as a banned drug category in subsection (c), including analgesics, antibiotics, antiemetics, diuretics, and corticosteroids, as allowed by policy of the facility.

- (c) A licensed practical nurse shall not perform any of the following:

- (1) Administer any of the following by intravenous route:

- (A) Blood and blood products, including albumin;
- (B) investigational medications;

- (C) anesthetics, antianxiety agents, biological therapy, serums, hemostatics, immunosuppressants, muscle relaxants, human plasma fractions, oxytocics, sedatives, tocolytics, thrombolytics, anticonvulsants, cardiovascular preparations, antineoplastics agents, hematopoietics, autonomic drugs, and respiratory stimulants;

- (D) intravenous fluid therapy in the home health setting, with the exception of the approved scope of practice authorized in subsection (a); or

- (E) intravenous fluid therapy to any patient under the age of 12 or any patient weighing less than 80 pounds, with the exception of the approved scope of practice authorized in subsection (a);

- (2) initiate total parenteral nutrition or lipids;
- (3) titrate medications;
- (4) draw blood from a central intravenous access device;

- (5) remove a central intravenous access device or any intravenous access device exceeding three inches in length; or

- (6) access implantable ports for any purpose.

- (d) Licensed practical nurses qualified by the board before June 1, 2000 may perform those activities listed in subsection (a) and paragraph (b)(9)(A) regardless of their intravenous therapy course content on admixing.

- (e) This regulation shall limit the scope of practice for each licensed practical nurse only with respect to intravenous fluid therapy and shall not restrict a licensed practical nurse's authority to care for patients receiving this therapy. (Authorized by and implementing K.S.A. 65-1136; effective Nov. 21, 1994; amended Dec. 13, 1996; amended June 12, 1998; amended Oct. 29, 1999; amended Jan. 24, 2003; amended May 18, 2012; amended Oct. 18, 2013.)

60-16-103. Stand-alone course approval procedure; competency examinations; recordkeeping. (a) Each person wanting approval

to offer a stand-alone course shall submit a proposal to the board.

The proposal shall contain the following:

(1) The name and qualifications of the coordinator;

(2) the name and qualifications of each faculty member of the course;

(3) the mechanism through which the provider will determine that each licensed practical nurse seeking to take the course meets the admission requirements;

(4) a description of the educational and clinical facilities that will be utilized;

(5) the outlines of the classroom curriculum and the skills curriculum, including time segments. These curricula shall meet the requirements of K.A.R. 60-16-104(b);

(6) the methods of student evaluation that will be used, including a copy of the final written competency examination and the final skills competency examination; and

(7) if applicable, a request for continuing education approval meeting the following requirements:

(A) For each long-term provider, the stand-alone course provider number shall be printed on the certificates and the course roster, along with the long-term provider number; and

(B) for each single program provider, the single program application shall be completed.

(b) To be eligible to enroll in a stand-alone course, the individual shall be a nurse with a current license.

(c)(1) Each stand-alone course shall meet both of the following requirements:

(A) Consist of at least 30 clock-hours of instruction; and

(B) require at least eight clock-hours of supervised clinical or skills lab practice, which shall include at least one successful peripheral venous access procedure and the initiation of an intravenous infusion treatment modality.

(2) Each stand-alone course, final written competency examination, and final clinical competency examination shall meet the board-approved curriculum requirements specified in K.A.R. 60-16-104 (b) (1)-(23).

(d)(1) Each stand-alone course coordinator shall meet the following requirements:

(A) Be licensed as a registered professional nurse;

(B) be responsible for the development and implementation of the course; and

(C) have experience in IV fluid therapy and knowledge of the IV fluid therapy standards.

(2) Each primary faculty member shall meet the following requirements:

(A) Be currently licensed to practice as a registered professional nurse in Kansas;

(B) have clinical experience that includes IV fluid therapy within the past five years; and

(C) maintain competency in IV fluid therapy.

(3) Each guest lecturer shall have professional preparation and qualifications for the specific subject in which that individual instructs.

(e)(1) The facility in which skills practice and the competency examination are conducted shall allow the students and faculty access to the IV fluid therapy equipment and IV fluid therapy recipients and to the pertinent records for the purpose of documentation. Each classroom shall contain sufficient space, equipment, and teaching aids to meet the course objectives.

(2) There shall be a signed, written agreement between the provider and each affiliating health care facility that specifies the roles, responsibilities, and liabilities of each party. This written agreement shall not be required if the only health care facility to be used is that of the provider.

(f)(1) The stand-alone course coordinator shall perform the following:

(A) Ensure that the clinical record sheet is complete, including competencies and scores;

(B) award a certificate to each licensed nurse documenting successful completion of both the final written competency examination and the final skills competency examination;

(C) submit to the board, within 15 days of course completion, a typed, alphabetized roster listing the name and license number of each individual who successfully completed the course and the date of completion. The coordinator shall ensure that each roster meets the following requirements:

(i) RN and LPN participants shall be listed on separate rosters; and

(ii) the roster shall include the provider name and address, the single or long-term provider number, the stand-alone course provider number, and the coordinator's signature; and

(D) maintain the records of each individual who has successfully completed the course for at least five years.

(g) Continuing education providers shall award at least 32 contact hours to each LPN who successfully completes the course according to K.A.R. 60-9-106. Continuing education providers shall award 20 contact hours, one time only, to each RN who successfully completes the course.

(h) After initial approval, each change in the stand-alone course shall be provided to the board for approval before the change is implemented.

(i)(1) Each stand-alone course provider shall submit to the board an annual report for the period of July 1 through June 30 of the respective year that includes the total number of licensees taking the course, the number passing the course, and the number of courses held.

(2) The single program providership shall be effective for two years and may be renewed by submitting the single offering provider application and by paying the fee specified in K.A.R. 60-4-103(a)(5). Each single program provider who chooses not to renew the providership shall notify the board in writing of the location at which the rosters and course materials will be accessible to the board for three years.

(3) Each long-term provider shall submit the materials outlined in subsection (a) with the five-year long-term provider renewal.

(j) If a course does not meet or continue to meet the requirements for approval established by the board or if there is a material misrepresentation of any fact with the information submitted to the board by a provider, approval may be withheld, made conditional, limited, or withdrawn by the board after giving the provider notice and an opportunity to be heard. (Authorized by and implementing K.S.A. 65-1136; effective Nov. 21, 1994; amended June 14, 2002; amended July 29, 2005; amended May 18, 2012; amended Jan. 17, 2020.)

60-16-104. Standards for course and program curriculum content. (a) The purpose of the intravenous fluid therapy content and stand-alone course shall be to prepare practical nursing students or licensed practical nurses to perform safely and competently the activities as defined in K.A.R. 60-16-102. The course shall be based on the nursing process and current intravenous nursing standards of practice.

(1) Intravenous fluid therapy content provided as part of a practical nursing program's curriculum as specified in K.A.R. 60-2-104 or as a stand-alone course offered by an approved provider shall meet the requirements of this regulation.

(2) Each provider of a stand-alone course shall obtain approval from the board before offering an intravenous fluid therapy course as specified in K.A.R. 60-16-103.

(3) Each provider of a stand-alone course shall

submit documentation of the use of the curriculum required in this regulation to the board.

(4) Each practical nursing program administrator wanting to implement the intravenous fluid therapy curriculum as required in this regulation shall submit a major curriculum change form as specified in K.A.R. 60-2-104(g).

(b) Each stand-alone course or practical nursing program curriculum in intravenous fluid therapy shall include instruction in the following topics:

(1) Definition of intravenous fluid therapy and indications as specified in K.A.R. 60-16-101;

(2) scope of practice as specified in K.A.R. 60-16-102;

(3) types of vascular-access delivery devices;

(4) age-related considerations;

(5) legal implications for intravenous fluid therapy;

(6) anatomy and physiology;

(7) fluid and electrolyte balance;

(8) infusion equipment used in intravenous fluid therapy;

(9) patient care;

(10) infusion therapies;

(11) parenteral solutions and indications;

(12) infection control and safety;

(13) site care and maintenance;

(14) vascular-access device selection and placement;

(15) insertion of peripheral short catheters;

(16) administration, maintenance, and monitoring of peripheral intravenous fluid therapy;

(17) infusion-related complications and nursing interventions;

(18) central and peripheral vascular devices;

(19) administration, maintenance, and monitoring of central intravenous fluid therapy;

(20) documentation;

(21) patient education;

(22) a testing component through which each student is able to demonstrate competency related to intravenous fluid therapy; and

(23) a means to verify that a student has successfully completed the stand-alone course or practical nursing program curriculum in intravenous fluid therapy as specified in this regulation. (Authorized by and implementing K.S.A. 65-1136; effective Nov. 21, 1994; amended Dec. 13, 1996; amended Oct. 29, 1999; amended April 20, 2001; amended June 14, 2002; amended July 29, 2005; amended May 18, 2012; amended Jan. 17, 2020.)

60-16-105. (Authorized by and implementing L. 1994, Chap. 218, §1; effective Nov. 21, 1994; revoked July 30, 2010.)

Article 17.—ADVANCED NURSING EDUCATION PROGRAM

60-17-101. Definitions. (a) An “advanced nursing education program” may be housed within a part of any of the following organizational units within an academic institution:

- (1) A college;
- (2) a school;
- (3) a division;
- (4) a department; or
- (5) an academic unit.

(b) “Affiliating agency” means an agency that cooperates with the advanced nursing education program to provide clinical facilities and resources for selected student experiences.

(c) “Clinical learning” means an active process in which the student participates in advanced nursing activities while being guided by a member of the faculty.

(d) “Contractual agreement” means a written contract or letter signed by the legal representatives of the advanced nursing education program and the affiliating agency.

(e) “Preceptor” means an advanced practice registered nurse or a physician who provides clinical supervision for advanced practice registered nurse students as a part of nursing courses taken during the advanced nursing education program.

(f) “Satellite program” means an existing, accredited advanced nursing education program provided at a location geographically separate from the parent program. The students may spend a portion or all of their time at the satellite location. The curricula in all locations shall be the same, and each credential shall be conferred by the parent institution.

(g) “Transfer student” means an individual who is permitted to apply advanced nursing courses completed at another institution to a different advanced nursing education program. (Authorized by K.S.A. 65-1129 and K.S.A. 2010 Supp. 74-1106; implementing K.S.A. 65-1133, as amended by L. 2011, ch. 114, sec. 47; effective March 31, 2000; amended May 18, 2012.)

60-17-102. Requirements for initial approval. (a) Each hospital and agency serving as an affiliating agency and providing facilities for clinical experience shall be licensed or accredited by the appropriate credentialing groups.

(b) (1) The advanced nursing education program or the institution of which it is a part shall be a legally constituted body. The controlling body shall be responsible for general policy and shall provide the financial support for the advanced nursing education program.

(2) Authority and responsibility for administering the advanced nursing education program shall be vested in the nurse administrator of the advanced nursing education program.

(c) Each new advanced nursing education program shall submit, at least 60 days before a scheduled board meeting, an initial application, which shall include all of the following:

- (1) The course of study and credential to be conferred;
- (2) the name and title of the nurse administrator of the advanced nursing education program;
- (3) the name of the controlling body;
- (4) the name and title of the administrator for the controlling body;
- (5) the organizational chart;
- (6) all sources of financial support, including a three-year budget;
- (7) a proposed curriculum, indicating the total number of hours of both theoretical and clinical instruction;
- (8) the program objectives or outcomes;
- (9) the number, qualifications, and assignments of faculty;
- (10) the faculty policies;
- (11) the admission requirements;
- (12) a copy of the current school bulletin or catalog;
- (13) a description of clinical facilities and client census data;
- (14) contractual agreements by affiliating agencies for clinical facilities, signed at least three months before the first date on which students may enroll;
- (15) the program evaluation plan; and
- (16) a proposed date of initial admission of students to the program.

(d) Each advanced nursing education program shall be surveyed for approval by the board, with the exception of nurse anesthesia programs, as determined by K.A.R. 60-13-103.

(1) During a survey, the nurse administrator of the program shall make available all of the following:

(A) Administrators, prospective faculty and students, affiliating agencies, representatives, preceptors, and support services personnel to discuss the advanced nursing education program;

- (B) minutes of faculty meetings;
- (C) faculty and student handbooks;
- (D) policies and procedures;
- (E) curriculum materials;
- (F) a copy of the advanced nursing education program's budget; and
- (G) affiliating agency contractual agreements.

(2) The nurse administrator of the advanced nursing education program or designated personnel shall take the survey team to inspect the nursing educational facilities, including satellite program facilities and library facilities.

(3) Upon completion of the survey, the nurse administrator shall be asked to correct any inaccurate statements contained in the survey report, limiting these comments to errors, unclear statements, or omissions.

(e) Each institution contemplating the establishment of an advanced nursing education program shall be surveyed and accredited by the board before the admission of students.

(f) If an advanced nursing education program fails to meet the requirements of the board within a designated period of time, the program shall be notified by the board's designee of the board's intent to deny approval. (Authorized by and implementing K.S.A. 2015 Supp. 65-1133; effective March 31, 2000; amended April 20, 2007; amended April 29, 2016.)

60-17-104. Faculty and preceptor qualifications. (a) Each nurse faculty member shall be licensed as a registered professional nurse in Kansas.

(b) Each preceptor shall be licensed in the state in which the preceptor is currently practicing. Each preceptor shall complete a preceptor orientation that includes information about the pedagogical aspects of the student-preceptor relationship.

(c) For advanced nursing education programs in the role of nurse anesthesia, each nurse faculty member shall have the following academic preparation and experience:

(1) The nurse administrator who is responsible for the development and implementation of the advanced nursing education program shall have had experience in administration or teaching and shall have a graduate degree.

(2) Each nurse faculty member who is assigned the responsibility of a course shall hold a graduate degree.

(3) Each nurse faculty member responsible for

clinical instruction shall possess a license as an advanced practice registered nurse and a graduate degree.

(d) For advanced nursing education programs in any role other than nurse anesthesia, each nurse faculty member shall have the following academic preparation and experience:

(1) The nurse administrator who is responsible for the development and implementation of the advanced nursing education program shall have had experience in administration or teaching and shall have a graduate degree in nursing.

(2) Each nurse faculty member who is assigned the responsibility of a course shall hold a graduate degree. Each person who is hired as a nurse faculty member shall have a graduate degree in nursing, except for any person whose graduate degree was conferred before July 1, 2005.

(3) Each nurse faculty member responsible for coordinating clinical instruction shall possess a license as an advanced practice registered nurse in the role for which clinical instruction is provided and shall have a graduate degree. Each person who is hired as a nurse faculty member shall have a graduate degree in nursing, except for any person whose graduate degree was conferred before July 1, 2005.

(4) Each preceptor or adjunct faculty shall be licensed as an advanced practice registered nurse or shall be licensed as a physician in the state in which the individual is currently practicing. Each preceptor shall complete a preceptor orientation including information about the pedagogical aspects of the student-preceptor relationship.

(e) The nonnursing faculty of each advanced nursing education program shall have graduate degrees in the area of expertise.

(f) The nurse administrator of each advanced nursing education program shall submit to the board a faculty qualification report for each faculty member who is newly employed by the program. (Authorized by K.S.A. 65-1129 and K.S.A. 2010 Supp. 74-1106; implementing K.S.A. 65-1133, as amended by L. 2011, ch. 114, sec. 47; effective March 31, 2000; amended April 20, 2007; amended May 18, 2012.)

60-17-105. Curriculum requirements.

(a) The faculty in each advanced nursing education program shall fulfill these requirements:

(1) Identify the competencies of the graduate for each role of advanced nursing practice for which the program provides instruction;

(2) determine the approach and content for learning experiences;

(3) direct clinical instruction as an integral part of the program; and

(4) provide for learning experiences of the depth and scope needed to fulfill the objectives or outcomes of advanced nursing courses.

(b) The curriculum in each advanced nursing education program shall include all of the following:

(1) Role alignment related to the distinction between practice as a registered professional nurse and the advanced role of an advanced practice registered nurse as specified in K.A.R. 60-11-101;

(2) theoretical instruction in the role or roles of advanced nursing practice for which the program provides instruction;

(3) the health care delivery system;

(4) the ethical and legal implications of advanced nursing practice;

(5) three college hours in advanced pharmacology or the equivalent;

(6) three college hours in advanced pathophysiology or its equivalent and three college hours in advanced health assessment or its equivalent for licensure as an advanced practice registered nurse in a role other than nurse anesthesia and nurse midwifery;

(7) if completing an advanced practice registered nurse program after July 1, 2009, three college hours in advanced pathophysiology or its equivalent and three college hours in advanced health assessment or its equivalent; and

(8) clinical instruction in the area of specialization, which shall include the following:

(A) Performance of or ordering diagnostic procedures;

(B) evaluation of diagnostic and assessment findings; and

(C) the prescription of medications and other treatment modalities for client conditions.

(c) (1) Each program shall consist of at least 45 semester credit hours or the academic equivalent. As used in this regulation, "academic equivalent" shall mean 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.

(2) The clinical component shall consist of at least 260 hours of clinical learning. After January 1, 2003, the clinical component shall consist of at least 500 hours of clinical learning. After July 1, 2009, the clinical component shall consist of at

least 500 hours of clinical learning in each clinical track, or the program shall provide documentation of the overlap if any clinical track consists of less than 500 clinical hours.

(d) Each nurse administrator shall meet the following requirements:

(1) Develop and implement a written plan for program evaluation; and

(2) submit any major revision to the curriculum of advanced nursing courses for board approval at least 30 days before a meeting of the board. The following shall be considered major revisions to the curriculum:

(A) Any significant change in the plan of curriculum organization; and

(B) any change in content.

(e) Each nurse administrator shall submit all revisions that are not major revisions, as defined in paragraph (d)(2), to the board or the board's designee for approval. (Authorized by K.S.A. 65-1129 and K.S.A. 2010 Supp. 74-1106; implementing K.S.A. 65-1133, as amended by L. 2011, ch. 114, sec. 47; effective March 31, 2000; amended April 20, 2007; amended May 18, 2012.)

60-17-110. Discontinuing an advanced practice registered nurse program. Each school terminating its program shall submit, for board approval, the school's plan for its currently enrolled students and for disposition of its records. (Authorized by K.S.A. 65-1129 and K.S.A. 2010 Supp. 74-1106; implementing K.S.A. 65-1133, as amended by L. 2011, ch. 114, sec. 47; effective March 31, 2000; amended April 20, 2007; amended May 18, 2012.)

60-17-111. Requirements for advanced practice registered nurse refresher course.

(a) (1) Each refresher course that prepares advanced practice registered nurses (APRNs) who have not been actively engaged in advanced nursing practice for more than five years shall be accredited by the board.

(2) If a formal refresher course is not available, an individualized course may be designed for a nurse. Each individualized course shall be accredited by the education specialist.

(b) Each refresher course student shall meet both of the following conditions:

(1) Be licensed currently as a Kansas registered professional nurse; and

(2) have been licensed as an advanced practice registered nurse in Kansas or another state or have

completed the education required to be licensed as an advanced practice registered nurse in Kansas.

(c) Continuing nursing education contact hours may be awarded for completion of APRN refresher courses. A contact hour shall equal a 50-minute hour of instruction.

(d) The objectives and outcomes of the refresher course shall be stated in behavioral terms and shall describe the expected competencies of the applicant.

(e) Each instructor for an APRN refresher course shall be licensed as an APRN and shall show evidence of recent professional education and competency in teaching.

(f) Each provider that has been accredited by the board to offer an APRN refresher course shall provide the following classroom and clinical experiences, based on the length of time that the student has not been actively engaged in advanced nursing practice:

(1) For students who have not engaged in advanced nursing practice for more than five years, but less than or equal to 10 years, 150 didactic hours and 350 clinical hours; and

(2) for students who have not engaged in advanced nursing practice for more than 10 years, 200 didactic hours and 500 clinical hours.

(g) The content, methods of instruction, and learning experiences shall be consistent with the objectives and outcomes of the course.

(h) Each refresher course for the roles of nurse practitioner, clinical nurse specialist, and nurse-midwife shall contain the following content:

(1) Didactic:

(A) Role alignment related to recent changes in the area of advanced nursing practice;

(B) the ethical and legal implications of advanced nursing practice;

(C) the health care delivery system;

(D) diagnostic procedures for the area of specialization; and

(E) prescribing medications for the area of specialization; and

(2) clinical:

(A) Conducting diagnostic procedures for the area of specialization;

(B) prescribing medications for the area of specialization;

(C) evaluating the physical and psychosocial health status of a client;

(D) obtaining a comprehensive health history;

(E) conducting physical examinations using basic examination techniques, diagnostic instruments, and laboratory procedures;

(F) planning, implementing, and evaluating care;

(G) consulting with clients and members of the health care team;

(H) managing the medical plan of care prescribed based on protocols or guidelines;

(I) initiating and maintaining records, documents, and other reports;

(J) developing teaching plans; and

(K) counseling individuals, families, and groups on the following issues:

(i) Health;

(ii) illness; and

(iii) the promotion of health maintenance.

(i) Each student in nurse-midwife refresher training shall also have clinical hours in the management of the expanding family throughout pregnancy, labor, delivery, postdelivery care, and gynecological care.

(j) The provider of each refresher course shall provide official evidence of completion to each individual who successfully completes the refresher course. (Authorized by K.S.A. 65-1129 and K.S.A. 2010 Supp. 74-1106; implementing K.S.A. 65-1130, as amended by L. 2011, ch. 114, sec. 44, and K.S.A. 65-1133, as amended by L. 2011, ch. 114, sec. 47; effective March 31, 2000; amended July 29, 2005; amended May 18, 2012.)

Agency 61

Kansas Board of Barbering

Editor's Note:

Effective July 1, 1990, the Board of Barber Examiners shall be and hereby is officially designated as the Kansas Board of Barbering. See L. 1990, Ch. 225.

Articles

- 61-1. SANITARY RULES AND REGULATIONS GOVERNING BARBER SHOPS, SCHOOLS AND COLLEGES AND PUBLIC REST ROOMS IN CONNECTION THEREWITH.
- 61-3. SCHOOLS; REQUIREMENTS.
- 61-4. ISSUANCE, RENEWAL, REVOCATION AND SUSPENSION OF CERTIFICATES OF REGISTRATION.
- 61-7. FEES.

Article 1.—SANITARY RULES AND REGULATIONS GOVERNING BARBER SHOPS, SCHOOLS AND COLLEGES AND PUBLIC REST ROOMS IN CONNECTION THEREWITH

61-1-24. Temporary permits issued; permits and licenses conspicuously displayed. (a) A temporary permit issued to any student graduating from a Kansas barber school or barber college shall be valid until the next examination.

(b) All permits, barber licenses, and shop licenses shall be displayed in a conspicuous manner. (Authorized by K.S.A. 65-1825a; implementing K.S.A. 2016 Supp. 65-1812 and K.S.A. 65-1818; effective Jan. 1, 1966; amended May 1, 1979; amended May 1, 1982; amended Dec. 2, 2016.)

Article 3.—SCHOOLS; REQUIREMENTS

61-3-2. Minimum requirements for courses of instruction. (a) No barber school or barber college shall be approved by the board unless the barber school or barber college requires, as a prerequisite to graduation, a course of instruction of at least 1,200 hours and not more than 1,500 hours completed within nine months of not more than eight hours in any one working day. This course of instruction consisting of 1,200-1,500 hours shall not apply to any student who is a person specified in paragraph (b)(1) or (2).

(b)(1) Each barber certified as a barber by a branch of the United States military services shall meet the requirements of K.A.R. 61-3-3(b), in

addition to the credits that the individual earned to become a certified barber in the United States military services.

(2) Each person licensed as a cosmetologist by the Kansas board of cosmetology shall meet the requirements of K.A.R. 61-3-3(b), in addition to the hours that the individual earned to become a licensed cosmetologist in Kansas. (Authorized by K.S.A. 65-1825a; implementing K.S.A. 2016 Supp. 65-1810 and 65-1812; effective Jan. 1, 1966; amended Dec. 2, 2016.)

61-3-3. Subjects required in courses of instruction. (a) Each barber school or barber college shall conduct regular classes teaching the theory and practice of all phases of barbering. The course of instruction shall meet the curriculum requirements in the board's document titled "Kansas barber minimum curriculum (1,200 hours)," as adopted by the board on July 28, 2016, which is hereby adopted by reference. This course of instruction shall not apply in its entirety to any student who is a person specified in subsection (b).

(b) Any person certified as a barber by a United States military service who meets the requirements of K.A.R. 61-3-2(b)(1) and any Kansas cosmetologist who meets the requirements of K.A.R. 61-3-2(b)(2) may apply to take the Kansas barbering examination if the applicant has completed at least 500 hours of instruction, at a barber school or barber college licensed by the board, in subjects listed in the curriculum specified in this subsection. The board's document titled "indus-

try-related minimum additional curriculum (500 hours),” as adopted by the board on July 28, 2016, is hereby adopted by reference. (Authorized by K.S.A. 65-1825a; implementing K.S.A. 2016 Supp. 65-1810 and 65-1812; effective Jan. 1, 1966; amended May 1, 1983; amended Dec. 2, 2016.)

61-3-5. Qualifications for supervisors of barber schools or barber colleges. The individual supervising the barbering course of study at a barber school or barber college shall be a Kansas-licensed barber instructor. (Authorized by K.S.A. 65-1825a; implementing K.S.A. 2016 Supp. 65-1810; effective Jan. 1, 1966; amended Dec. 2, 2016.)

61-3-7. Minimum requirements for opening a barber school or barber college.

(a) Each approved barber school or barber college shall have at least three students enrolled and at least five feet between the centers of each adjoining barber chair in the clinical demonstration room before opening. If the barber school or barber college is located in a building in which another entity operates a business or school that conducts or teaches anything other than barbering as defined in K.S.A. 65-1809 and amendments thereto, the barber school or barber college shall have a separate entrance and shall be completely separate within that building, except as provided in subsection (b).

Each barber school or barber college shall have at least two rooms accessible to its students at all times. One room shall be used for class study, examinations, and lectures, and the other room shall be used for practical demonstrations. The barber school or barber college shall provide at least one restroom with a toilet and washbasin, which shall be kept in a sanitary condition. Each room shall be equipped to meet the requirements of all applicable regulations of the board.

(b) Any barber school or barber college that shares a building in which another entity operates a business or school that conducts or teaches anything other than barbering may share the following facilities with that entity:

(1) Classrooms other than the clinic floor, if no classroom is used by both the entity and the barber school or barber college at the same time;

(2) restrooms; and

(3) common areas, including reception areas, lounges, and hallways. (Authorized by and implementing K.S.A. 65-1825a, K.S.A. 2015 Supp.

74-1806; effective Jan. 1, 1966; amended May 1, 1988; amended March 20, 2015; amended May 13, 2016.)

61-3-20. Teaching staff. Each barber school and each barber college shall have at least one licensed instructor for every 10 or fewer students. Each licensed instructor shall instruct and supervise all student work. The maximum instructor-to-student ratio during instruction and supervision of all student work shall be no less than 1:10. (Authorized by K.S.A. 65-1825a; implementing K.S.A. 2016 Supp. 65-1810; effective Jan. 1, 1966; amended May 1, 1978; amended Dec. 2, 2016.)

61-3-22. Schools ineligible for a permit to operate a barber school or barber college. No correspondence school shall be granted a permit to establish or operate a barber school or barber college. (Authorized by K.S.A. 65-1825a, K.S.A. 2014 Supp. 74-1806; implementing K.S.A. 65-1810; effective Jan. 1, 1966; amended May 1, 1988; amended March 20, 2015.)

Article 4.—ISSUANCE, RENEWAL, REVOCATION AND SUSPENSION OF CERTIFICATES OF REGISTRATION

61-4-2. Issuance and renewal of licenses.

(a) Each barber license, shop owner license, and instructor license shall be renewed annually on an alphabetical basis as follows:

(1) For each licensee whose last name begins with A, B, C, M, N, or O, on or before March 31;

(2) for each licensee whose last name begins with D, E, F, P, Q, or R, on or before June 30;

(3) for each licensee whose last name begins with G, H, I, S, T, or U, on or before September 30; and

(4) for each licensee whose last name begins with J, K, L, V, W, X, Y, or Z, on or before December 31.

(b) The restoration fee for late renewals shall be in accordance with K.A.R. 61-7-2.

(c) Except as specified in subsection (e), any student may be issued a barber license upon passing the barber examination, paying a prorated license fee, and meeting all other requirements of K.S.A. 65-1808 et seq. and amendments thereto. The license shall expire as specified in subsection (a).

(d) Each barber school and each barber college shall renew the license annually on or before December 31.

(e) Any person who has complied with K.A.R. 61-3-3(b) and meets the following requirements may be granted a Kansas barber license:

(1) Has filed an application to take the Kansas barber examination;

(2) has paid the applicable examination and licensing fees; and

(3) has passed the Kansas barber examination. (Authorized by K.S.A. 65-1825a; implementing K.S.A. 2016 Supp. 65-1812 and 65-1819; effective, E-81-37, Dec. 10, 1980; effective May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended Dec. 2, 2016.)

Article 7.—FEES

61-7-1. (Authorized by K.S.A. 65-1825; implementing K.S.A. 1982 Supp. 65-1817; effective May 1, 1983; revoked May 13, 2016.)

61-7-2. Fees. The following fees shall be charged by the board:

- (a) Barber license
 - (1) Examination to practice barbering \$100
 - (2) Issuance of license to practice barbering 80
 - (3) Renewal of license to practice barbering 80
 - (4) Restoration of expired license to practice barbering
- (A) If the expiration period is not more than three years, the restoration and lapsed fees shall be as follows:
 - lapsed 1 through 30 days 100
 - lapsed 31 through 365 days..... 160
 - lapsed 366 through 730 days..... 240
 - lapsed 731 through 1,095 days..... 320

(B) For each barbering license that has lapsed for more than three years, the applicant shall be

reexamined upon payment of the barbering examination and issuance of license fees 180

(b) Instructor license

(1) Examination to instruct barbering 40

(2) Issuance of license to instruct barbering 40

(3) Renewal of license to instruct barbering 40

(4) Restoration of expired instructor's license

(A) If the expiration period is not more than three years, the restoration and lapsed fees shall be as follows:

lapsed 1 through 30 days..... 60

lapsed 31 through 365 days..... 80

lapsed 366 through 730 days..... 120

lapsed 731 through 1,095 days..... 160

(B) For each instructor's license that has lapsed for more than three years, the instructor shall be reexamined upon payment of the examination, instructor's license, and renewal fees 120

(c) License to operate a barber school or barber college (annual fee) 500

(d) License to operate a barber shop

(1) Shop inspection and annual license fee 40

(2) Restoration of expired shop license. If the expiration period is not more than three years, the restoration and lapsed fees shall be as follows:

lapsed 1 through 30 days..... 55

lapsed 31 through 365 days..... 120

lapsed 366 through 730 days..... 60

lapsed 731 through 1,095 days..... 200

(3) New shop, relocation, or change of

ownership..... 80

(e) Seminar permit 80

(f) Student learning license 55

(Authorized by and implementing K.S.A. 2015 Supp. 65-1817; effective May 13, 2016.)

Agency 63

State Board of Mortuary Arts

Articles

- 63-1. EMBALMING; CONTINUING EDUCATION OF EMBALMERS AND FUNERAL DIRECTORS.
- 63-4. FEES.
- 63-5. ADMINISTRATIVE HEARINGS AND DISCIPLINARY ACTION.
- 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:

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 5.—ADMINISTRATIVE HEARINGS AND DISCIPLINARY ACTION

63-5-3. Potentially disqualifying civil and criminal records; advisory opinion; fee. (a) For purposes of this regulation, “conviction” shall mean a judgment or order of guilt by a court of competent jurisdiction in any state, or a subdivision thereof, or territory of the United States, by a court of the United States, or by a military court martial pursuant to the uniform code of military justice.

(b) The following criminal records may disqualify an applicant from receiving a license:

(1) A conviction of any offense classified as a felony in the jurisdiction in which the conviction occurred;

(2) a conviction of criminal desecration as defined in K.S.A. 2018 Supp. 21-6205, and amendments thereto, or a crime defined as substantially similar in the jurisdiction in which the conviction occurred;

(3) a conviction of any offense classified as a class A misdemeanor, or a similar classification in the jurisdiction in which the conviction occurred, that involves any of the following:

(A) A crime whose victim was a client, customer, or other individual with whom the applicant had a professional or fiduciary relationship;

(B) a crime that occurred at the applicant’s work site or while the applicant was on work duty;

(C) a crime involving fraud, theft, or misappropriation of another person’s money, property, or services;

(D) giving a worthless check or causing unlawful prosecution for a worthless check;

(E) counterfeiting;

(F) criminal use of a financial card;

(G) a crime classified as a sex offense or requiring registration as a sex offender by the jurisdiction in which the conviction occurred;

(H) a crime involving assault, battery, domestic battery, battery of a law enforcement officer, sexual battery, stalking, or criminal restraint as defined by the jurisdiction in which the conviction occurred;

(I) a crime involving promoting obscenity, promoting material to minors that is harmful, or promoting prostitution;

(J) a crime that involved knowingly violating a protection from abuse order, a protective order, or a restraining order;

(K) cruelty to animals;

(L) a crime involving the unlawful use, possession, or distribution of any illegal drug or controlled substance;

(M) a crime involving the unlawful use or possession of paraphernalia with intent to use to manufacture, cultivate, plant, propagate, harvest, test, analyze, or distribute a controlled substance;

(N) a crime involving harassment by telephone, any telecommunications device, or telefacsimile communication;

(O) unlawful administration of a substance as defined in K.S.A. 2018 Supp. 21-5425, and amendments thereto, or defined as substantially similar in the jurisdiction in which the conviction occurred;

(P) driving under the influence of drugs or alcohol, or any other crime in which the applicant was intoxicated when the applicant committed the crime;

(Q) a crime involving the abuse, neglect, or exploitation of a child, elderly person, or disabled person as defined by the jurisdiction in which the conviction occurred; or

(R) a crime involving the unlawful use, possession, distribution, or discharge of a firearm; and

(4) conviction of a misdemeanor offense that meets both of the following conditions:

(A) The crime involved at least one of the circumstances described in paragraph (b)(3); and

(B) one of the following conditions is met:

(i) Fewer than five years have passed since the applicant completed the applicant’s sentence, including any term of incarceration, probation, or community supervision or payment of any fine, fees, or restitution; or

(ii) the applicant has been convicted of another crime in the five years immediately preceding the date of the application for license.

(c) Civil or administrative records that may disqualify an applicant from receiving a license shall be any records of any court or administrative agency judgment, order, or a settlement in which the applicant admitted or was found to have engaged in conduct that would constitute a violation of the mortuary arts act or any of the implementing regulations. Those records shall not be used to disqualify an applicant for more than five years after the applicant satisfied the judgment, order, or settlement agreement.

(d) Any individual with a criminal, civil, or administrative record described in this regulation may submit a petition on a form provided by the board for an informal, advisory opinion concerning whether the individual's civil, administrative, or criminal record may disqualify the individual from licensure. Each petition shall include the following:

(1) The details of the individual's civil, administrative, or criminal record, including a copy of each court or administrative record or any settlement by the parties;

(2) an explanation of the circumstances that resulted in the civil, administrative, or criminal record; and

(3) a check or money order in the amount of \$50.00. (Authorized by K.S.A. 65-1712, 65-1723, 65-1730, 65-1766, and 74-120; implementing K.S.A. 65-1751, 65-1766, and 74-120; effective March 8, 2019.)

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 receipt 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

Board of Examiners in Optometry

Articles

65-4. GENERAL PROVISIONS.

65-5. LICENSES.

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.)

Article 5.—LICENSES

65-5-6. Continuing education. (a) Each licensed optometrist shall earn annually 24 hours of documented and approved continuing education during each license renewal period.

(b) No more than eight hours of the 24 annually required hours of documented and approved continuing education may be obtained through courses that do not include a live presentation. No more than four of the 24 annually required hours of documented and approved continuing education may be obtained through observing ophthalmic surgery. No more than four of the 24 annually required hours of documented and approved continuing education may be in the subject area of practice management.

Courses including those presented through the internet, by correspondence, in journals or other publications, and by presentation that is remote or recorded, or both, shall be subject to the limitations specified in this subsection.

(c) Each academic credit hour shall be equivalent to 15 hours of continuing education. Credit for auditing an academic course shall be given for actual hours attended during which instruction was given and shall not exceed the number of hours allowed for academic credit.

(d) The following educational programs may be used to meet the annual educational requirement:

- (1) Educational meetings of the American optometric association;
- (2) educational meetings of the Kansas optometric association;
- (3) scientific sections of the American academy of optometry;
- (4) postgraduate courses offered at any accredited school of optometry; and
- (5) other educational programs approved by the board.

(e) Each provider seeking board approval for a continuing education offering shall submit a copy of the continuing education program, schedule, or outline to the secretary-treasurer at least 60 days before the date of the program.

(f) Each licensee shall submit a certificate of attendance to the secretary-treasurer with or before the licensee's application for renewal. The certificate of attendance shall contain the following:

- (1) The name of the sponsoring organization;
- (2) the name, signature, and address of the licensee;
- (3) the number of hours attended;
- (4) the subject of the approved education program;
- (5) the date of the educational program; and
- (6) any other evidence of attendance required by the board.

(g) The certificate of attendance shall be on a form approved by the board and shall be signed by the licensee and an appropriate representative of the sponsoring organization. (Authorized by K.S.A. 74-1504(a)(6); implementing K.S.A. 2014 Supp. 65-1509a; effective May 18, 1992; amended

March 7, 1997; amended June 9, 2000; amended Oct. 3, 2003; amended June 5, 2015.)

65-5-10. (Authorized by K.S.A. 74-1504(a)(6); implementing K.S.A. 1998 Supp. 65-1501, K.S.A. 1998 Supp. 65-1501a, K.S.A. 1998 Supp. 65-1505, K.S.A. 1998 Supp. 65-4915(b), and K.S.A. 65-1525; effective Feb. 28, 1997; amended Nov. 29, 1999; revoked June 5, 2015.)

65-5-11. (Authorized by and implementing

K.S.A. 74-1504 and K.S.A. 2003 Supp. 65-1509; effective June 25, 2004; revoked June 5, 2015.)

65-5-13. Professional liability insurance. Each person licensed by the board shall, before rendering professional services within the state, obtain and maintain professional liability insurance coverage of at least \$1,000,000 for each claim. (Authorized by K.S.A. 74-1504; implementing K.S.A. 2014 Supp. 65-1505; effective June 5, 2015.)

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 PROFESSIONAL SURVEYING.
- 66-14. CONTINUING EDUCATION REQUIREMENTS.
- 66-15. FEES.

Article 6.—PROFESSIONAL PRACTICE

66-6-1. Seals and signatures. (a) Each licensee, within 30 days of a license being issued, shall obtain a seal of the design approved by the board in compliance with K.S.A. 74-7023, and amendments thereto, and this regulation. The seal shall be made of two concentric circles. The outer circle shall be 1 ⁵/₈ inches in diameter. The inner circle shall be 1 ¹/₁₆ inches in diameter and shall contain the words “LICENSED” at the top of the circle and “KANSAS” at the bottom of the circle and the number of the license certificate in the center. The area between the two circles shall, except as provided in this subsection, contain the licensee’s name as it appears on that individual’s license at the top of the circle and the licensee’s profession at the bottom of the circle.

The seal may contain, before the licensee’s surname, an abbreviated form of the licensee’s given name or a combination of initials representing the licensee’s given name. The seal may be a rubber stamp, an embossed seal, or a digital seal.

(b)(1) After the licensee’s seal has been applied to any document, the licensee shall apply the licensee’s handwritten or authenticated digital signature and the date across the seal. The application of the licensee’s seal and signature and the date shall constitute certification that the document on which the seal was applied was created by the licensee or under the licensee’s responsible charge.

(2) After a licensee has applied the seal, handwritten or digital signature, and date to a document, that document may be reproduced as

necessary for the project in accordance with applicable law.

(3) Any licensee may use a digital signature if the digital signature authentication process meets all of the following requirements:

(A) Is unique to the licensee using the digital signature;

(B) is able to be verified;

(C) is under the sole control of the licensee using the digital signature; and

(D) is linked to an electronic document bearing the digital signature in such a manner that the signature is invalidated if any data in the document is altered.

(4) Each transmitted or stored electronic document containing a digital signature shall bear the signature, date of signing, and seal, which shall be a confirmation that the electronic document was not altered after the initial digital signing of the document. If the electronic document is altered, the signature, date, and seal shall be void.

(c)(1) Except as provided in K.S.A. 74-7031, K.S.A. 74-7032, K.S.A. 74-7033, K.S.A. 74-7034, or K.S.A. 74-7042a and amendments thereto, each document, including drawings, technical reports, original land descriptions for the purpose of conveying an interest in real property, records, and papers, shall be sealed, signed, and dated by the licensee who prepared the document or by the licensee who is in responsible charge. The licensee shall seal, sign, and date only work within the licensee’s area of licensure and competence. Unless the licensee is in responsible charge, that licensee shall not review or check technical submissions of another licensed professional or un-

licensed person and seal the documents as the licensee's own work.

(2) Documents required to be sealed, signed, and dated shall include the following:

(A) Any document submitted to any public or governmental agency, a client, or a user for final approval or recording; and

(B) each revision to a sealed, signed, and dated document, which shall be identified and sealed, signed, and dated by the licensee responsible for the revision.

(d)(1) The following documents shall be sealed, signed, and dated as specified in this subsection:

(A) For a set of drawings, in one of the following ways:

(i) On each drawing sheet of a set of drawings;

(ii) only on the first sheet of a multisheet set of project drawings if a digital signature authentication process meeting all the requirements in this regulation and capable of digitally linking all drawing sheets to a licensee's area of responsibility is utilized; or

(iii) in a certification block displaying the seal, signature, and date of each licensee in responsible charge and designating the drawing sheets for which each licensee is responsible, which shall be included on the cover sheet or first drawing sheet of the set of drawings;

(B) for project-specific technical specifications, on the cover sheet or index page. If multiple licensees contribute to these specifications, each licensee shall also designate each part for which that licensee is responsible;

(C) for each technical report or survey plat, on the first or last page;

(D) for original land descriptions for the purpose of conveying an interest in real property, on the first or last page;

(E) for each manufacturer's design document submitted in response to a project's delegated design requirements, including performance specifications or drawings for a specific system or components that are not commonly manufactured items standard for order, and prepared by or under the direct supervision of a Kansas licensee, with the submittal sealed, signed, and dated by the manufacturer's Kansas licensee as specified in paragraph (d)(1)(A) or (B); and

(F) for modified standard details or drawings required by a public agency to be incorporated in a project, on the cover sheet or index page of the document.

(2) For multiple seals, each licensee shall affix

that individual's seal and signature to the document and shall designate the specific subject matter for which that licensee is responsible, in a note under that licensee's seal or in the title or index sheet indicating the document to which the seal applies.

(e) The documents not required to be sealed, signed, and dated shall include the following:

(1) A working drawing or preliminary document, if the working drawing or preliminary document contains a statement in large, bold letters stating "PRELIMINARY, NOT FOR CONSTRUCTION, RECORDING PURPOSES, OR IMPLEMENTATION" or words of comparable meaning; and

(2) published standard details, drawings, or specifications adopted by a municipal, county, or public agency, if incorporated in that agency's own projects. These documents shall be referenced within the project's set of drawings when used. Nothing in this subsection shall relieve a licensee of the duty of professional conduct.

(f)(1) If a licensee who has responsible charge of the work is unavailable to complete the work, a successor licensee may assume responsible charge by performing all professional services, including developing a complete design file with work or design criteria, calculations, code research, and any necessary and appropriate changes to the work, under either of the following conditions:

(A) The work is a site adaptation of a standard design plan.

(B) The non-professional services, including drafting, are not required to be redone by the successor licensee but clearly and accurately reflect the successor licensee's work.

(2) The successor licensee shall have responsible charge over the work product.

(3) The successor licensee shall be responsible for compliance with this subsection. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7023; effective May 1, 1978; amended May 1, 1984; amended May 1, 1985; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 13, 1995; amended March 1, 1996; amended Feb. 6, 1998; amended Nov. 2, 2001; amended March 28, 2008; amended, T-66-5-30-14, July 1, 2014; amended Sept. 26, 2014; amended June 3, 2016; amended Dec. 4, 2020.)

66-6-4. Professional conduct. (a) For the purposes of this regulation, "licensee" shall mean an architect, a landscape architect, a professional

engineer, a professional geologist, or a professional surveyor.

(b) If any licensee's professional judgment has been disregarded under circumstances in which the safety, health, or welfare of the public is endangered, the licensee shall inform the employer or client of the possible consequences, and the licensee shall notify the authority who issued the building permit or otherwise has jurisdiction.

(c) The licensee shall not advertise to perform or undertake to perform any assignment involving a specific technical profession unless the licensee is licensed and qualified by education and experience in that technical profession, as defined in K.S.A. 74-7003, and amendments thereto.

(d) A licensee in any technical profession shall not affix a personal or digital signature, seal, or both to any plan or document dealing with subject matter that is outside the licensee's field of practice as defined by K.S.A. 74-7003, and amendments thereto.

(e) If the competence of any licensee to perform an assignment in a specific technical field is at issue, the licensee may be required by the board to pass an appropriate examination.

(f) In all professional reports, statements, and testimony, each licensee shall meet the following requirements:

- (1) Be completely objective and truthful; and
- (2) include all relevant and pertinent information.

(g) When serving as an expert or technical witness before any court, commission, or other tribunal, each licensee shall express only opinions founded on the following:

- (1) An adequate knowledge of the facts at issue;
- (2) a background of technical competence in the subject matter; and
- (3) an actual, good-faith belief in the accuracy and propriety of the licensee's testimony.

(h) If a licensee issues any statements, criticisms, or arguments on public policy matters that are inspired or paid for by any interested party or parties, those comments shall be prefaced by and include disclosure of the following:

- (1) The identity of each party on whose behalf the licensee is speaking; and
- (2) the existence of any pecuniary interest of the licensee.

(i) Each licensee shall disclose all known or potential conflicts of interest to employers or clients by promptly informing them of any business association, interest, or any other circumstances that

could influence that licensee's judgment or the quality of the licensee's services.

(j) A licensee shall not accept compensation, financial or otherwise, from more than one party for services on the same project or for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.

(k) A licensee shall not solicit or accept financial or other valuable consideration, directly or indirectly, from either of the following:

(1) Material or equipment suppliers for specifying their products; or

(2) contractors, their agents, or other parties in connection with work for employers or clients for which the licensee is responsible.

(l) A licensee shall not solicit a contract from a governmental body on which a principal or officer of the licensee's organization serves as a member, except upon public disclosure of all pertinent facts and circumstances and consent of the appropriate public authority.

(m) A licensee shall not offer, directly or indirectly, to pay a commission or other consideration or to make a political contribution or other gift in order to secure work, except for payment made to an employment agency for its services.

(n) In all contacts with prospective or existing clients or employers, each licensee shall accurately represent the licensee's qualifications and the scope of the licensee's responsibility in connection with work for which the licensee is claiming credit.

(o) A licensee shall not be associated with, or permit the use of the licensee's personal name or firm name in, a business venture being performed by any person or firm that the licensee knows, or has reason to believe, is engaging in either of the following:

(1) Business or professional practice of a fraudulent or dishonest nature; or

(2) a violation of K.S.A. 74-7001 et seq., and amendments thereto, or the regulations promulgated and adopted by the board, or both.

(p) Each licensee with knowledge of any alleged violation of K.S.A. 74-7001 et seq., and amendments thereto, or the regulations promulgated and adopted by the board, or both, shall report the alleged violation to the board.

(q) Each licensee shall cooperate with the board in its investigation of complaints or possible violations of K.S.A. 74-7001 et seq., and amendments thereto, and the regulations of the board. This cooperation shall include responding timely to written communications from the board, providing

any information or documents requested within 30 days of the date on which the communication was mailed, and appearing before the board or its designee upon request.

(r) A licensee shall not assist any person in applying for licensure if the licensee knows that person to be unqualified with respect to education, training, experience, or character.

(s) Conviction of a felony or the revocation or suspension of a professional license by another jurisdiction, if for a cause that in Kansas would constitute a violation of Kansas law or of these regulations, or both, shall constitute unprofessional conduct.

(t) A licensee shall not violate any order of the board.

(u) Each professional surveyor shall comply with the minimum standards for the practice of professional surveying adopted by reference in K.A.R. 66-12-1.

(v) Each licensee shall take appropriate measures to ensure that the licensee's drawings and specifications meet the following requirements:

(1) Remain the property of the licensee regardless of whether the project contemplated was executed;

(2) are not utilized for projects that were not contemplated at the time of the completion of the drawings and specifications; and

(3) are not used by the client on any other projects, including additions to the contemplated project, unless the licensee defaults or agrees in writing to this use. (Authorized by K.S.A. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12; implementing K.S.A. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12, and K.S.A. 2013 Supp. 74-7026, as amended by 2014 SB 349, sec. 20; effective May 1, 1978; amended May 1, 1984; amended May 1, 1985; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 13, 1995; amended Feb. 4, 2000; amended Feb. 9, 2001; amended Nov. 2, 2001; amended Feb. 4, 2005; amended Jan. 5, 2007; amended March 28, 2008; amended, T-66-5-30-14, July 1, 2014; amended Sept. 26, 2014.)

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) landscape architects | December 31; |
| (3) professional engineers | April 30; |
| (4) professional geologists | June 30; and |
| (5) professional surveyors | March 31. |

(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. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12; implementing K.S.A. 2013 Supp. 74-7025, as amended by 2014 SB 349, sec. 19, and K.S.A. 2013 Supp. 74-7036, as amended by 2014 SB 349, sec. 28; 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; amended Sept. 26, 2014.)

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.)

66-6-10. License statuses. Any licensee may elect to place the license, at the time of renewal, into one of the following license statuses:

(a) Active status shall require renewal every two years with the appropriate fee. The individual shall have 30 continuing education units (CEUs) of approved continuing education activities as required for renewal.

(b) Inactive status shall require renewal every two years with the appropriate fee. No CEUs shall be required for a licensee on inactive status. In order to qualify for inactive status, the individual shall have no pending disciplinary action.

An individual on inactive status shall not practice a technical profession in Kansas.

(c) Emeritus status shall require the individual to be at least 60 years of age. The individual shall submit a one-time application, with no fee and no proof of continuing education required. The individual shall have no pending disciplinary action. Any individual who chooses this license status may use that individual's professional title in conjunction with the word "emeritus." An individual on emeritus status shall not practice a technical profession in Kansas. (Authorized by K.S.A. 74-7013 and K.S.A. 74-7025; implementing K.S.A. 74-7025; effective Sept. 26, 2014; amended Dec. 4, 2020.)

Article 7.—APPLICATIONS

66-7-1. Applications. (a) In addition to the appropriate, completed application form and fee, each applicant shall also have the following submitted to the board office:

(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, which shall be submitted 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. 74-7013; implementing K.S.A. 74-7018; effective May 1, 1984; amended May 4, 1992; amended Jan. 6, 2012; amended Dec. 4, 2020.)

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.)

66-7-4. Potentially disqualifying civil and criminal records; advisory opinion; fee. (a) Conviction of any felony may disqualify an applicant from receiving a license.

(b) Civil records that may disqualify an applicant from receiving a license shall be the records of any court judgment or settlement in which the applicant admitted or was found to have engaged in conduct that would constitute a violation of the technical professions act or any of the board's regulations. Those records shall not be used to disqualify an applicant for more than five years after the applicant satisfied any judgment or restitution ordered by the court or agreed to in the settlement.

(c) Any individual with a criminal or civil record described in this regulation may submit a petition to the board for an informal, advisory opinion concerning whether the individual's civil or criminal record may disqualify the individual from licensure. Each petition shall include the following:

(1) The details of the individual's civil or criminal record, including a copy of the court records or the settlement agreement;

(2) an explanation of the circumstances that resulted in the civil or criminal record; and

(3) a check or money order in the amount of \$50.00. (Authorized by K.S.A. 74-120 and K.S.A. 74-7013; implementing K.S.A. 74-120 and K.S.A. 74-7026; effective Aug. 16, 2019.)

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 engineer-

ing fundamentals section and a professional practice section.

(b) Each applicant for a professional license shall be required to pass the section on engineering fundamentals and meet the educational requirements under K.A.R. 66-9-4 before submitting an application to take the section on professional practice. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7017, K.S.A. 74-7021, and K.S.A. 74-7023; effective May 1, 1984; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 14, 1994; amended Nov. 6, 2009; amended Dec. 27, 2013; amended Dec. 4, 2020.)

66-8-4. Professional surveyor examinations. (a) The examinations required of each applicant for licensure as a professional surveyor shall be the following:

(1) The national council of examiners for engineering and surveying (NCEES) fundamentals of surveying;

(2) the NCEES principles of practices of surveying; and

(3) the board's state-specific land surveying examination covering Kansas surveying laws and practices.

(b) Any applicant who has passed only one or more sections of the state-specific land surveying examination shall be granted transfer credits for the sections passed.

(c) Each applicant for a license as a professional surveyor shall be required to pass the section on the fundamentals of surveying and shall meet the surveying experience requirements under K.S.A. 74-7022, and amendments thereto, before the applicant may take the section on professional practice. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7017, K.S.A. 74-7022, and K.S.A. 74-7023; 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; amended Sept. 26, 2014; amended Dec. 4, 2020.)

66-8-6. Reexamination. (a) Any applicant for a license to practice engineering, 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 seeking 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 of any possible violation by the applicant of the provisions of any candidate testing agreement regarding examination irregularities.

(d) Each applicant shall submit the appropriate fee for each examination. (Authorized by K.S.A. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12; implementing K.S.A. 2013 Supp. 74-7009, as amended by 2014 SB 349, sec. 10, and K.S.A. 2013 Supp. 74-7023, as amended by 2014 SB 349, sec. 17; effective May 1, 1984; amended May 4, 1992; amended June 18, 2010; amended Dec. 27, 2013; amended Sept. 26, 2014.)

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 geology experience requirements under 2014 SB 349, sec. 16, and amendments thereto, before submitting an application to take the section on geologic practice. (Authorized by K.S.A. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12; implementing K.S.A. 74-7017, K.S.A. 2013 Supp. 74-7023, as amended by 2014 SB 349, sec. 17, and 2014 SB 349, sec. 16; effective Feb. 4, 2000; amended Nov. 6, 2009; amended, T-66-5-30-14, July 1, 2014; amended Sept. 26, 2014.)

66-8-8. Examination standards acceptable to the board for reciprocity applicants. (a) The reexamination of an applicant from another jurisdiction shall not be required for a license by reciprocity if that jurisdiction's examination requirements would have met the Kansas requirements

in effect on the date when the applicant's original license was issued, as determined by the board.

(b) Another jurisdiction's examination requirements may be accepted by the board if that jurisdiction did not require the national examination when the applicant was originally licensed.

(c) In order to meet the standard acceptable to the board, each applicant for a license by reciprocity as a professional surveyor shall be required to demonstrate proficiency in Kansas surveying laws and practices. This proficiency shall be presumed by the board upon the applicant's successful completion of the examination as specified in K.A.R. 66-8-4(a)(2). (Authorized by K.S.A. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12; implementing K.S.A. 74-7024, as amended by 2014 SB 349, sec. 18; effective Feb. 4, 2005; amended Jan. 5, 2007; amended Sept. 26, 2014.)

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.)

66-9-5. Surveying curriculum approved by the board. Any applicant seeking licensure as a professional surveyor may fulfill the education requirement by any of the following:

(a) Graduation from an approved engineering curriculum as defined in K.A.R. 66-9-4;

(b) graduation from a four-year surveying baccalaureate curriculum accredited by the accreditation board for engineering and technology (ABET);

(c) graduation from an approved surveying curriculum of two years from a school or college approved by the board;

(d) graduation from an approved four-year related science curriculum, which may include geology, mathematics, chemistry, or physics;

(e) successful completion of the board's “land surveying curriculum,” which was approved by the board on December 8, 2006 and is hereby adopted by reference; or

(f) successful completion of at least 12 semester hours of approved surveying coursework consisting of three semester hours in each of the following, from a school or college approved by the board:

(1) Surveying measurements and analysis;

(2) global positioning system (GPS) surveying techniques;

(3) real property law; and

(4) boundary control and legal principles. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7022; effective Feb. 22, 1993; amended Feb. 14, 1994; amended Nov. 1, 2002; amended June 29, 2007; amended Sept. 26, 2014; amended Dec. 4, 2020.)

66-9-6. Geology curriculum approved by the board. Graduation from a course of study in geology shall mean successful completion of a baccalaureate or a master's degree in geology that meets the requirements of 2014 SB 349, sec. 16, and amendments thereto. (Authorized by K.S.A. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12; implementing 2014 SB 349, sec. 16; effective Feb. 4, 2000; amended Feb. 4, 2005; amended, T-66-5-30-14, July 1, 2014; amended Sept. 26, 2014.)

66-9-7. Education 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 education 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 one of the following to the board, for the board's review and consideration for approval:

(1) Proof that the applicant's educational qualifications comply with K.A.R. 66-9-1; or

(2) proof of certification from the national council of architectural registration boards (NCARB). (Authorized by K.S.A. 2017 Supp. 74-7013; implementing K.S.A. 2017 Supp. 74-7024; effective Feb. 4, 2005; amended Jan. 6, 2012; amended Dec. 27, 2013; amended Sept. 26, 2014; amended June 14, 2019.)

Article 10.—EXPERIENCE

66-10-1. Architectural experience satisfactory to the board. (a) Each applicant for a license to practice architecture by examination shall complete a structured experience program of at least 3,740 hours in the following experience areas:

- (1) In practice management, 160 hours;
- (2) in project management, 360 hours;
- (3) in programming and analysis, 260 hours;
- (4) in project planning and design, 1,080 hours;
- (5) in project development and documentation, 1,520 hours; and
- (6) in construction and evaluation, 360 hours.

At least 1,860 of these 3,740 hours shall be completed under the supervision of an architect.

(b) Compliance with the "architectural experience program guidelines," dated May 2017 and published by the national council of architectural registration boards (NCARB), shall be prima facie evidence of satisfactory completion of the structured experience program. (Authorized by K.S.A. 74-7013 and 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; amended Dec. 27, 2013; amended Sept. 26, 2014; amended June 14, 2019.)

66-10-3. Architectural experience required of a reciprocity applicant. Each applicant for a license to practice architecture by reciprocity shall provide one of the following to the board, for review and consideration for approval:

(a) Proof that the applicant's experience qualifications comply with K.A.R. 66-10-1; or

(b) proof of certification from the national council of architectural registration boards (NCARB). (Authorized by K.S.A. 2017 Supp. 74-7013; implementing K.S.A. 2017 Supp. 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; amended Dec. 27, 2013; amended June 14, 2019.)

66-10-4. Landscape architecture work experience. (a) The work experience required of each applicant shall expose the applicant to all phases of work integral to the practice of landscape architecture and shall be verified as specified in paragraph (b)(1)(B).

(b)(1) Landscape architectural work experience shall meet the following requirements:

(A) Fall within the definition of the "practice of landscape architecture" under K.S.A. 74-7003 and amendments thereto; and

(B) if performed after February 22, 1993, be supervised and verified by a licensed landscape architect, architect, or engineer.

(2) Beginning April 1, 1995, each applicant for examination shall provide a record of landscape architectural experience that has been compiled and transmitted by the council of landscape architectural boards (CLARB).

(3) Beginning July 1, 2001, each applicant for reciprocity shall provide a record of landscape architectural experience that has been compiled and transmitted by the council of landscape architectural boards (CLARB).

(c) The following requirements and provisions shall be used to assign credit for work experience:

(1) A master's degree in landscape architecture may equal one year of credit toward the four-year experience requirement for a graduate of an accredited, four-year curriculum in landscape architecture.

(2) Each applicant who is a graduate of an accredited, master's level curriculum in landscape architecture as the first professional degree shall be considered by the board to be equivalent to a graduate of a five-year curriculum and shall meet the experience requirements of that curriculum as specified in K.S.A. 74-7020, and amendments thereto.

(3) Each month of teaching in an accredited landscape architecture curriculum shall qualify for

one month of landscape architecture experience. Teaching experience or other allowed experience, but not both, may be approved as experience for any concurrent calendar period.

(4) Credit may be given for 50 percent of the verified work experience obtained after a student has achieved “junior status” in a landscape architectural curriculum accredited by the landscape architectural accreditation board (LAAB). Credit for this work experience shall not exceed one year.

(d) Each applicant shall supply at least three references from licensed landscape architects who are familiar with the applicant's landscape architectural experience. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7020; 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 Feb. 9, 2001; amended Dec. 4, 2020.)

66-10-9. Engineering experience. (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;

(2) be directly supervised by a licensed professional engineer. However, direct supervision by 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; and

(3) include at least two years of work experience, which shall have been gained in the United States.

(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). Credit shall not be allowed for both work experience and master's or doctoral degree credit obtained during the same time period.

(3) Each month of teaching in an accredited engineering curriculum shall qualify for one month of engineering experience. Teaching experience or other allowed experience, but not both, may be approved as experience for any concurrent calendar period.

(4) Work experience credit shall not be allowed for work performed before graduation with the baccalaureate degree.

(d) Each applicant shall supply at least three references from professional engineers who are licensed in the United States and are familiar with the applicant's engineering experience. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7021; 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; amended Dec. 27, 2013; amended Dec. 4, 2020.)

66-10-10. Surveying experience required of a graduate of an accredited engineering curriculum.

Each graduate of an accredited engineering curriculum, as defined by K.A.R. 66-9-4, shall provide a verified record of six years of surveying experience as specified by K.S.A. 74-7022(a), and amendments thereto. At least four years of experience shall have been in progressive surveying, as defined in K.A.R. 66-10-12(b)(1). (Authorized by K.S.A. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12; implementing K.S.A. 2013 Supp. 74-7022, as amended by 2014 SB 349, sec. 15; effective May 1, 1984; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 13, 1995; amended Sept. 26, 2014.)

66-10-10a. Surveying experience required of applicant who completes surveying curriculum or is a graduate of an approved surveying curriculum.

(a) Each graduate of a four-year surveying curriculum, as described in K.A.R. 66-9-5(b), shall be required to provide documentation of four years of surveying experience, as required by K.S.A. 74-7022(a) and amendments thereto. The four years of experience shall have been in progressive surveying, as described in K.A.R. 66-10-12(b)(1).

(b) Each person who has successfully completed the land surveying curriculum specified in K.A.R. 66-9-5(e) and each graduate of an approved surveying curriculum of two years, as specified in K.A.R. 66-9-5(c), shall be required

to provide documentation of six years of surveying experience, as required by K.S.A. 74-7022(a) and amendments thereto. At least four years of experience shall have been in progressive surveying as specified in K.A.R. 66-10-12(b)(1), and the remainder shall have been in either progressive surveying or basic surveying, as specified in K.A.R. 66-10-12(b)(2) or (3). (Authorized by K.S.A. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12; implementing K.S.A. 2013 Supp. 74-7022, as amended by 2014 SB 349, sec. 15; effective Feb. 22, 1993; amended Feb. 13, 1995; amended Jan. 5, 2007; amended June 29, 2007; amended Sept. 26, 2014.)

66-10-10b. Surveying experience required of a graduate in a four-year related science curriculum other than land surveying or engineering. Each graduate of a four-year curriculum considered by the board to be related to land surveying, which may include geology, mathematics, chemistry, or physics, shall provide documentation of six years of surveying experience. At least four years of this experience shall have been in progressive land surveying, as defined in K.A.R. 66-10-12(b)(1). (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7022; effective Nov. 1, 2002; amended Dec. 4, 2020.)

66-10-10c. Surveying experience required of an applicant who completed 12 semester hours of approved surveying coursework. Each applicant meeting the education requirements of K.A.R. 66-9-5(f) shall provide documentation of eight years of surveying experience. At least six years of this experience shall have been in progressive surveying as defined in K.A.R. 66-10-12(b)(1). (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7022; effective Dec. 4, 2020.)

66-10-11. (Authorized by K.S.A. 74-7013 and 74-7022; implementing K.S.A. 74-7022; effective May 1, 1984; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 13, 1995; amended Feb. 9, 2001; amended Feb. 3, 2006; revoked Sept. 26, 2014.)

66-10-12. Surveying experience. (a)(1) Surveying experience shall meet the following requirements:

(A) Fall within the definition of “practice of professional surveying” in K.S.A. 74-7003, and amendments thereto; and

(B) be under the direct supervision of a licensed professional surveyor for work performed after May 1, 1988.

(2) Each applicant shall supply references from at least three licensed surveyors or licensed engineers who are familiar with the applicant’s surveying experience. At least one reference shall be from a licensed surveyor.

(b) The following requirements shall be used to assign credit for work experience:

(1) Progressive surveying experience shall include each of the following elements of professional surveying:

- (A) Project management;
- (B) research;
- (C) measurements and locations;
- (D) computations and analysis;
- (E) legal principles and reconciliation;
- (F) land planning and design;
- (G) monumentation; and
- (H) documentation and land information systems.

(2) Surveying experience normally identified with engineering projects, including construction staking, curb and gutter projects, sanitary sewers, and design surveys for highways or bridges other than those that relate to right-of-way surveys, shall not be considered progressive surveying experience. However, this experience may be considered by the board as basic surveying experience.

(3) Each month of teaching in an accredited engineering or surveying curriculum shall qualify for one month of basic surveying experience. Teaching experience or other allowed experience, but not both, may be approved as experience for any concurrent calendar period. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7022; effective May 1, 1984; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 13, 1995; amended Feb. 4, 2000; amended Feb. 9, 2001; amended Nov. 2, 2001; amended Feb. 3, 2006; amended Sept. 26, 2014; amended Dec. 4, 2020.)

66-10-13. Geology experience. (a) The work experience required of each applicant shall expose the applicant to all phases of work integral to the discipline of geology in which the applicant claims qualification to practice and shall be verified as specified in paragraph (b)(2).

(b) Geology experience shall meet the following requirements:

(1) Fall within the definition of “practice of professional geology” in K.S.A. 74-7003, and amendments thereto; and

(2) be directly supervised by a licensed geologist for work performed after July 1, 2000. However, direct supervision by a licensed geologist shall not be required of the employees of any person, firm, or corporation that does not offer services in the technical professions to the public, although verification by the applicant's supervisor shall still be required.

(c) The following shall be used to assess credit for work experience:

(1) Experience credit shall not be allowed for work performed before graduation.

(2) 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.

(3) Each month of teaching in an accredited geology curriculum shall qualify for one month of geology experience. Teaching experience or other allowed experience, but not both, may be approved as experience for any concurrent calendar period.

(d) Each applicant shall supply references from at least three licensed geologists or licensed engineers who are familiar with the applicant's geology experience. At least two of these references shall be licensed geologists. One of the three references may be a licensed engineer. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7041a; effective Feb. 4, 2000; amended Feb. 9, 2001; amended Nov. 2, 2001; amended Nov. 1, 2002; amended Dec. 27, 2013; amended, T-66-5-30-14, July 1, 2014; amended Sept. 26, 2014; amended Dec. 4, 2020.)

66-10-14. Engineering, surveying, and geology experience standards acceptable to the board for reciprocity applicants. (a) Each applicant for a professional engineering license by reciprocity shall meet the following requirements:

(1) Provide verification from the employer of at least four years of experience in the practice of professional engineering, 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 references from at least three engineers who are licensed in the United States and are familiar with the applicant's engineering experience.

(b) Each applicant for a professional surveying license by reciprocity shall meet the following requirements:

(1) Provide verification from the employer of at least eight years of surveying experience or education, or a combination of these, pursuant to K.S.A. 74-7022 and amendments thereto, K.A.R. 66-10-10, K.A.R. 66-10-10a, K.A.R. 66-10-10b, and K.A.R. 66-10-11; and

(2) supply references from at least three licensed surveyors or licensed engineers who are familiar with the applicant's surveying experience. At least one reference shall be from a licensed surveyor.

(c) Each applicant for a professional geology license by reciprocity shall meet the following requirements:

(1) Provide verification from the employer of at least four years of experience in the practice of professional geology, 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 references from at least three licensed geologists or licensed engineers 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 licensed engineer. (Authorized by K.S.A. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12, K.S.A. 2013 Supp. 74-7021, as amended by 2014 SB 349, sec. 14, K.S.A. 2013 Supp. 74-7022, as amended by 2014 SB 349, sec. 15, and 2014 SB 349, sec. 16; implementing K.S.A. 2013 Supp. 74-7018, K.S.A. 2013 Supp. 74-7021, as amended by 2014 SB 349, sec. 14, K.S.A. 2013 Supp. 74-7022, as amended by 2014 SB 349, sec. 15, K.S.A. 74-7024, as amended by 2014 SB 349, sec. 18, and 2014 SB 349, sec. 16; effective Feb. 4, 2005; amended Feb. 3, 2006; amended Nov. 6, 2009; amended Dec. 27, 2013; amended, T-66-5-30-14, July 1, 2014; amended Sept. 26, 2014.)

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 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);

(b) submits proof of completion of a baccalaureate engineering curriculum or equivalent as described in K.A.R. 66-9-4; and

(c) submits an application, on a form provided by the board, that is approved by the board. (Authorized by K.S.A. 2012 Supp. 74-7013; implementing K.S.A. 2012 Supp. 74-7021; effective May 1, 1984; amended May 4, 1992; amended Feb. 14, 1994; amended Nov. 6, 2009; amended Dec. 27, 2013.)

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. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12; implementing 2014 SB 349, sec. 16; effective Nov. 1, 2002; amended Nov. 6, 2009; amended, T-66-5-30-14, July 1, 2014; amended Sept. 26, 2014.)

66-11-1b. Intern surveyor certificate. An intern 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. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12; implementing K.S.A. 2013 Supp. 74-7022, as amended by 2014 SB 349, sec. 15; effective Nov. 1, 2002; amended Nov. 6, 2009; amended Sept. 26, 2014.)

66-11-2. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7021 and 74-7023; effective May 1, 1984; amended May 4, 1992; amended Feb. 22, 1993; amended Feb. 14, 1994; amended Jan. 5, 2007; revoked Dec. 27, 2013.)

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 establish-

es 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. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12; implementing K.S.A. 2013 Supp. 74-7023, as amended by 2014 SB 349, sec. 17, and 2014 SB 349, sec. 16; effective Feb. 4, 2000; amended Nov. 6, 2009; amended, T-66-5-30-14, July 1, 2014; amended Sept. 26, 2014.)

66-11-5. Admission requirements for fundamentals of surveying examination. (a) Each application shall be reviewed by the board to determine whether the requirements for admission to take the fundamentals of surveying examination have been met. Once the board establishes that these requirements have been met, the applicant shall be allowed to sit for the examination.

(b) Each applicant shall meet the following requirements for admission before taking the examination:

(1)(A) Graduation from an accredited surveying curriculum, as defined in K.A.R. 66-9-5 (b) and (c);

(B) graduation from an approved engineering curriculum specified in K.A.R. 66-9-5(a);

(C) graduation from an approved four-year related science curriculum specified in K.A.R. 66-9-5(d); or

(D) successful completion of the surveying curriculum specified in K.A.R. 66-9-5(e) or (f); and

(2) verification of the surveying experience requirements specified in K.A.R. 66-10-10a, K.A.R. 66-10-10b, or K.A.R. 66-10-10c, as applicable. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7022 and K.S.A. 74-7023; effective Nov. 1, 2002; amended Feb. 3, 2006; amended June 29, 2007; amended Jan. 23, 2009; amended Sept. 26, 2014; amended Dec. 4, 2020.)

Article 12.—MINIMUM STANDARDS FOR THE PRACTICE OF PROFESSIONAL SURVEYING

66-12-1. Minimum standards for the practice of professional 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)”;

(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 and implementing K.S.A. 2013 Supp. 74-7013, as amended by 2014 SB 349, sec. 12; 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; amended, T-66-5-30-14, July 1, 2014; amended Sept. 26, 2014.)

Article 14.—CONTINUING EDUCATION REQUIREMENTS

66-14-1. Requirements. (a) Except as provided in subsections (b) and (c), each licensee shall have completed 30 continuing education units (CEUs) of acceptable continuing education activities during the two-year period immediately preceding the biennial renewal date established in K.A.R. 66-6-6 as a condition for license renewal. At a minimum, 24 of the required 30 CEUs shall be related to health, safety, property, and welfare (HSPW). If the licensee exceeds the requirement in any renewal period, the licensee may carry a maximum of 15 HSPW CEUs forward into the subsequent renewal period. Any licensee may obtain a maximum of 10 HSPW CEUs in any 24-hour period.

(b) Each licensee renewing a license in more than one profession shall have completed 20 HSPW CEUs for each profession every two years before renewal. At least 16 of the required 20 CEUs for each profession shall be HSPW CEUs. The number of CEUs that may be carried over into the next renewal period for each licensee renewing in more than one profession shall not exceed 15 HSPW CEUs in each technical profession.

(c)(1) Each professional surveyor shall complete at least two CEUs of preapproved continuing education activity on the Kansas minimum standards adopted by reference in K.A.R. 66-12-1(b).

(2) Each provider of a continuing education activity on the Kansas minimum standards specified in paragraph (c)(1) shall submit an application for preapproval of the continuing education activity on a form provided by the board.

(3) To qualify for preapproval, each continuing education activity shall meet the following conditions:

(A) The continuing education activity has a definable purpose and objective.

(B) The continuing education activity is created and conducted by a person qualified in the subject area.

(C) The continuing education activity equals two contact hours.

(D) A certificate will be provided to the participant upon completion of the continuing education activity. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7013 and 74-7025; effective March 1, 1996; amended Feb. 4, 2000; amended Jan. 23, 2009; amended Dec. 27, 2013; amended Sept. 1, 2015; amended Dec. 4, 2020.)

66-14-2. Definitions. Each of the following terms used in this article of the board’s regulations shall have the meaning specified in this regulation:

(a) “College or university course continuing education unit” means a continuing education unit acceptable to the board for successfully completing a semester credit hour in a course. One semester credit hour shall be the equivalent of 15 CEUs.

(b) “Contact hour” means one clock-hour of at least 50 minutes of instruction or presentation of a continuing education activity.

(c) “Continuing education activity” means an activity that meets the following requirements:

(1) Enhances a licensee’s level of technical, professional, managerial, or ethical competence in order to further the goal of protecting the health, safety, property, and welfare of the public (HSPW); and

(2) reinforces the need for life-long learning in order to stay current with changing technology, changing procedures, changing processes, and established standards.

(d) “Continuing education unit” and “CEU” mean a unit of credit accepted by the board for participation in a continuing education activity as specified in K.A.R. 66-14-3. One contact hour shall be the equivalent of one CEU.

(e) “Sponsor” means an individual, organization, association, institution, or other entity that provides a continuing education activity for the purpose of fulfilling the continuing educational requirements of these regulations. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7013 and 74-7025; effective March 1, 1996; amended

Jan. 23, 2009; amended Sept. 1, 2015; amended Dec. 4, 2020.)

66-14-3. Continuing education activities.

(a) Continuing education activities that meet the continuing education requirement shall include the following:

(1) Attending professional or technical presentations at meetings, conventions, or conferences;

(2) attending in-house programs sponsored by corporations or other organizations;

(3) successfully completing seminars, tutorials, short courses, correspondence courses, televised courses, or videotaped courses;

(4) making professional or technical presentations at meetings, conventions, or conferences;

(5) teaching or instructing, as described in K.A.R. 66-14-5(d);

(6) authoring published papers, articles, or books;

(7) serving as an officer or committee member of a technical profession society or organization, as described in K.A.R. 66-14-5(f);

(8) successfully completing a course semester credit hour at an approved college or university; and

(9) successfully completing health, safety, property, and welfare continuing education activities, which shall include instruction in technical and professional subjects that safeguard the public and that are within any of the following areas necessary for the evaluation, design, construction, utilization, planning, engineering, implementation, construction, testing, operation, maintenance, and renewal of engineered systems in the built environment:

(A) Practice management focused on areas related to the management of the licensee's practice and details of running a business;

(B) project management focused on areas related to the management of projects through execution, in the profession of the licensee;

(C) programming and analysis focused on areas related to the evaluation of project requirements, constraints, and opportunities;

(D) project planning and design focused on areas related to the preliminary design of sites, buildings, and environmental considerations;

(E) project development and documentation focused on areas related to the integration and documentation of building systems, material selection, and material assemblies into a project; or

(F) construction and evaluation focused on ar-

reas related to construction contract administration and post-occupancy evaluation of projects.

(b) Each of the continuing education activities identified in paragraphs (a)(1), (2), (3), (8), and (9) shall meet all of the following conditions:

(1) The continuing education activity has a definable purpose and objective relevant to the licensee's field of practice.

(2) The program is conducted by a person qualified in the subject area.

(3) The licensee retains a record of registration and attendance. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7013 and 74-7025; effective March 1, 1996; amended Feb. 4, 2005; amended Jan. 23, 2009; amended Sept. 1, 2015; amended Dec. 4, 2020.)

66-14-5. Computation of credit. Continuing education activities shall be measured in continuing education units (CEUs) and shall be computed as follows:

(a) Successfully completing one contact hour of coursework or seminars at meetings, conventions, conferences, or in-house programs shall be the equivalent of one CEU.

(b) Taking an educational tour of a technically significant project shall be the equivalent of one CEU for each toured project, if the tour is conducted by a sponsor including a college, university, or professional organization.

(c) Preparation and making presentations, as specified in K.A.R. 66-14-3(a)(4), shall constitute four CEUs for the first contact hour of presentation plus one CEU for each additional contact hour of presentation.

(d) Teaching credit shall be valid for teaching a course or seminar in its initial presentation only. Full-time faculty at a college, university, or other educational institution shall otherwise not receive teaching credit for teaching their regularly assigned courses. Teaching or instructing a new college or university course for the first time shall be the equivalent of 10 CEUs.

(e) Authoring a published paper, article, or book shall be the equivalent of one of the following:

(1) 10 CEUs for each book or published paper in the licensee's area of professional practice; or

(2) five CEUs for each paper or article in the licensee's area of professional practice.

(f) Serving as an officer or committee member of a technical profession society or public commissions organization shall be the equivalent of two CEUs. Continuing education units shall be

limited to two CEUs for each organization and shall not be earned until the completion of each year of service.

(g) Serving as a mentor or sponsor for the architectural experience program (AXP) of the national council of architectural registration boards (NCARB) shall be the equivalent of two CEUs annually.

(h) Successfully completing one university semester hour of credit shall be the equivalent of 15 CEUs.

(i) Successfully completing one contact hour of professional development self-study coursework that is offered by a third-party sponsor with evidence of achievement with a final graded test shall be the equivalent of one CEU. A maximum of five self-study CEUs may be applied in any one renewal period. Proof of course completion shall be required. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7013 and 74-7025; effective March 1, 1996; amended Nov. 2, 2001; amended Feb. 4, 2005; amended Jan. 23, 2009; amended Sept. 1, 2015; amended Dec. 4, 2020.)

66-14-6. Exemptions. To qualify for an exemption from the continuing education requirement, the licensee shall submit an application to the board documenting the existence of one of the following conditions:

(a) The licensee is renewing for the first time.

(b) The licensee is called to active duty in the armed forces of the United States for a period exceeding 120 consecutive days in a renewal period. This individual may be exempt from obtaining 15 CEUs of the 30 CEUs required during the renewal period.

(c) The licensee chooses to have the license placed on inactive status or emeritus status as specified in K.A.R. 66-6-10. If the licensee elects to return to practice, the licensee shall earn 30 CEUs for the last renewal period or shall meet the requirement specified in K.A.R. 66-14-1(b). (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7013 and K.S.A. 74-7025; effective March 1, 1996; amended Feb. 4, 2000; amended Nov. 1, 2002; amended Sept. 26, 2014; amended Dec. 4, 2020.)

66-14-7. Records. (a) Each licensee shall maintain records on forms prescribed by the board to support the continuing education units claimed by the licensee.

The records shall include the following:

(1) A log showing the type of continuing edu-

cation activity claimed and the number of CEUs earned; and

(2) supporting documentation, which may include documentation of either of the following:

(A) Presentations or attendance at meetings, conventions, conferences, programs, seminars, and similar functions, which shall be documented by verification records in the form of completion certificates, sign-in sheets, or other documents supporting evidence of attendance; or

(B) authoring published papers, articles, or books, which shall be documented by proof of publication.

(b) Each licensee shall maintain the records specified in subsection (a) for at least four years and shall provide a copy to the board, upon request. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7013 and 74-7025; effective March 1, 1996; amended Jan. 23, 2009; amended Sept. 1, 2015; amended Dec. 4, 2020.)

66-14-8. Reinstatement. Any individual may apply for reinstatement of a cancelled license by performing the following:

(a) Submitting an application for reinstatement;

(b) paying the required reinstatement fee; and

(c) providing evidence of obtaining 30 CEUs in the immediately preceding two-year period. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7025; effective March 1, 1996; amended Dec. 4, 2020.)

66-14-9. Proof of compliance. Each licensee shall provide proof of meeting the continuing education requirements of the board. If the licensee fails to furnish the information required by the board, the individual's license shall not be renewed. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7025; effective March 1, 1996; amended Dec. 4, 2020.)

66-14-10. (Authorized by K.S.A. 2014 Supp. 74-7013; implementing K.S.A. 2014 Supp. 74-7013 and 74-7025; effective March 1, 1996; amended Feb. 9, 2001; amended June 18, 2010; amended Sept. 1, 2015; revoked Dec. 4, 2020.)

66-14-11. (Authorized by K.S.A. 2014 Supp. 74-7013; implementing K.S.A. 2014 Supp. 74-7013 and 74-7025; effective March 1, 1996; amended Sept. 1, 2015; revoked Dec. 4, 2020.)

66-14-12. Disallowance. If the board disallows any continuing education units claimed by an applicant for license renewal or reinstatement,

the applicant shall have 120 days after notification of the disallowance to substantiate the original claim or to earn other continuing education units to meet the minimum requirement. (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7025; effective March 1, 1996; amended Dec. 4, 2020.)

Article 15.—FEES

66-15-1. Fees. The following nonrefundable fees shall be charged to any applicant, licensee, or holder of a certificate of authorization for any of the technical professions and shall be collected by the board:

- (a) Application for original license \$60.00

(b) Application for license by reciprocity \$250.00

(c) Application for certificate of authorization for a business entity..... \$170.00

(d) Biennial renewal of an active license..... \$70.00
- (e) Biennial renewal of a certificate of authorization for a business entity..... \$95.00

(f) Late fee for the untimely renewal of a license or certificate of authorization \$20.00

(g) Return from inactive license to active practice license \$20.00

(h) Reinstatement of a cancelled license..... \$100.00

(i) Replacement of a lost, destroyed, or mutilated license or certificate of authorization \$20.00

(j) Replacement of any revoked or suspended license \$100.00

(k) Replacement of a revoked or suspended certificate of authorization \$150.00
- (Authorized by K.S.A. 74-7013; implementing K.S.A. 74-7009, 74-7025, and 74-7026; effective Jan. 17, 2020.)

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

- 67-1. APPLICATION FOR LICENSE.
- 67-2. EXAMINATIONS.
- 67-3. DUTIES OF SPONSORS OF TEMPORARY LICENSEES.
- 67-5. RENEWALS.

Article 1.—APPLICATION FOR LICENSE

67-1-8. Potentially disqualifying civil and criminal records; advisory opinion; fee. (a) Any of the following criminal records may disqualify an applicant from receiving a license:

- (1) Conviction of any felony related to the fitting and dispensing of hearing instruments;
- (2) conviction of any class A misdemeanor that includes any of the following:

(A) A crime whose victim was a client, customer, or other individual with whom the applicant had a professional or fiduciary relationship;

(B) a crime that occurred at the applicant's work site or while the applicant was on work duty;

(C) a crime involving fraud, theft, or misappropriation of another person's money or property;

(D) a crime classified as a sex offense or requiring registration as a sex offender by the jurisdiction in which the conviction occurred;

(E) a crime involving assault or battery as defined by the jurisdiction in which the conviction occurred;

(F) a crime involving the unlawful use, possession, or distribution of drugs; or

(G) a crime involving the abuse, neglect, or exploitation of a child, elderly person, or disabled person as defined by the jurisdiction in which the conviction occurred; or

(3) conviction of any other misdemeanor that meets both of the following conditions:

(A) The crime involved at least one of the circumstances described in paragraph (a)(2); and

(B)(i) Fewer than five years have passed since the applicant completed that individual's sentence, including any term of incarceration, probation, or community supervision; or

(ii) the applicant has been convicted of another crime in the five years immediately preceding the date of application for license.

(b) Civil records that may disqualify an applicant from receiving a license shall be records of any court judgment or settlement in which the applicant admitted or was found to have engaged in conduct that would constitute a violation of the hearing instrument act or any of the board's regulations. Those records shall not be used to disqualify an applicant for more than five years after the applicant satisfied any judgment or restitution ordered by the court or agreed to in the settlement.

(c) Any individual with a criminal or civil record described in this regulation may submit a petition to the board for an informal, advisory opinion concerning whether the individual's civil or criminal record may disqualify the individual from licensure. Each petition shall include the following:

(1) The details of the individual's civil or criminal record, including a copy of the court records or the settlement agreement;

(2) an explanation of the circumstances that resulted in the civil or criminal record; and

(3) a check or money order in the amount of \$50.00. (Authorized by K.S.A. 74-120 and 74-5806; implementing K.S.A. 74-120 and 74-5818; effective Jan. 10, 2020.)

Article 2.—EXAMINATIONS

67-2-4. Examinations. (a) Each applicant shall be required to take an examination that includes both written and practical demonstrations of technical proficiency. Each applicant shall be required to take and pass the written examination before taking the practical examination. The passing score on the practical examination shall be at least 75 percent for each individual section. The written examination shall be graded by the international hearing society, subject to approval by the board.

(b) After the board has approved the applicant's passing score on the written examination, the applicant shall be notified by letter of the date, time, and location of the practical examination. If the board receives proof of an applicant's passing score on the written examination from the international hearing society fewer than 30 days before the next scheduled practical examination and determines that the examination site can accommodate an additional examinee, the applicant may be permitted to take that practical examination. The applicant shall be notified by letter of the results of the practical examination within 30 days from the date of that examination. (Authorized by K.S.A. 74-5806; implementing K.S.A. 74-5812; effective May 1, 1982; amended May 1, 1984; amended March 6, 1995; amended May 12, 2000; amended Feb. 17, 2017; amended Jan. 10, 2020.)

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.)

Article 5.—RENEWALS

67-5-5. Fees. The following fees shall be collected by the board:

(a)(1) License application.....	\$100
(2) Licensure verification, for each state	\$15
(b)(1) Temporary license	\$100
(2) Temporary license renewal.....	\$100
(3) Change of supervisor	\$15
(c)(1) License	\$100
(2) License or certificate of endorsement renewal.....	\$100
(3) License or certificate of endorsement late renewal.....	\$200
(4) License or certificate of endorsement reinstatement.....	\$300
(5) Inactive license or renewal of inactive license.....	\$25
(6) Conversion of inactive license to active license.....	\$100
(d)(1) Written examination.....	\$35
(2) Practical examination, each section	\$25
(e) Replacement of license or certificate	\$15
(f) Insufficient funds check	\$25

(Authorized by and implementing K.S.A. 74-5810a; effective May 25, 2007; amended Feb. 17, 2017; amended Jan. 10, 2020.)

Agency 68

State Board of Pharmacy

Articles

- 68-1. REGISTRATION AND EXAMINATION OF PHARMACISTS.
- 68-2. DRUGSTORES.
- 68-5. GENERAL RULES.
- 68-7. MISCELLANEOUS PROVISIONS.
- 68-9. AUTOMATED PRESCRIPTION SYSTEMS.
- 68-11. FEES.
- 68-13. PARENTERAL PRODUCTS.
- 68-14. WHOLESALE DISTRIBUTORS.
- 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 education for pharmacists. (a)(1) “Continuing education” shall mean an organized and systematic education experience beyond basic preparation that is designed to achieve the following:

(A)(i) Increase knowledge, improve skills, or enhance the practice of pharmacy; or

(ii) improve protection of the public health and welfare; and

(B) ensure continued competence.

(2) “ACPE-NABP CPE monitor service” shall mean the electronic tracking service of the accreditation council for pharmacy education and the national association of boards of pharmacy for monitoring continuing education that pharmacists receive from continuing education providers.

(b) Thirty clock-hours of continuing education shall be required for renewal of a pharmacist license during each licensure period. Continuing education clock-hours may be prorated for licensure periods that are less than biennial at a rate of 1.25 clock-hours per month.

(c)(1) Each continuing education program shall be approved by the board. Each provider or licensee shall submit the continuing education program to the board at least 10 days in advance for consideration for approval. Each provider shall advertise the continuing education program

as having only pending approval until the provider is notified of approval by the board.

(2) 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, and medical school courses.

(3) Each provider shall furnish a certificate of completion to the licensee for each continuing education program that the licensee has successfully completed. Each certificate shall be in a format approved by the board and shall include the following:

(A) The licensee's name;

(B) the title and date of the approved continuing education program;

(C) the name of the provider;

(D) the number of continuing education clock-hours approved by the board;

(E) the number of continuing education clock-hours completed by the licensee;

(F) the approved program number issued by the board; and

(G) the provider's dated signature, certifying program completion.

(d) Within 30 days of completion, each licensee shall submit to the board proof of completion of

any approved continuing education program not reported to the ACPE-NABP CPE monitor service. No credit shall be given for any certificate of completion received by the board after the June 30 expiration date of each licensure period.

(e) A licensee shall not be allowed to carry forward excess clock-hours earned in one licensure period into the next licensure period.

(f) The required continuing education shall be obtained in the two-year licensure period ending on the June 30 expiration date of each license. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2015 Supp. 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; amended Aug. 19, 2016.)

68-1-1f. Foreign graduates. (a) Each applicant who has graduated from a school or college of pharmacy or a pharmacy department of a university located outside of the United States or who is not a citizen of the United States shall provide proof that the applicant has reasonable ability to communicate verbally and in writing with the general public in English as specified in this regulation.

(b) Each foreign applicant shall be required to meet the English language requirements for licensure under the pharmacy act of the state of Kansas by passing the internet-based test of English as a foreign language (TOEFL iBT) with at least the following minimum scores:

(1) 22 in reading;

(2) 21 in listening;

(3) 26 in speaking; and

(4) 24 in writing. (Authorized by K.S.A. 65-1630 and K.S.A. 65-1631; implementing K.S.A. 65-1631; effective May 1, 1983; amended June 6, 1994; amended March 20, 1995; amended Aug. 1, 1997; amended Oct. 20, 2006; amended Aug. 19, 2016.)

68-1-1g. (Authorized by and implementing K.S.A. 65-1631; effective Oct. 20, 2006; revoked Aug. 19, 2016.)

68-1-1h. Foreign pharmacy graduate equivalency examination. In addition to meeting 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 1,740 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; amended Dec. 15, 2017.)

Article 2.—DRUGSTORES

68-2-5. Pharmacist-in-charge; notice to board. Each pharmacist shall submit to the board, on a form provided by the board, notice

of ceasing to serve as the pharmacist-in-charge at a pharmacy or registrant required to have a pharmacist-in-charge no later than five days after ceasing to serve as the pharmacist-in-charge. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2019 Supp. 65-1626, K.S.A. 65-1637c, and K.S.A. 65-1643; effective Jan. 1, 1966; amended, E-76-31, Aug. 11, 1975; amended May 1, 1976; amended May 1, 1978; amended May 1, 1988; amended Aug. 1, 1997; amended March 22, 2002; amended Feb. 7, 2020.)

68-2-10. Cessation of operations. (a) When any pharmacy ceases operations at the location for which the registration was received, the pharmacist-in-charge shall meet the following requirements:

(1) Within five days after ceasing operations at that location, submit to the board, on a form provided by the board, notice of cessation of pharmacy operations, which shall include the following:

- (A) The date the pharmacy ceased operations;
- (B) a signed statement attesting that an inventory of all controlled substances was conducted;
- (C) the location, pharmacy registration number, contact information, and manner of disposition of the remaining stocks of drugs; and

(D) the location, pharmacy registration number, contact information, and manner of disposition of all records required by the Kansas pharmacy practice act to be maintained; and

(2) no more than 10 days after ceasing operations at that location, notify each patient household that has received a prescription from the pharmacy within the previous two-year period, by U.S. mail, phone, text message, or electronic mail, of the cessation of operations of the pharmacy and the contact information and location for obtaining copies of patient records.

(b) The pharmacist-in-charge of any pharmacy that acquires patient records from a pharmacy that ceases operation shall be responsible for the preservation of the acquired records for the remainder of the term that the records are required by the Kansas pharmacy practice act to be preserved.

(c) In the absence of a pharmacist-in-charge, the owner of each pharmacy shall meet the requirements of this regulation. (Authorized by K.S.A. 65-1630; implementing K.S.A. 65-1642 and K.S.A. 65-1643; effective Jan. 1, 1966; amended, E-76-31, Aug. 11, 1975; amended May 1, 1976; amended Feb. 7, 2003; amended Jan. 3, 2020.)

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 pharmacy 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 II, III, IV, and V, 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 C.F.R. part 1311 shall be considered an original, written, signed prescription drug order. (Authorized by K.S.A. 65-1630 and K.S.A. 2014 Supp. 65-1642; implementing K.S.A. 2014 Supp. 65-1637b and K.S.A. 2014 Supp. 65-1642; effective Feb. 5, 1999; amended Dec. 27, 1999; amended June 2, 2006; amended Oct. 23, 2009; amended May 20, 2011; amended Feb. 13, 2015.)

68-2-23. Notification to board; disciplinary action. Each pharmacy owner shall notify the board in writing within 30 days of any denial, limitation, suspension, revocation, voluntary surrender, or other disciplinary action taken by the state of Kansas or another jurisdiction against the pharmacy or the pharmacy owner or any application, license, registration, or permit held by the pharmacy owner. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2017 Supp. 65-1627; effective Jan. 4, 2019.)

Article 5.—GENERAL RULES

68-5-16. Ratio of pharmacy technicians to pharmacists. The ratio of pharmacy technicians to pharmacists in any pharmacy shall not exceed four to one. A pharmacist shall not supervise at any time more than two pharmacy technicians

who have not passed a certification examination approved by the board pursuant to K.A.R. 68-5-17. (Authorized by and implementing K.S.A. 65-1663; effective, T-68-8-22-05, Aug. 22, 2005; effective May 26, 2006; amended April 27, 2007; amended Feb. 7, 2020.)

68-5-17. Pharmacy technicians; certification examination; request for extension. The following requirements shall apply to each individual who applies for a new pharmacy technician registration on or after July 1, 2017:

(a) Each pharmacy technician shall be required to pass either the pharmacy technician certification board (PTCB) certification examination or the national healthcareer association (NHA) ExCPT certification examination before the first renewal of the pharmacy technician's registration.

(1) Each pharmacy technician shall be required to attain a scaled score of at least 1400 on the PTCB certification examination in order to pass.

(2) Each pharmacy technician shall be required to attain a score of at least 390 on the NHA ExCPT certification examination in order to pass.

(b) Any pharmacy technician who is unable to take or pass an approved certification examination before the first renewal of the pharmacy technician's registration may submit to the board, on a form provided by the board, a request for a six-month extension to pass an approved certification examination. The request shall be submitted to the board at least 30 days before the pharmacy technician's registration expiration date and shall provide the reason for the request, which may include any of the following:

(1) Previous examination attempts and failures;

(2) the commencement date of training or preparation and the reasons for delay;

(3) an event that directly resulted from the occurrence of natural causes outside the pharmacy technician's control;

(4) a change in employment and the relevant dates; or

(5) medical necessity.

(c) Within 30 days after passing an approved certification examination or before the first renewal, whichever is earlier, each pharmacy technician shall submit to the board proof of successful completion of the examination. (Authorized by K.S.A. 2016 Supp. 65-1663, as amended by L. 2017, ch. 34, sec. 15, and K.S.A. 2016 Supp. 65-1692; implementing K.S.A. 2016 Supp. 65-1663, as amended by L. 2017, ch. 34, sec. 15; effective May 11, 2018.)

68-5-18. Pharmacy technicians; continuing education. (a)(1) “Continuing education” shall mean an organized and systematic education experience beyond basic preparation that is designed to achieve the following:

(A)(i) Increase knowledge, improve skills, or enhance the practice of pharmacy; or

(ii) improve protection of the public health and welfare; and

(B) ensure continued competence.

(2) “ACPE-NABP CPE monitor service” shall mean the electronic tracking service of the accreditation council for pharmacy education and the national association of boards of pharmacy for monitoring continuing education that pharmacy technicians receive from continuing education providers.

(b) Twenty clock-hours of continuing education shall be required for renewal of a pharmacy technician registration during each registration period. Continuing education clock-hours may be prorated for registration periods that are less than biennial at a rate of 0.8 clock-hours per month.

(c)(1) Each continuing education program shall be approved by the board. Each provider or registrant shall submit the continuing education program to the board at least 10 days in advance for consideration for approval. Each provider shall advertise the continuing education program as having only pending approval until the provider is notified of approval by the board.

(2) 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, and medical school courses.

(3) Each provider shall furnish a certificate of completion to the pharmacy technician for each continuing education program that the registrant has successfully completed. Each certificate shall be in a format approved by the board and shall include the following:

(A) The registrant’s name;

(B) the title and date of the approved continuing education program;

(C) the name of the provider;

(D) the number of continuing education clock-hours approved by the board;

(E) the number of continuing education clock-hours completed by the registrant;

(F) the approved program number issued by the board; and

(G) the provider’s dated signature, certifying program completion.

(d) Within 30 days of completion, each pharmacy technician shall submit to the board proof of completion of any approved continuing education program not reported to the ACPE-NABP CPE monitor service. No credit shall be given for any certificate of completion received by the board after the October 31 expiration date of each registration period.

(e) A licensee shall not be allowed to carry forward excess clock-hours earned in one registration period into the next registration period.

(f) The required continuing education shall be obtained in the two-year registration period ending on the October 31 expiration date of each registration. (Authorized by K.S.A. 65-1630 and K.S.A. 2015 Supp. 65-1663; implementing K.S.A. 2015 Supp. 65-1663; effective Aug. 19, 2016.)

Article 7.—MISCELLANEOUS PROVISIONS

68-7-10. Pharmacy-based drug distribution systems in long-term care facilities; emergency medication kits. (a) Each of the following terms, as used in this regulation, shall have the meaning specified in this subsection:

(1) “Automated drug delivery system” means an automated dispensing system, as defined by K.S.A. 2017 Supp. 65-1626 and amendments thereto, that is located in a long-term care facility, uses a robotic, mechanical, or computerized device to supply each drug to an individual licensed by the board of healing arts or the board of nursing, who shall administer the drug to a patient, and meets the requirements of K.A.R. 68-9-3.

(2) “Formulary” means a prescription drug list approved by the pharmacy and therapeutics committee or an equivalent committee governing the security, control, and distribution of drugs within a long-term care facility.

(3) “Long-term care facility” means “nursing facility,” as defined in K.S.A. 39-923 and amendments thereto.

(4) “Traditional system” means a drug distribution system in which the pharmacist receives a prescription order for an individual patient and fills the prescription in any manner other than packaging individual doses in unit-dose containers.

(5) “Unit-dose container” means a single-unit or

multiple-unit container for articles intended for administration in single doses and directly from the container, by other than parenteral route.

(A) "Multiple-unit container" means a container that permits the withdrawal of successive portions of the contents without changing the strength, quality, or purity of the remaining portion.

(B) "Single-unit container" means a container that is designed to hold a quantity of a drug intended for administration as a single dose promptly after the container is opened.

(6) "Unit-dose system" means a drug distribution system that is pharmacy-based and uses unit-dose containers that enable distribution of packaged doses in a manner that preserves the identity of the drug until the time of administration.

(b) Each pharmacy-based drug distribution system for a long-term care facility shall meet the following requirements:

(1) Be consistent with the medication needs of each patient;

(2) conform to all federal and state laws and regulations pertaining to pharmacies; and

(3) meet the following additional requirements:

(A) Each prescription shall be dispensed from a pharmacy within a time period that reasonably meets the needs of the patient, considering the following factors:

(i) The need for the drug as an emergency;

(ii) the availability of the drug;

(iii) the pharmacy's hours of operation; and

(iv) the stability of the drug;

(B) the supplying pharmacy shall be responsible for the safe delivery of drugs to a designated person or persons in the long-term care facility;

(C) the supplying pharmacy shall provide a method of identifying the date and quantity of medication dispensed;

(D) a patient medication profile record system shall be maintained for each long-term care facility patient serviced by the supplying pharmacy and shall contain the information necessary to allow the pharmacist to monitor each patient's drug therapy; and

(E) each medication distribution system container shall be labeled to permit the identification of the drug therapy.

(c) Each unit-dose system shall meet the following requirements, in addition to the requirements in subsection (b):

(1) All medication shall be packaged in unit-dose containers as far as practicable and the packaging shall meet the requirements of K.A.R.

68-7-15 and 68-7-16, unless the manufacturer specifies a different type of packaging to be used to prevent adulteration as defined by K.S.A. 65-668, and amendments thereto.

(2) The pharmacist shall be responsible for filling and refilling prescriptions or prescriber's orders, or both, according to the directions of the prescriber by relying on the original prescription or prescriber's order or a copy thereof.

(3) The pharmacist shall comply with all requirements for prescription orders, including inventory and recordkeeping requirements, under the following:

(A) The Kansas uniform controlled substances act, K.S.A. 65-4101 et seq. and amendments thereto;

(B) the Kansas pharmacy act, K.S.A. 65-1625 et seq. and amendments thereto;

(C) the board's applicable regulations in articles 1 and 20; and

(D) all federal laws and regulations applicable to prescriptions or medication orders.

(4) Packaging for the unit-dose system shall take place at the address of the pharmacy providing the unit-dose system.

(5) Container requirements for unit-dose systems may include trays, bins, carts, and locked cabinets if the requirements of K.A.R. 68-7-14 are met. If these options are used, all patient medication trays or drawers shall be sufficiently labeled to identify each patient.

(6) Each unit-dose system shall provide a verification check at the point of patient administration in order to ensure proper drug utilization.

(7) The delivery time-cycle or hours of exchange shall not be limited to a specific time, but shall depend upon the pharmacist's discretion, the needs of the long-term care facility, the stability of the drug, and the type of container used.

(8) The pharmacist shall have sole responsibility for dispensing under the unit-dose system.

(d)(1) Each emergency medication kit shall contain only the drugs that are generally regarded by practitioners as essential to the prompt treatment of sudden and unforeseen changes in a patient's condition that present an imminent threat to the patient's life or well-being.

(2) Each drug to be contained within an emergency medication kit shall be approved by the long-term care facility's pharmaceutical services committee or its equivalent, either of which shall be composed of at least a practitioner and a pharmacist.

(3) The pharmacist providing each emergency medication kit shall ensure that the following requirements are met:

(A) The kit shall be supplied by a pharmacist, who shall retain possession of the drug until it is administered to the patient upon the valid order of a prescriber.

(B) If the kit is not in an automated drug delivery system, the kit shall be locked or sealed in a manner that indicates when the kit has been opened or tampered with.

(C) The kit shall be securely locked in a sufficiently well-constructed cabinet or cart or in an automated drug delivery system, with drugs properly stored according to the manufacturer's recommendations. Access to the cabinet or cart shall be available only to each nurse specified by the pharmaceutical services committee or its equivalent.

(D) The kit shall have an expiration date equivalent to the earliest expiration date of the drugs within the kit, but in no event more than one year after all of the drugs were placed in the kit.

(E) Unless the kit is in an automated drug delivery system, all drugs contained within the emergency medication kit shall be returned to the pharmacy as soon as the kit has been opened, along with the prescriber's drug order for medications administered. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2017 Supp. 65-1637, K.S.A. 2017 Supp. 65-1642, and K.S.A. 2017 Supp. 65-1648; effective May 1, 1978; amended May 1, 1983; amended Sept. 9, 1991; amended Aug. 19, 2016; amended Jan. 4, 2019.)

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 inter-

im 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 non-discretionary 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 admixtures. 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.

er 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.)

68-7-12a. Nonresident pharmacies. Each nonresident pharmacy shall meet the requirements of this regulation to be and remain registered in Kansas by the board.

(a)(1) Each pharmacy shall be currently licensed or registered in good standing in the state in which it is located.

(2) Each practicing pharmacist employed by or under contract with the pharmacy shall be licensed as a pharmacist in the state where the pharmacist practices.

(3) Each pharmacy shall provide and maintain, in readily retrievable form, the record of a satisfactory inspection conducted within the previous 18-month period by the licensing entity of the state where the pharmacy is located. If no such inspection record is readily available, the record of a satisfactory inspection conducted at the expense of the pharmacy within the previous 18-month period by a third party recognized by the board to inspect may be accepted.

(4) Each pharmacy shall designate a pharmacist-in-charge, as defined by K.S.A. 65-1626 and amendments thereto, who shall be named in the application and who shall be responsible for receiving communications from the board.

(A) The pharmacist-in-charge shall timely respond to any lawful request for information from the board or law enforcement authorities.

(B) The pharmacist-in-charge shall be responsible for receiving and maintaining publications distributed by the board.

(b) The owner or the owner's authorized representative of the nonresident pharmacy shall apply for registration and renewal on forms approved by the board. The information reasonably necessary to carry out the provisions of K.S.A. 65-1657 and amendments thereto, including the name, address, and position of each officer and director of a corporation or of the owners if the pharmacy is not a corporation, shall be required by the board.

(c) An exemption for registration may be granted by the board under K.S.A. 65-1657 and amendments thereto, upon application by any nonresident pharmacy that confines its dispensing activity to isolated transactions. The following shall be considered to determine whether to grant an exemption:

(1) The number of prescriptions dispensed or reasonably expected to be dispensed into Kansas;

(2) the number of patients served or reasonably expected to be served in Kansas;

(3) any efforts to promote the pharmacy's services in Kansas;

(4) any contract between the pharmacy and either an employer or organization to provide pharmacy services to employees or other beneficiaries in Kansas;

(5) medical necessity;

(6) the effect on the health and welfare of persons in Kansas; and

(7) any other relevant matters.

(d) The pharmacy owner shall pay an annual registration fee as specified in K.A.R. 68-11-2.

(e) The pharmacy records of drugs dispensed to Kansas addresses shall be maintained so that the records are readily retrievable upon request. These records shall be made available for inspection by the board or by Kansas law enforcement authorities upon request.

(f) The pharmacy shall maintain an incoming toll-free telephone number for use by Kansas customers to facilitate personal communication with a pharmacist with access to patient records.

(1) This service shall be available during normal business hours for at least 40 hours and six days per week.

(2) This telephone number and any others available for use shall be printed on each container of drugs dispensed in Kansas.

(3) The toll-free number shall have a sufficient number of extensions to provide reasonable access to incoming callers.

(g) Generic drugs shall be dispensed into Kansas only pursuant to K.S.A. 65-1637, and amendments thereto.

(h) The facilities and records of the pharmacy shall be subject to inspection by the board. Satisfactory inspections conducted within the previous 18-month period by the licensing entity of the state where the pharmacy is located or a third party recognized by the board to inspect may be accepted in lieu of inspection by the board.

(i) Each owner or owner's authorized representative of the nonresident pharmacy either doing business in Kansas or providing pharmacy services, dispensing, or either delivering or causing to be delivered prescription drugs to Kansas consumers shall designate a resident agent in Kansas for service of process and file this information with the secretary of state. (Authorized by and implementing K.S.A. 2016 Supp. 65-1657; effective March 29, 1993; amended March 20, 1995; amended Feb. 7, 2003; amended Jan. 12, 2018.)

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.)

68-7-15. Prepackaging or repackaging of oral drugs. All prepackaging or repackaging of oral drugs, whether in a unit-dose container or multiple-dose container, shall meet the requirements of this regulation.

(a) Packaging in advance of immediate need shall be done by a pharmacist or under the pharmacist's direct supervision.

(b) Packaging shall be limited to the drugs dispensed from or supplied by the pharmacy or in accordance with a shared services agreement.

(c) All containers used for packaging and the storage conditions shall be maintained according to the manufacturer's recommendations to preserve the stability of the drug. The expiration date shall be the manufacturer's expiration date, the expiration date for the type of packaging material used, or not more than 12 months from the date of packaging, whichever is earlier.

(d) An electronic or a written record shall be established for lot numbers for recall purposes.

(e) If an area apart or separated from the prescription drug area is used for prepackaging or repackaging, the area shall be enclosed and locked when a pharmacist is not in attendance in that area.

(f) In lieu of separately dispensing a drug and an ingestible event marker approved by the food and drug administration to monitor whether a patient is taking the drug as prescribed, any pharmacist may use an ingestible event medication adherence package pursuant to a valid prescription order or after obtaining the consent of the practitioner, caregiver, or patient.

(g) For purposes of this regulation, "ingestible event medication adherence package" shall mean an ingestible unit-dose package designed to ensure medication adherence that contains drugs from a manufacturer's original container and an ingestible event marker, as defined by 21 C.F.R. 880.6305, dated April 1, 2016 and hereby adopted by reference.

(h) In addition to meeting the requirements of

this regulation, all repackaging of sterile preparations shall meet the requirements of K.A.R. 68-13-4. (Authorized by K.S.A. 65-1630; implementing K.S.A. 65-1634; effective May 1, 1978; amended Dec. 15, 2017; amended Nov. 29, 2019.)

68-7-20. Shared services. (a)(1) "Order" shall mean either of the following:

(A) A prescription order as defined in K.S.A. 65-1626, and amendments thereto; or

(B) a medication order as defined in K.A.R. 68-5-1.

(2) "Shared order filling" shall mean the following:

(A) Preparing, packaging, compounding, or labeling an order, or any combination of these functions, by a person authorized by the pharmacy act to do so and located at a pharmacy on behalf of and at the request of another pharmacy; and

(B) returning the filled order to the requesting pharmacy for delivery to the patient or patient's agent or, at the request of the requesting pharmacy, directly delivering the filled order to the patient.

(3) "Shared order processing" shall mean the following order-processing functions that are performed by a person authorized by the pharmacy act and located at a pharmacy, on behalf of and at the request of another pharmacy:

(A) Interpreting and entering the order; and

(B) performing drug utilization reviews, claims adjudication, refill authorizations, or therapeutic interventions, or any combination of these functions.

(4) "Shared services" shall mean shared order filling or shared order processing, or both.

(b) Each pharmacy participating in shared services shall be registered by the board as either a resident or a nonresident pharmacy.

(c) Pharmacies may provide or utilize shared services functions only if the pharmacies involved meet the following requirements:

(1) Share a common electronic file or appropriate technology to allow access to sufficient information necessary to fill, refill, or perform shared services in conformance with the pharmacy act and the board's regulations; and

(2)(A) Have the same owner; or

(B) have a written contract outlining the services provided and the shared responsibilities of each party in complying with the pharmacy act and the board's regulations.

(d) Each pharmacy engaged in shared services shall meet the following requirements:

(1) Maintain records identifying, individually for each order processed, the name of each pharmacist, technician, pharmacy student, and intern who took part in the drug utilization review, refill authorization, or therapeutic intervention functions performed at that pharmacy;

(2) maintain records identifying, individually for each order filled or dispensed, the name of each pharmacist, technician, pharmacy student, and intern who took part in the filling, dispensing, and counseling functions performed at that pharmacy;

(3) report to the board within 30 days the results of any disciplinary action taken by another state's pharmacy board;

(4) maintain a mechanism for tracking the order during each step of the processing and filling procedures performed at the pharmacy;

(5) maintain a mechanism to identify on the prescription label all pharmacies involved in filling the order;

(6) provide for adequate security to protect the confidentiality and integrity of patient information; and

(7) be able to obtain for inspection any required record or information within 72 hours of any request by a board representative.

(e) Each pharmacy providing or utilizing shared services shall adopt and maintain a joint policies and procedures manual that meets both of the following conditions:

(1) The manual describes how compliance with the pharmacy act and the board's regulations will be accomplished while engaging in shared services.

(2) A copy of the manual is maintained in each pharmacy.

(f) Nothing in this regulation shall prohibit an individual pharmacist licensed in Kansas who is an employee of or under contract with the pharmacy from accessing the pharmacy's electronic database from inside or outside the pharmacy and performing the order-processing functions permitted by the pharmacy act and the board's regulations, if both of the following conditions are met:

(1) The pharmacy establishes controls to protect the privacy and security of confidential records.

(2) None of the database is duplicated, downloaded, or removed from the pharmacy's electronic database.

(g) Nothing in this regulation shall permit a pharmacy, physician, physician assistant, or mid-level practitioner to utilize shared services to operate a requesting pharmacy that is not actively

engaged in the practice of pharmacy. (Authorized by K.S.A. 65-1630 and K.S.A. 65-1656; implementing K.S.A. 2016 Supp. 65-1626, as amended by L. 2017, ch. 34, sec. 1, K.S.A. 2016 Supp. 65-1626a, K.S.A. 2016 Supp. 65-1637, as amended by L. 2017, ch. 34, sec. 6, K.S.A. 2016 Supp. 65-1642, as amended by L. 2017, ch. 34, sec. 8, and K.S.A. 65-1656; effective April 16, 2004; amended April 18, 2008; amended Dec. 15, 2017.)

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 repackaged 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.)

68-7-22. Collaborative practice. (a) Each of the following terms, as used in this regulation, shall have the meaning specified in this subsection:

(1) "Collaborative drug therapy management" and "CDTM" mean a practice of pharmacy in which a pharmacist performs certain pharmaceutical-related patient care functions for a specific patient, and the functions have been delegated to the pharmacist by a physician through a collaborative practice agreement.

(2) "Collaborative practice agreement" and "CPA" mean a signed agreement or protocol voluntarily entered into between one or more pharmacists and one or more physicians that provides for collaborative drug therapy management.

(3) "Pharmacist" means a person licensed, without limitation or restriction, to practice pharmacy in Kansas.

(4) "Physician" means a person who is licensed to practice medicine and surgery in Kansas and who is a signing party to the pharmacist's CPA or update.

(b) Any pharmacist may practice collaborative drug therapy management only pursuant to a collaborative practice agreement or update established and maintained in accordance with this regulation. Although a physician shall remain ultimately responsible for the care of the patient, each pharmacist who engages in CDTM shall be responsible for all aspects of the CDTM performed by the pharmacist.

A pharmacist shall not become a party to a CPA or update that authorizes the pharmacist to engage in any CDTM function that is not appropriate to the training and experience of the pharmacist or physician, or both. A pharmacist shall not provide CDTM to a patient if the pharmacist knows that the patient is not being treated by a physician who has signed the pharmacist's current CPA.

(c)(1) Each CPA and update shall be dated and signed by each physician and each pharmacist. Each CPA and update shall include the following:

(A) A statement of the general methods, procedures, and decision criteria that the pharmacist is to follow in performing CDTM;

(B) a statement of the procedures that the pharmacist is to follow to document the CDTM decisions made by the pharmacist;

(C) a statement of the procedures that the pharmacist is to follow to communicate to the physician either of the following:

- (i) Each change in a patient's condition identified by the pharmacist; or
- (ii) each CDTM decision made by the pharmacist;

(D) a statement identifying the situations in which the pharmacist is required to initiate contact with the physician; and

(E) a statement of the procedures to be followed by the pharmacist if an urgent situation involving a patient's health occurs, including identification of an alternative health care provider that the pharmacist should contact if the pharmacist cannot reach a physician.

(2) A CPA shall not authorize a pharmacist to administer influenza vaccine except pursuant to K.S.A. 65-1635a, and amendments thereto.

(d) Each CPA and update shall be reviewed and updated at least every two years. A signing phar-

macist shall deliver a digital or paper copy of each CPA and update to the board within five business days after the CPA or update has been signed by all parties.

(e) Within 48 hours of making any drug or drug therapy change to a patient's treatment, the pharmacist shall initiate contact with a physician, identifying the change.

(f) This regulation shall not be interpreted to impede, restrict, inhibit, or impair either of the following:

(1) Current hospital or medical care facility procedures established by the hospital or medical care facility pharmacy and either the therapeutics committee or the medical staff executive committee; or

(2) the provision of medication therapy management as defined by the centers for medicare and medicaid services under the medicare part D prescription drug benefit.

(g) As part of each pharmacist's application to renew that individual's license, the pharmacist shall advise the board if the pharmacist has entered into a CPA. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2015 Supp. 65-1626a; effective May 27, 2016.)

68-7-23. Dispensing and administration of emergency opioid antagonist without a prescription. (a) Any pharmacist may dispense an emergency opioid antagonist and the necessary medical supplies needed to administer an emergency opioid antagonist to a patient, bystander, first responder agency, or school nurse without a prescription, in accordance with the opioid antagonist protocol and this regulation.

(b) Each pharmacist dispensing an emergency opioid antagonist pursuant to this regulation shall submit to the board a form provided by the board, within five days of signing the opioid antagonist protocol, and shall maintain a signed and dated copy of the opioid antagonist protocol, which shall be made available to the pharmacist-in-charge, the board, and the board's designee. Each pharmacist that no longer dispenses emergency opioid antagonists pursuant to the opioid antagonist protocol shall notify the board, in writing, within 30 days of discontinuation.

(c) Each emergency opioid antagonist dispensed by a pharmacist shall be labeled in accordance with the pharmacy practice act and any implementing regulations.

(d) Each pharmacist who dispenses an emer-

gency opioid antagonist pursuant to this regulation shall perform the following:

(1) For each patient, bystander, first responder agency, or school nurse to whom the emergency opioid antagonist is dispensed, instruct that person or entity to summon emergency medical services as soon as practicable either before or after administering the emergency opioid antagonist;

(2) for each patient or bystander to whom the emergency opioid antagonist is dispensed, provide in-person counseling, training, and written educational materials appropriate to the dosage form dispensed, including the following:

(A) Risk factors of opioid overdose;

(B) strategies to prevent opioid overdose;

(C) signs of opioid overdose;

(D) steps in responding to an overdose;

(E) information on emergency opioid antagonists;

(F) procedures for administering an emergency opioid antagonist;

(G) proper storage, disposal, and expiration date of the emergency opioid antagonist dispensed; and

(H) information on where to obtain a referral for substance use disorder treatment; and

(3) for each first responder agency or school nurse to whom the emergency opioid antagonist is dispensed, provide that person or entity with written education and training materials that meet the requirements of paragraphs (d)(1) and (2) and include the requirements to keep inventory records and report any administration of the emergency opioid antagonist to the appropriate healthcare provider pursuant to this regulation.

(e) Each pharmacist shall document the dispensing of any emergency opioid antagonist pursuant to this regulation in a written or electronic prescription record for the patient, bystander, first responder agency, or school nurse to whom the emergency opioid antagonist is dispensed. The pharmacist shall record as the prescriber either that pharmacist or the physician who has signed the opioid antagonist protocol. The prescription record shall be maintained so that the required information is readily retrievable during the pharmacy's normal operating hours and shall be securely stored within the pharmacy for at least five years.

(f) Any of the following individuals or facilities licensed or registered with the board of pharmacy or the board of healing arts may sell emergency opioid antagonists at wholesale to a first responder agency or school nurse:

(1) A pharmacist;
 (2) a physician medical director; or
 (3) a pharmacy.
 (g) Each first responder, scientist, and technician operating under a first responder agency administering an emergency opioid antagonist shall perform the following:

(1) Summon emergency medical services as soon as practicable either before or after administering the emergency opioid antagonist;

(2) immediately provide information related to the administration to any responding emergency medical services personnel, any emergency room personnel, or any treating physician; and

(3) notify the physician medical director for the first responder agency within 24 hours of administration.

(h) Each first responder agency that is dispensed an emergency opioid antagonist shall ensure that any first responder, scientist, or technician operating under the first responder agency is appropriately trained on the use of emergency opioid antagonists and meets the training requirements in subsection (d) and the opioid antagonist protocol. (Authorized by and implementing 2017 HB 2217, sec. 1; effective, T-68-6-19-17, July 1, 2017; effective Sept. 15, 2017.)

68-7-25. Notification to board; pharmacist, pharmacy technician, or pharmacy intern. Each pharmacist, pharmacy technician, and pharmacy intern shall notify the board in writing of any of the following circumstances within 30 days of the date of occurrence:

(a) Any conduct resulting in a charge of, arrest or indictment for, plea of guilty or no contest to, diversion agreement, or suspended imposition of sentence against the registrant or licensee that would constitute any of the following:

(1) Unprofessional conduct as defined by K.S.A. 65-1626, and amendments thereto;

(2) a violation of the federal or state food, drug, and cosmetic act; or

(3) a violation of the Kansas uniform controlled substances act;

(b) any conviction of any felony against the registrant or licensee; or

(c) any denial, limitation, suspension, revocation, voluntary surrender, or other disciplinary action taken by another jurisdiction against any pharmacy, pharmacist, pharmacy intern, or pharmacy technician application, license, registration, or permit held by the registrant or licensee. (Au-

thorized by K.S.A. 65-1630; implementing K.S.A. 2017 Supp. 65-1626, 65-1627, 65-1663, and 65-1676; effective Jan. 4, 2019.)

Article 9.—AUTOMATED PRESCRIPTION SYSTEMS

68-9-2. Automated drug delivery systems in pharmacies. (a) For purposes of this regulation, “automated drug delivery system” shall mean an automated dispensing system, as defined by K.S.A. 65-1626 and amendments thereto, that is located in a Kansas pharmacy and uses a robotic, mechanical, or computerized device to perform operations or activities other than compounding or administration, involving the storage, packaging, or labeling of, or any other step before dispensing, drugs. Each prescription medication prepared by an automated drug delivery system shall be verified and documented by a Kansas-licensed pharmacist as part of the dispensing process.

(b) A pharmacist-in-charge of any licensed pharmacy, licensed health care facility, or other location that is required to be supervised by a pharmacist-in-charge and that uses an automated drug delivery system shall perform the following before allowing the automated drug delivery system to be used:

(1) Ensure that the automated drug delivery system is in good working order and accurately selects the correct strength, dosage form, and quantity of the drug prescribed while maintaining appropriate recordkeeping and security safeguards;

(2) ensure that the automated drug delivery system has a mechanism for securing and accounting for all drugs removed from and subsequently returned to the system;

(3) ensure that the automated drug delivery system has a mechanism for securing and accounting for all wasted or discarded drugs, including a manual override for the pharmacist, pharmacy intern, or pharmacy technician to clear a jammed, blocked, or malfunctioning automated drug delivery system;

(4) ensure compliance with an ongoing continuous quality improvement program pursuant to K.S.A. 65-1695, and amendments thereto, or a risk management program that monitors total system performance and includes the requirement for accuracy in the drug and strength delivered;

(5) ensure that the automated drug delivery system is loaded accurately and according to the original manufacturer’s storage requirements;

(6) approve and implement an operational policy that limits the personnel responsible for the loading and unloading of drugs to or from the automated drug delivery system to any of the following:

- (A) A Kansas-licensed pharmacist;
- (B) a Kansas-registered pharmacy intern;
- (C) a Kansas-registered pharmacy technician; or
- (D) a nurse with a license issued pursuant to K.S.A. 65-1115, and amendments thereto;

(7) at the location of the automated drug delivery system, maintain a current list of those approved individuals who are authorized to unload any drug from the automated drug delivery system;

(8) approve and implement security measures that meet the requirements of all applicable state and federal laws and regulations in order to prevent unauthorized individuals from accessing or obtaining drugs;

(9) preapprove all individuals who are authorized to unload any drug from the automated drug delivery system;

(10) ensure that all drugs loaded in the automated drug delivery system are packaged in the manufacturer's original packaging or in repackaged containers, in compliance with K.A.R. 68-7-15 and K.A.R. 68-7-16, or in containers with the lot number and expiration date tracked by the automated drug delivery system;

(11) provide the board with prior written notice of the installation or removal of the automated drug delivery system; and

(12) ensure that a system of preventive maintenance and sanitation for the automated drug delivery system is established and followed. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2017 Supp. 65-1637 and 65-1642; effective July 6, 2001; amended Feb. 7, 2003; amended Aug. 19, 2016; amended Jan. 4, 2019.)

68-9-3. Automated drug delivery system to supply drugs for administration in certain facilities. (a) Each of the following terms, as used in this regulation, shall have the meaning specified in this subsection:

(1) "Automated drug delivery system" means an automated dispensing system, as defined by K.S.A. 2017 Supp. 65-1626 and amendments thereto, that is located in a facility outside of a managing pharmacy and uses a robotic, mechanical, or computerized device to supply each drug to an individual licensed by the board of healing arts or the board of nursing, who shall administer the drug to a patient.

(2) "Facility" means any of the following:

(A) A medical care facility, as defined in K.S.A. 65-1626 and amendments thereto;

(B) an institutional drug room, as defined in K.S.A. 65-1626 and amendments thereto; or

(C) a long-term care facility, which shall mean any of the following:

(i) A nursing facility, as defined in K.S.A. 39-923 and amendments thereto;

(ii) a nursing facility for mental health, as defined in K.S.A. 39-923 and amendments thereto; or

(iii) any other type of adult care home, as defined in K.S.A. 39-923 and amendments thereto, that is not specified in paragraphs (a)(2)(C)(i) and (ii) and, after submitting an application, is approved by the board for an automated drug delivery system.

(3) "Managing pharmacy" means a pharmacy located in Kansas.

(4) "Pharmacist-in-charge" means the pharmacist-in-charge of the managing pharmacy.

(b) Before the initial stocking and use of an automated drug delivery system to supply drugs for administration, the pharmacist-in-charge shall meet the following requirements:

(1) Provide the board with at least 14-day prior written notice, on a form provided by the board; and

(2) ensure that all necessary licenses, registrations, and authorizations, including a drug enforcement administration registration if supplying controlled substances, have been obtained.

(c) The pharmacist-in-charge shall consult with the pharmacy and therapeutics committee or an equivalent committee in establishing the criteria and process for determining a formulary of approved drugs that may be stored in the automated drug delivery system.

(d) A bar code verification, electronic verification, or similar verification process shall be utilized to ensure the correct selection of drugs placed or to be placed into each automated drug delivery system. The utilization of a bar code, electronic verification, or similar verification process shall require an initial quality assurance validation, followed by a quarterly assurance review by a pharmacist.

(e) The pharmacist-in-charge shall ensure that a policy exists requiring that if, at the time of loading any controlled substance, a discrepancy in the count of that drug in the automated drug delivery system exists, the discrepancy is immediately reported to the pharmacist-in-charge.

Whenever the pharmacist-in-charge becomes aware of a discrepancy regarding the count of a controlled substance in the automated drug delivery system, the pharmacist-in-charge shall be responsible for reconciliation of the discrepancy or proper reporting of the loss.

(f) The pharmacist-in-charge shall be responsible for the following:

(1) Controlling access to the automated drug delivery system;

(2) maintaining policies and procedures for the following:

(A) Operating the automated drug delivery system;

(B) providing prior training and authorization of personnel who are authorized to remove any drug from the automated drug delivery system;

(C) maintaining, at the location of the automated drug delivery system, a list of those individuals who are authorized to remove any drug from the automated drug delivery system;

(D) maintaining patient services whenever the automated drug delivery system is not operating; and

(E) defining a procedure for a pharmacist to grant access to the drugs in the automated drug delivery system;

(3) securing the automated drug delivery system;

(4) ensuring that each patient receives the pharmacy services necessary for appropriate pharmaceutical care;

(5) ensuring that the automated drug delivery system maintains the integrity of the information in the system and protects patient confidentiality;

(6) ensuring compliance with all requirements for packaging and labeling each medication pursuant to K.A.R. 68-7-15 and K.A.R. 68-7-16, unless the medication is already packaged in the manufacturer's original container or in repackaged containers;

(7) ensuring that a system of preventive maintenance and sanitation exists and is implemented for the automated drug delivery system;

(8) ensuring that a policy exists for securing and accounting for all drugs that are wasted or discarded from the automated drug delivery system;

(9) ensuring that inspections are conducted and documented at least monthly to ensure the accuracy of the contents of the automated drug delivery system; and

(10) ensuring the accurate loading and unloading of the automated drug delivery system by approving and implementing an operational policy

that limits the personnel responsible for the loading and unloading of the automated drug delivery system to a Kansas-licensed pharmacist or any of the following, each of whom shall be under the supervision of a Kansas-licensed pharmacist:

(A) A Kansas-registered pharmacy intern;

(B) a Kansas-registered pharmacy technician; or

(C) a nurse with a license issued pursuant to K.S.A. 65-1115, and amendments thereto.

(g) A pharmacist shall comply with the medication order review and verification requirements specified in K.A.R. 68-7-11.

(h) Except in the event of a sudden and unforeseen change in a patient's condition that presents an imminent threat to the patient's life or well-being, any authorized individual at a facility may distribute patient-specific drugs utilizing an automated drug delivery system without verifying each individual drug selected or packaged by the automated drug delivery system only if both of the following conditions are met:

(1) The initial medication order has been reviewed and approved by a pharmacist.

(2) The drug is distributed for subsequent administration by a health care professional permitted by Kansas law to administer drugs.

(i) The pharmacist-in-charge shall be responsible for establishing a continuous quality improvement program for the automated drug delivery system. This program shall include written procedures for the following:

(1) Investigation of any medication error related to drugs supplied or packaged by the automated drug delivery system;

(2) review of any discrepancy or transaction reports and identification of patterns of inappropriate use of or access to the automated drug delivery system; and

(3) review of the operation of the automated drug delivery system.

(j) The pharmacist-in-charge shall ensure that the managing pharmacy maintains, in a readily retrievable manner and for at least five years, the following records related to the automated drug delivery system:

(1) Transaction records for all drugs or devices supplied by the automated drug delivery system; and

(2) any report or analysis generated as part of the continuous quality improvement program.

(k) A Kansas-registered pharmacy technician, a Kansas-registered pharmacy intern, or a nurse with a license issued pursuant to K.S.A. 65-1115,

and amendments thereto, who the pharmacist-in-charge has determined is properly trained may be authorized by that pharmacist-in-charge to perform the functions of loading and unloading an automated drug delivery system utilizing a bar code verification, electronic verification, or similar verification process as specified in subsection (d).

(l) If any drug has been removed from the automated drug delivery system, that drug shall not be replaced into the automated drug delivery system unless either of the following conditions is met:

(1) The drug's purity, packaging, and labeling have been examined according to policies and procedures established by the pharmacist-in-charge to determine that the reuse of the drug is appropriate.

(2) The drug is one of the specific drugs, including multidose vials, that have been exempted by the pharmacy and therapeutics committee or an equivalent committee.

(m) Upon the removal of any automated drug delivery system, the pharmacist-in-charge shall provide the board with notification, on a form provided by the board. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2017 Supp. 65-1637, 65-1642, and 65-1648; effective Aug. 19, 2016; amended Jan. 4, 2019.)

Article 11.—FEES

68-11-1. Fees for examination and licensure as a pharmacist. The following fees shall be paid to the board by each applicant for examination and licensure as a pharmacist:

(a) Each applicant for examination shall pay a fee of \$100.00.

(b) Each applicant for reciprocal licensure shall pay a fee of \$125.00.

(c) An additional fee of \$250.00 to evaluate the education and training shall be paid by each applicant for reciprocal licensure or examination who graduated from a school or college of pharmacy or department of a university not approved by the board.

(d) Each licensed pharmacist shall pay a renewal fee of \$150.00.

(e) The penalty fee for a late renewal of a pharmacist license shall be \$200.00. (Authorized by K.S.A. 65-1630 and K.S.A. 65-1645; implementing K.S.A. 65-1645; effective May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended May 1, 1991; amended Nov. 30, 1992; amended June 6, 1994; amended July 31, 1998; amended Feb. 5, 1999; amended

Feb. 7, 2003; amended Oct. 20, 2006; amended May 30, 2014; amended May 31, 2019.)

68-11-2. Fees for premises and service registrations and permits. (a) Pharmacy registration fees shall be as follows:

(1) Each new pharmacy registration shall be \$150.00.

(2) Each renewal pharmacy registration shall be \$125.00.

(b) Manufacturer registration fees shall be as follows:

(1) Each new registration shall be \$350.00.

(2) Each renewal registration shall be \$350.00.

(c) Wholesaler distributor registration fees shall be as follows:

(1) Each new registration shall be \$350.00.

(2) Each renewal registration shall be \$350.00.

(3) For each wholesale distributor who deals exclusively in nonprescription drugs, the registration fee shall be \$50.00.

(4) For each wholesale distributor who deals exclusively in nonprescription drugs, the renewal fee shall be \$50.00.

(d) For each institutional drug room or veterinary medical teaching hospital pharmacy, registration fees shall be as follows:

(1) Each new registration shall be \$25.00.

(2) Each renewal registration shall be \$20.00.

(e) Retail dealer permit fees shall be as follows:

(1) Each new permit shall be \$10.00.

(2) Each renewal permit shall be \$10.00.

(f) Each special auction permit shall be \$28.00.

(g) Sample distribution fees shall be as follows:

(1) Each new permit shall be \$30.00.

(2) Each renewal permit shall be \$30.00.

(h) For each place of business that sells durable medical equipment, registration fees shall be as follows:

(1) Each new registration shall be \$300.00.

(2) Each renewal registration shall be \$300.00.

(i) Third-party logistics provider registration fees shall be as follows:

(1) Each new registration shall be \$350.00.

(2) Each renewal registration shall be \$350.00.

(3) For each third-party logistics provider who deals exclusively in nonprescription drugs, the registration fee shall be \$50.00.

(4) For each third-party logistics provider who deals exclusively in nonprescription drugs, the renewal fee shall be \$50.00.

(j) For each outsourcing facility or virtual outsourcing facility, registration fees shall be as follows:

- (1) Each new registration shall be \$350.00.
- (2) Each renewal registration shall be \$350.00.
- (k) Repackager registration fees shall be as follows:

- (1) Each new registration shall be \$350.00.
- (2) Each renewal registration shall be \$350.00.
- (l) For each place of business that operates an automated dispensing system for patient medication administration, registration fees shall be as follows:

- (1) Each new registration shall be \$20.00.
 - (2) Each renewal registration shall be \$20.00.
- (Authorized by K.S.A. 65-1630 and K.S.A. 65-1645; implementing K.S.A. 65-1645; effective May 1, 1983; amended May 1, 1988; amended June 6, 1994; amended Feb. 7, 2003; amended Oct. 24, 2008; amended May 30, 2014; amended Dec. 15, 2017; amended May 31, 2019.)

68-11-3. Fees for registration as a pharmacy technician or pharmacy intern. The following fees shall be paid to the board:

- (a) Each applicant for initial registration as a pharmacy technician shall pay a fee of \$20.00.
- (b) Each registered pharmacy technician shall pay a renewal fee of \$20.00.
- (c) Each applicant for a pharmacy intern registration shall pay a fee of \$20.00. (Authorized by K.S.A. 65-1630, K.S.A. 2015 Supp. 65-1663, and K.S.A. 2015 Supp. 65-1676; implementing K.S.A. 2015 Supp. 65-1663 and 65-1676; effective Aug. 19, 2016.)

Article 13.—PARENTERAL PRODUCTS

68-13-1. (Authorized by K.S.A. 65-1630; implementing K.S.A. 2001 Supp. 65-1642; effective May 1, 1988; amended Feb. 7, 2003; revoked Jan. 4, 2019.)

68-13-2. Definitions. As used in this article of the board's regulations, each of the following terms shall have the meaning specified in this regulation:

- (a) "Active ingredients" means chemicals, substances, or other components intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in humans or for use as nutritional supplements.
- (b) "Added substances" and "inactive ingredients" mean the ingredients necessary to compound a sterile preparation or nonsterile preparation and not intended or expected to cause a human pharmacologic response if administered

alone in the amount or concentration contained in a single dose of the drug product.

(c) "Antearea" means an area, separate from the buffer area, that meets the requirements of an ISO class eight environment and in which personal hygiene and garbing procedures, staging of components, order entry, and labeling are performed.

(d) "Batch" means multiple sterile dosage units in a quantity greater than 25 that are compounded in a discrete process by the same individual or individuals during one limited period.

(e) "Beyond-use date" means a date placed on a prescription label at the time of dispensing, repackaging, or prepackaging that is intended to indicate to the patient or caregiver a time beyond which the contents of the prescription are not recommended to be used.

(f) "Biological safety cabinet" and "BSC" mean a ventilated cabinet for sterile preparations and hazardous drugs to protect personnel, products, and the environment that has an open front with inward airflow for protection of personnel, downward-airflow LAFS for product protection, and HEPA-filtered exhausted air for environmental protection.

(g) "Buffer area" means an area that meets the requirements for an ISO class seven environment and in which the primary engineering control is located.

(h) "Clean room" means a room that meets the requirements for an ISO class five environment.

(i) "Complex nonsterile compounding" means making a nonsterile preparation that requires special training, environment, facilities, equipment, and procedures to ensure appropriate therapeutic outcomes. Nonsterile preparations made using complex nonsterile compounding shall include transdermal dosage forms, modified-release forms, and suppositories for systemic effects.

(j) "Component" means any active ingredient or added substance intended for use in the compounding of a drug product, including any ingredient that does not appear in the drug product.

(k) "Compounding" has the meaning specified in K.S.A. 2017 Supp. 65-1626, and amendments thereto.

(l) "Compounding area" means any area in a pharmacy or outsourcing facility where compounding is performed.

(m) "Compounding aseptic containment isolator" and "CACI" mean a compounding aseptic isolator designed to provide worker protection

from exposure to undesirable levels of airborne drugs throughout the compounding and material transfer process and to provide an aseptic environment for compounding sterile preparations. Air exchange with the surrounding environment shall not occur unless the air is first passed through a HEPA filter capable of containing airborne concentrations of the physical size and state of the drug being compounded. Whenever volatile hazardous drugs are compounded, the exhaust air from the CACI shall be removed by the building's ventilation system.

(n) "Compounding aseptic isolator" and "CAI" mean a type of isolator specifically designed for compounding sterile preparations or nonsterile preparations and designed to maintain an aseptic compounding environment within the isolator throughout the compounding and material transfer process. Air exchange into the CAI from the surrounding environment shall not occur unless the air has first passed through a HEPA filter and an ISO class five environment is maintained.

(o) "Cytotoxic," when used to describe a pharmaceutical, means that the pharmaceutical is capable of killing living cells. This term is also used to describe components classified as cancer chemotherapeutic, carcinogenic, mutagenic, or anti-neoplastic.

(p) "Dosage unit" means the amount of a sterile preparation that would be administered to or taken by one patient at a time.

(q) "Endotoxin" means a potentially toxic, natural compound that is a structural component of bacterial cell walls and that is released mainly when bacteria undergo destruction or decomposition.

(r) "Essentially a copy" means any sterile preparation or nonsterile preparation that is comparable in active ingredients to a commercially available drug product, unless either of the following conditions is met:

(1) There is a change made for an identified individual patient that produces a clinically significant difference for the patient, as determined by the prescribing practitioner, between the comparable commercially available drug product and either the sterile preparation or the nonsterile preparation.

(2) The drug appears on the drug shortage list in section 506E of the federal food, drug, and cosmetic act, 21 U.S.C. 356e, at the time of compounding, distribution, and dispensing.

(s) "Excursion" means a deviation from the range of temperatures specified by the manufac-

turer for storage or transport of a pharmaceutical based on stability data.

(t) "Glove fingertip test" means a test in which a gloved fingertip is pressed to and cultured on a microbiological growth media plate. Each successful glove fingertip test shall yield no more than three colony-forming units per contact plate for the annual competency evaluation and shall yield zero colony-forming units at least three times for the initial competency evaluation.

(u) "Hazardous drug" means any drug or compounded drug identified by at least one of the following criteria:

- (1) Carcinogenicity;
- (2) teratogenicity or developmental toxicity;
- (3) reproductive toxicity;
- (4) organ toxicity at low doses;
- (5) genotoxicity; or
- (6) drug product structure or toxicity that mimics that of existing hazardous drugs.

(v) "HEPA" means high-efficiency particulate air.

(w) "ISO class eight environment" means an atmospheric environment containing less than 3,520,000 airborne particles measuring at least 0.5 micron in diameter per cubic meter of air.

(x) "ISO class five environment" means an atmospheric environment containing less than 3,520 airborne particles measuring at least 0.5 micron in diameter per cubic meter of air.

(y) "ISO class seven environment" means an atmospheric environment containing less than 352,000 airborne particles measuring at least 0.5 micron in diameter per cubic meter of air.

(z) "Laminar airflow system" and "LAFS" mean an apparatus designed to provide an ISO class five environment for the compounding of sterile preparations using air circulation in a defined direction that passes through a HEPA filter.

(aa) "Manufacturing" means manufacture as defined in K.S.A. 65-1626, and amendments thereto.

(bb) "Media fill test" means a test in which a microbiological growth medium, which may consist of a soybean-casein digest medium, is substituted for an actual drug product to simulate admixture compounding. The media fill test shall be successful if it produces a sterile preparation without microbial contamination.

(cc) "Moderate nonsterile compounding" means making a nonsterile preparation that requires special calculations or procedures to determine quantities of components per nonsterile preparation or per dosage unit or making a nonsterile preparation for which stability data is not available. Nonster-

ile preparations made using moderate nonsterile compounding shall include morphine sulfate suppositories, diphenhydramine troches, and a mixture of two or more manufactured creams if stability of the mixture is not known.

(dd) "Multiple-dose container" means a multiple-unit container for any sterile preparation intended only for parenteral administration, usually containing antimicrobial preservatives.

(ee) "Nonsterile preparation" means a pharmaceutical made using simple nonsterile compounding, moderate nonsterile compounding, or complex nonsterile compounding.

(ff) "Official compendium" has the meaning specified in K.S.A. 65-656, and amendments thereto.

(gg) "Order" means either a prescription order as defined in K.S.A. 65-1626, and amendments thereto, or a medication order as defined in K.A.R. 68-5-1.

(hh) "Parenteral," when used to refer to a solution, means that the solution is administered by injection through one or more layers of skin or by other routes of administration that bypass the gastrointestinal tract.

(ii) "Parenteral product" means a sterile preparation administered by injection through one or more layers of skin or by other routes of administration that bypass the gastrointestinal tract.

(jj) "Practitioner-patient-pharmacist relationship" means a relationship that meets all of the following conditions:

(1) The practitioner has assumed the responsibility for making medical judgments regarding the health of the patient and the need for medical treatment.

(2) The practitioner has sufficient knowledge of the patient to initiate at least a general or preliminary diagnosis of the medical condition, and the practitioner has examined the patient and is available for follow-up.

(3) The practitioner has communicated the necessary prescriptions to the pharmacist, who is able to provide pharmaceutical care to the patient and, if needed, communicate with the practitioner.

(kk) "Primary engineering control" means a clean room or an apparatus for compounding sterile preparations, including an LAFS, a BSC, a CAI, or a CACI, designed to provide an ISO class five environment for compounding sterile preparations.

(ll) "Purified water" means water that meets the requirements for ionic and organic chemistry

purity and protection from microbial contamination specified in section 1231 of the official compendium.

(mm) "Refrigeration" and "controlled cold temperature" mean a temperature maintained thermostatically between 2° and 8°C (36° to 46°F) that allows for excursions between 0° and 15°C (32° to 59°F) that are experienced during storage, shipping, and distribution, such that the allowable calculated mean kinetic temperature is not more than 8°C (46°F).

(nn) "Room temperature" means a temperature maintained thermostatically that meets the following criteria:

(1) Encompasses the usual and customary working environment of 20° to 25°C (68° to 77°F);

(2) results in a mean kinetic temperature calculated to be not more than 25°C (77°F); and

(3) allows for excursions between 15° and 30°C (59° to 86°F) experienced in pharmacies, hospitals, and storage facilities, such that the allowable calculated mean kinetic temperature remains in the allowed range.

(oo) "Segregated compounding area" means a designated, demarcated area or room that is restricted to compounding low-risk sterile preparations, which shall contain a primary engineering control providing unidirectional airflow that maintains an ISO class five environment and shall be void of all activities and materials extraneous to the sterile compounding process.

(pp) "Simple nonsterile compounding" means either of the following:

(1) Making a nonsterile preparation that has a compounding monograph listed in the official compendium or that appears in a peer-reviewed journal containing specifics on component quantities, compounding procedure, equipment, and stability data for the formulation and appropriate beyond-use dates; or

(2) reconstituting or manipulating commercially available products that require the addition of one or more ingredients as directed by the manufacturer.

Nonsterile preparations made using simple nonsterile compounding shall include captopril oral solution, indomethacin topical gel, and potassium bromide oral solution.

(qq) "Single-dose container" means a single-unit container for any sterile preparation intended for parenteral administration that is accessed once for one patient.

(rr) "Specific medical need" means a medical

reason why a commercially available drug product cannot be used, excluding cost and convenience.

(ss) "Sterile preparation" means any dosage form of a drug, including parenteral products free of viable microorganisms, made using currently accepted aseptic compounding techniques under acceptable compounding conditions. This term shall include any commercially compounded sterile drug dosage form that has been altered in the compounding process.

(tt) "Sufficient documentation" means either of the following:

(1) A prescription documenting a specific medical need; or

(2) a notation in a pharmacy's or an outsourcing facility's records that verbal or other documentation of the specific medical need was received for each prescription, including the name of the person verifying the specific medical need, the date, and the specific medical need. (Authorized by K.S.A. 65-1630 and K.S.A. 2017 Supp. 65-1637e; implementing K.S.A. 2017 Supp. 65-1626, K.S.A. 2017 Supp. 65-1626a, K.S.A. 65-1634, K.S.A. 2017 Supp. 65-1637c, and K.S.A. 2017 Supp. 65-1642; effective May 11, 2018.)

68-13-3. Nonsterile preparations. (a) This regulation shall apply to the following:

(1) Nonsterile preparations that are compounded in Kansas; and

(2) nonsterile preparations that are shipped or delivered into Kansas by a pharmacy and are to be administered to a patient in Kansas.

(b) "Pharmacy," as used in this regulation, shall mean a pharmacy, nonresident pharmacy, or outsourcing facility as defined by K.S.A. 2017 Supp. 65-1626, and amendments thereto.

(c) Any pharmacist may compound a nonsterile preparation that is commercially available only if it is different from a product approved by the FDA and there is sufficient documentation of a specific medical need for an individual patient.

(d) A pharmacist shall not compound a nonsterile preparation by any of the following methods:

(1) Using any component withdrawn from the market by the FDA for safety reasons;

(2) receiving, storing, or using any drug component that is not guaranteed or otherwise determined to meet the requirements of an official compendium;

(3) compounding finished drugs from bulk active ingredients that do not meet the require-

ments of a monograph listed in the official compendium; or

(4) compounding finished drugs from bulk active ingredients that are not components of FDA-approved drugs.

(e) For the convenience of any patient, any pharmacist may compound a nonsterile preparation before receiving an order based on routine, regularly observed prescribing patterns.

(f) Compounding for non-human animals shall meet the same requirements as those for human prescriptions, except that a pharmacist shall not compound bulk chemicals for food-producing animals.

(g) Each nonsterile preparation sold by a pharmacy to a practitioner for administration to a patient shall be packaged with a label that includes the following text: "For Office Use Only — Not for Resale."

(h) Any pharmacy may distribute nonsterile preparations without a prescription, including providing limited quantities to a practitioner in the course of professional practice to administer limited quantities to an individual patient, if the nonsterile preparations are not intended for resale.

(i) Each pharmacy selling any prescription nonsterile preparation to a practitioner for office use shall maintain an invoice documenting the following:

(1) The name and address of the practitioner;

(2) the drug compounded, including the lot number and expiration date of each component;

(3) the quantity sold; and

(4) the date of the transaction.

The invoice shall be maintained in the pharmacy and shall be made readily available to the pharmacist-in-charge, the board, and the board's designee.

(j) Within each pharmacy in which compounding occurs, one area shall be designated as the principal compounding area, where all nonsterile compounding shall take place.

(1) Each compounding area shall be well-lighted and well-ventilated, with clean and sanitary surroundings, and shall be free of food and beverages.

(2) Each compounding area shall provide the drugs, chemicals, and devices with necessary protection from deterioration due to light, heat, and evaporation and shall be arranged to protect all prescription drugs and devices from theft and any other unauthorized removal.

(3) All components used in compounding nonsterile preparations shall be stored in labeled con-

tainers in a clean, dry area and, if required, under proper refrigeration.

(4) Each compounding area shall include a sink that is equipped with hot and cold running water for hand and equipment washing.

(k) Each pharmacist compounding nonsterile preparations shall use purified water if the formulations indicate the inclusion of water.

(l) Each pharmacist-in-charge shall maintain a uniform formulation record for each nonsterile preparation, documenting the following:

(1) The ingredients, quantities, strength, and dosage form of the nonsterile preparation;

(2) the equipment used to compound the nonsterile preparation and the mixing instructions;

(3) the container used in dispensing;

(4) the storage requirements;

(5) the beyond-use date to be assigned;

(6) quality control procedures, which shall include identification of each person performing or either directly supervising or checking each step in the compounding process and which may include monitoring the following:

(A) Capsule weight variation;

(B) adequacy of mixing to ensure uniformity and homogeneity; and

(C) the clarity, completeness, or pH of solutions;

(7) the source of the formulation, including the name of the person, entity, or publication; and

(8) the name or initials of the person creating the formulation record and the date on which the formulation record was established at the pharmacy.

(m) Each pharmacist-in-charge shall maintain on the original order or on a separate, uniform record a compounding record for each nonsterile preparation, documenting the following:

(1) The name and strength of the nonsterile preparation;

(2) the identifier used to distinguish the nonsterile preparation's formulation record from other formulation records;

(3) the name of the manufacturer or repackager and, if applicable, the lot number and expiration date of each component;

(4) the total number of dosage units or total quantity compounded;

(5) the name of each person who compounded the nonsterile preparation;

(6) the name of the pharmacist, or the pharmacy student or intern working under the direct supervision and control of the pharmacist, who verified the accuracy of the nonsterile preparation;

(7) the date of compounding;

(8) the assigned internal identification number, if used;

(9) the prescription number, if assigned;

(10) the results of quality control procedures; and

(11) the assigned beyond-use date. In the absence of valid scientific stability information that is applicable to a specific drug or nonsterile preparation, the beyond-use date shall not be later than the expiration date of any component of the formulation and shall be established in accordance with the following criteria:

(A) For nonaqueous and solid formulations, either of the following:

(i) If a manufactured drug product is the source of the active ingredient, six months from the date of compounding or the time remaining until the manufactured drug product's expiration date, whichever is earlier; or

(ii) if a substance listed in an official compendium is the source of an active ingredient, six months from the date of compounding or the time remaining until the expiration date of any component of the formulation, whichever is earlier;

(B) for water-containing oral formulations, not more than 14 days when stored under refrigeration; and

(C) for water-containing non-oral formulations, not longer than the intended duration of therapy or 30 days, whichever is earlier.

(n) The compounding record and the corresponding formulation record specified in subsections (m) and (l), respectively, shall be retained at the pharmacy for at least five years and shall be made readily available to the pharmacist-in-charge, the board, and the board's designee.

(o) If a patient requests a transfer of the patient's prescription, a copy of the original prescription shall be transmitted upon the request of the receiving pharmacist. The transferring pharmacist shall also transfer the following written information with the prescription:

(1) Active ingredients;

(2) concentration;

(3) dosage form;

(4) route of delivery;

(5) delivery mechanism;

(6) dosing duration; and

(7) details about the compounding procedure.

(p) The pharmacist-in-charge shall ensure that all support personnel are trained and successfully demonstrate the following before performing delegated compounding:

(1) Comprehensive knowledge of the pharmacy's standard operating procedures with regard to compounding as specified in the policy and procedure manual; and

(2) familiarity with the compounding techniques used at the pharmacy. (Authorized by K.S.A. 65-1630 and K.S.A. 2017 Supp. 65-1637e; implementing K.S.A. 2017 Supp. 65-1626a, K.S.A. 65-1634, K.S.A. 65-1637c, and K.S.A. 2017 Supp. 65-1642; effective May 11, 2018.)

68-13-4. Sterile preparations. (a) This regulation shall apply to the following:

(1) Sterile preparations that are compounded in Kansas; and

(2) sterile preparations that are shipped or delivered into Kansas by a pharmacy to be administered to a patient in Kansas.

(b) As used in this regulation, each of the following terms shall have the meaning specified in this subsection:

(1)(A) "High-risk," when used to describe a sterile preparation, means that the sterile preparation meets at least one of the following conditions:

(i) The sterile preparation is compounded from nonsterile ingredients or with nonsterile containers or equipment before terminal sterilization.

(ii) The sterile ingredients or components of the sterile preparation are exposed to air quality inferior to that of an ISO class five environment for more than one hour.

(iii) The sterile preparation contains nonsterile water and is stored for more than six hours before being sterilized.

(iv) The compounding pharmacist cannot verify from documentation received from the supplier or by direct examination that the chemical purity and content strength of the ingredients meet the specifications of an official compendium.

(v) The sterile preparation has been stored at room temperature and administered more than 24 hours after compounding, stored under refrigeration more than three days, or stored frozen from 0° to -20°C (32° to -4°F) or colder for 45 or fewer days, and sterility has not been confirmed by testing.

(B) This term shall apply to sterile preparations including the following:

(i) Alum bladder irrigation solution;

(ii) any morphine preparation made for parenteral administration from nonsterile powder or tablets;

(iii) any total parenteral nutrition solution made from dried amino acids;

(iv) any total parenteral nutrition solution sterilized by final filtration; and

(v) any autoclaved intravenous solution.

(2) "Immediate use" means a situation in which a sterile preparation is compounded pursuant to an order in a medical care facility for administration to the patient within one hour of the start of compounding the sterile preparation.

(3) "Low-risk," when used to describe a sterile preparation, means that the sterile preparation meets the following conditions:

(A) In the absence of sterility testing, is stored at room temperature and administration to the patient has begun not more than 48 hours after compounding, is stored under refrigeration for 14 or fewer days before administration to the patient over a period not to exceed 24 hours, or is stored frozen at -20°C (-4°F) or colder for 45 or fewer days before administration to the patient over a period not to exceed 24 hours;

(B) is prepared for administration to one patient or is batch-prepared and contains suitable preservatives for administration to more than one patient; and

(C) is prepared by a simple or closed-system aseptic transfer of no more than three sterile, nonpyrogenic, finished pharmaceuticals obtained from licensed manufacturers into sterile final containers obtained from licensed manufacturers with no more than two instances in which a transfer device passes through the designated access point into any one sterile container or package.

(4)(A) "Medium-risk," when used to describe a sterile preparation, means that the sterile preparation meets at least one of the following conditions:

(i) In the absence of sterility testing, is stored at room temperature and administered to the patient not more than 30 hours after compounding, is stored under refrigeration for nine or fewer days, or is stored frozen at -20°C (-4°F) or colder for 45 or fewer days;

(ii) is batch-prepared and intended for use by more than one patient or by one patient on multiple occasions;

(iii) is created by a compounding process that includes complex aseptic manipulations other than a single-volume transfer; or

(iv) is compounded by at least four manipulations of sterile ingredients obtained from licensed manufacturers in a sterile container obtained from a licensed manufacturer by using a simple or closed-system aseptic transfer.

(B) This term shall apply to the following:

(i) Sterile preparations for use in a portable pump or reservoir over multiple days;

(ii) batch-reconstituted sterile preparations;

(iii) batch-prefilled syringes; and

(iv) total parenteral nutrient solutions that are compounded by the gravity transfer of carbohydrates and amino acids into an empty container with the addition of sterile additives using a syringe and needle or that are mixed with an automatic compounding device.

(5) "Pharmacy" means a pharmacy, nonresident pharmacy, or outsourcing facility as defined by K.S.A. 2017 Supp. 65-1626, and amendments thereto.

(c) Any sterile preparation for immediate use may be compounded outside a primary engineering control if both of the following conditions are met:

(1) Administration to the patient begins within one hour of the start of compounding the sterile preparation.

(2) The sterile preparation is compounded by a simple or closed-system aseptic transfer of sterile, nonpyrogenic, finished pharmaceuticals obtained from licensed manufacturers into sterile final containers obtained from licensed manufacturers.

(d) When a multiple-dose container with antimicrobial preservatives has been opened or entered, the container shall be labeled with a beyond-use date not to exceed 28 days, unless otherwise specified by the manufacturer.

(e) Each compounding area shall contain a primary engineering control providing unidirectional airflow that will maintain an ISO class five environment for compounding sterile preparations and shall be void of all activities and materials that are extraneous to compounding.

(f) Each sterile preparation compounded in a segregated compounding area shall be labeled with a beyond-use date of no more than 12 hours.

(g) Each single-dose container shall be labeled as such.

(h) The contents of each single-dose container shall be used within one hour if the container is opened or entered in an area with air quality that does not meet the requirements of an ISO class five environment.

(i) The contents of each single-dose container shall be used within six hours if the container is opened or entered in an area that meets the requirements of an ISO class five environment.

(j) For the convenience of any patient, any pharmacist may compound a sterile preparation

before receiving an order if the pharmacist has previously filled orders for the sterile preparation and the sterile preparation is based on routine, regularly observed prescribing patterns.

(k) Compounding for non-human animals shall meet the same requirements as those for human prescriptions, except that a pharmacist shall not compound bulk chemicals for food-producing animals.

(l) Each sterile preparation sold by a pharmacy to a practitioner for administration to a patient shall be packaged with a label that includes the following text: "For Office Use Only — Not For Resale."

(m) Any pharmacy may distribute sterile preparations without a prescription, including providing limited quantities to a practitioner in the course of professional practice to administer limited quantities to an individual patient, if the sterile preparations are not intended for resale.

(n) A pharmacist shall not compound a sterile preparation that is essentially a copy.

(o) Any pharmacist may compound a sterile preparation that is commercially available only if there is sufficient documentation of a specific medical need for the prescription or the product is temporarily unavailable due to problems other than safety or effectiveness. Each pharmacist shall document any unavailability in the patient's prescription record, including the date the product was unavailable, and shall maintain documentation from the manufacturer or distributor demonstrating the product's unavailability. The pharmacist shall cease compounding the sterile preparation as soon as the product becomes commercially available.

(p) A pharmacist shall not compound a sterile preparation by any of the following methods:

(1) Using any component withdrawn from the market by the FDA for safety reasons;

(2) receiving, storing, or using any drug component that is not guaranteed or otherwise determined to meet the requirements of an official compendium; or

(3) compounding finished drugs through manufacturing, as defined in K.S.A. 65-1626 and amendments thereto, without first receiving an FDA-sanctioned investigational new drug application in accordance with 21 U.S.C. 355(i) and 21 C.F.R. Part 312.

(q) Each pharmacist or pharmacy compounding sterile preparations shall have the following resources:

(1) A primary engineering control that is cur-

rently certified by an inspector certified by the controlled environmental testing association to ensure aseptic conditions within the working area and that has the required documentation. The certification shall be deemed current if the certification occurred within the previous six months or on the date the device was last moved to another location, whichever is more recent. The required documentation shall include the following:

(A) Inspection certificates for the past five years or since the date of installation, whichever is more recent;

(B) records of all filter maintenance for the past five years or since the date of installation, whichever is more recent;

(C) records of all HEPA filter maintenance for the past five years or since the date of installation, whichever is more recent; and

(D) records of all disinfecting and cleaning for the past year or since the date of installation, whichever is more recent;

(2) a sink with hot and cold running water;

(3) a refrigerator capable of maintaining a temperature of 2° to 8°C (36° to 46°F) and, if needed, a freezer capable of maintaining a temperature of -25° to -10°C (-13° to 14°F). The temperature shall be monitored and recorded each business day. Each pharmacy with an electronic system that alerts the pharmacist to noncompliant temperatures shall be exempt from daily recording;

(4) the reference materials required by K.A.R. 68-2-12a and a current copy of a reference text on intravenous incompatibilities and stabilities. If an electronic library is provided, a workstation shall be readily available for use by pharmacy personnel, students, interns, and board personnel;

(5) a policy and procedure manual, with a documented review at least every two years by the pharmacist-in-charge or designee, which shall include the following subjects:

(A) Sanitation;

(B) storage;

(C) dispensing;

(D) labeling;

(E) destruction and return of controlled substances;

(F) recordkeeping;

(G) recall procedures;

(H) responsibilities and duties of supportive personnel;

(I) aseptic compounding techniques; and

(J) ongoing evaluation of all staff compounding sterile preparations; and

(6) supplies necessary for compounding sterile preparations.

(r) Each pharmacist-in-charge shall maintain a uniform formulation record for each sterile preparation, documenting the following:

(1) The quantities, strength, and dosage form of all components of the sterile preparation;

(2) the equipment used to compound the sterile preparation and the mixing instructions;

(3) the container used in dispensing;

(4) the storage requirements;

(5) the beyond-use date to be assigned;

(6) quality control procedures, which may include monitoring the following, if applicable:

(A) Adequacy of mixing to ensure uniformity and homogeneity; and

(B) the clarity, completeness, or pH of solutions;

(7) the sterilization methods;

(8) the source of the formulation; and

(9) the name of the pharmacist who verified the accuracy of the formulation record and the date of verification.

(s) Each pharmacist-in-charge shall maintain on the original order or on a separate, uniform record a compounding record for each sterile preparation, documenting the following:

(1) The name and strength of the sterile preparation;

(2) the formulation record reference for the sterile preparation;

(3) the name of the manufacturer or repackager and, if applicable, the lot number and the expiration date of each component;

(4) the total number of dosage units or total quantity compounded;

(5) the name of the person or persons who compounded the sterile preparation;

(6) the name of the pharmacist, or the pharmacy student or intern working under the direct supervision and control of the pharmacist, who verified the accuracy of the sterile preparation;

(7) the date of compounding;

(8) the assigned internal identification number, if applicable;

(9) the prescription number, if assigned;

(10) the results of quality control procedures;

(11) the results of the sterility testing and, if applicable, pyrogen testing for the batch; and

(12) the assigned beyond-use-date. In the absence of valid scientific stability information that is applicable to a component or the sterile preparation, the beyond-use date shall be established in accordance with the following criteria:

(A) For nonaqueous and solid formulations, one of the following:

(i) If the manufactured drug product is the source of the active ingredient, six months from the date of compounding or the time remaining until the manufactured drug product's expiration date, whichever is earlier; or

(ii) if the substance listed in an official compendium is the source of an active ingredient, six months from the date of compounding or the time remaining until the expiration date of any component of the formulation, whichever is earlier;

(B) for formulations containing water and made from ingredients in solid form, not more than 14 days when stored under refrigeration; and

(C) for all other formulations, not longer than the intended duration of therapy or 30 days, whichever is earlier.

(t) The compounding record and corresponding formulation record specified in subsections (s) and (r), respectively, shall be retained at the pharmacy for at least five years and shall be made readily available to the pharmacist-in-charge, the board, and the board's designee.

(u) Medical care facility pharmacies shall generate a compounding record and a corresponding formulation record only for batch compounding or for any sterile preparation with a beyond-use date of more than seven days.

(v) Except when compounding in any CAI, each person involved in compounding a sterile preparation shall follow personal garbing and washing procedures that include the following minimum requirements:

(1) Preparing for garbing by removing any outer garments, cosmetics, jewelry, and artificial nails;

(2) performing the following procedures, in the order listed:

(A) Donning dedicated shoes or shoe covers;

(B) donning head and facial hair covers;

(C) either washing the hands with soap for at least 20 seconds or using an antiseptic hand scrub in accordance with the manufacturer's instructions; and

(D) donning a nonshedding gown; and

(3) entering the work area and immediately performing an antiseptic hand-cleaning procedure using an alcohol-based surgical hand scrub and successively donning sterile, powder-free gloves. Sterile gloves shall be disinfected after touching any nonsterile area.

(w) All sterile preparations shall be stored and delivered in a manner that is designed to maintain parenteral product stability and sterility.

(x) All sterile preparations, except for sterile preparations for immediate use, shall be compounded under aseptic conditions as follows:

(1) Each low-risk sterile preparation labeled with a beyond-use date of 12 hours or longer shall be compounded in an ISO class five environment using techniques that ensure sterility. Each low-risk sterile preparation labeled with a beyond-use date of less than 12 hours shall, at a minimum, be made in a segregated compounding area.

(2) Each medium-risk sterile preparation shall be compounded in an ISO class five environment using techniques that ensure sterility.

(3) Each high-risk sterile preparation made with nonsterile components shall be sterilized before being administered to a patient and shall have a certificate of analysis indicating that all nonsterile components meet the standards of the "United States pharmacopeia" and the FDA for identity, purity, and endotoxin levels as verified by a pharmacist.

(y) Each pharmacist engaged in the dispensing of sterile preparations shall meet all labeling requirements under state and federal law. In addition, the label of each sterile preparation shall contain the following information:

(1) The name and quantity of each component;

(2) the beyond-use date;

(3) the prescribed flow rate;

(4) the name or initials of each person who compounded the sterile preparation; and

(5) any special storage instructions.

(z)(1) The pharmacist-in-charge and all personnel involved in compounding sterile preparations shall have practical or academic training in sterile compounding, clean room technology, laminar flow technology, and quality assurance techniques. The training shall include the following:

(A) At least one successful media fill test; and

(B) a successful glove fingertip test.

(2) The pharmacist-in-charge shall ensure that all supportive personnel are trained and successfully demonstrate the following before performing any delegated sterile admixture services:

(A) Comprehensive knowledge of the pharmacy's standard operating procedures with regard to sterile admixture services, as specified in the policy and procedure manual;

(B) familiarity with the compounding techniques; and

(C) aseptic technique, which shall be proven by means of a media fill test and a glove fingertip test.

(3) The pharmacist-in-charge shall be responsible

for testing the aseptic technique of all personnel involved in compounding sterile preparations annually by means of a media fill test. All personnel involved in compounding high-risk sterile preparations shall undergo this testing twice each year. Each individual who fails to demonstrate acceptable aseptic technique shall be prohibited from compounding sterile preparations until the individual demonstrates acceptable technique by means of a media fill test.

(aa) The pharmacist-in-charge shall document all training and test results for each person before that person begins compounding sterile preparations. This documentation shall be maintained by the pharmacy for at least five years and shall be made available to the board upon request.

(bb) The pharmacist-in-charge shall be responsible maintaining records documenting the frequency of cleaning and disinfection of all compounding areas, according to the following minimum requirements:

(1) Each ISO class five environment shall be cleaned and disinfected as follows:

(A) At the beginning of each shift;

(B) every 30 minutes during continuous periods of compounding individual sterile preparations;

(C) before each batch; and

(D) after a spill or known contamination.

(2) All counters, work surfaces, and floors shall be cleaned and disinfected daily.

(3) All walls, ceilings, and storage shelves shall be cleaned and disinfected monthly.

(cc) The pharmacist-in-charge shall be responsible for maintaining records documenting the monitoring of the air pressure and air flow and shall initiate immediate corrective action if indicated. The air pressure of the anteroom shall be maintained at five pascals, and the air flow shall be maintained at 0.2 meters per second. The air pressure and air flow values shall be checked and recorded at least once daily.

(dd) The pharmacist-in-charge shall be responsible for maintaining records documenting the monitoring of the cleanliness and sterility of the sterile compounding environment. Environmental sampling shall be performed in each new facility before any sterile preparation in that facility is provided to a patient and, at a minimum, every six months thereafter. The environmental sampling shall include the primary engineering control, anteroom and buffer area, and equipment and shall be performed following any repair or service performed at the facility and in response to any identified problem or concern.

Environmental sampling shall consist of the following, at a minimum:

(1) Environmental nonviable particle counts;

(2) environmental viable airborne particle testing by volumetric collection;

(3) environmental viable surface sampling; and

(4) certification of operational efficiency of the primary engineering control by an independent contractor according to the international organization of standardization classification of particulate matter in room air, at least once every six months.

(ee) The environmental sampling records specified in subsection (dd) shall be retained at the pharmacy for at least five years and shall be made readily available to the pharmacist-in-charge, the board, and the board's designee.

(ff) If a microbial growth above acceptable levels is detected in an ISO class five environment, ISO class seven environment, or ISO class eight environment, an immediate reevaluation of the adequacy of compounding practice, cleaning procedures, operational procedures, and air filtration efficiency with the aseptic compounding location shall be conducted and documented. Each investigation into the source of the contamination shall include air sources, personnel garbing, and all filters, at a minimum. The ISO class five environment, ISO class seven environment, or ISO class eight environment shall be cleaned three times and environmental sampling shall be performed and reevaluated. Sterile preparations may be compounded and labeled with a beyond-use date according to subsection (gg) until microbial growth has decreased to acceptable levels.

(1) An ISO class five environment shall have acceptable levels of microbial growth if both of the following conditions are met:

(A) An airborne sample demonstrates no more than one colony-forming unit per cubic meter of air.

(B) A surface sample demonstrates no more than three colony-forming units per contact plate.

(2) An ISO class seven environment shall have acceptable levels of microbial growth if both of the following conditions are met:

(A) An airborne sample demonstrates no more than 10 colony-forming units per cubic meter of air.

(B) A surface sample demonstrates no more than five colony-forming units per contact plate.

(3) An ISO class eight environment shall have acceptable levels of microbial growth if both of the following conditions are met:

(A) An airborne sample demonstrates no more than 100 colony-forming units per cubic meter of air.

(B) A surface sample demonstrates no more than 100 colony-forming units per contact plate.

(gg) Unless sterility has been confirmed by testing, each high-risk sterile preparation shall be administered according to the following:

(1) Within 24 hours of compounding if stored at room temperature;

(2) within three days of compounding if stored under refrigeration; or

(3) within 45 days of compounding if stored frozen at -20°C (-4°F) or colder. (Authorized by K.S.A. 65-1630 and K.S.A. 2017 Supp. 65-1637e; implementing K.S.A. 2017 Supp. 65-1626a, K.S.A. 65-1634, K.S.A. 2017 Supp. 65-1637c, and K.S.A. 2017 Supp. 65-1642; effective May 11, 2018.)

Article 14.—WHOLESALE DISTRIBUTORS

68-14-1. (Authorized by K.S.A. 65-1630; implementing K.S.A. 1998 Supp. 65-1643; effective June 15, 1992; amended March 20, 1995; amended July 30, 1999; revoked Jan. 3, 2020.)

68-14-2. Definitions. As used in this article of the board's regulations and the pharmacy practice act, each of the following terms shall have the meaning specified in this regulation:

(a) "Blood" means whole blood collected from a single donor and processed either for transfusion or for further manufacturing.

(b) "Blood component" means that part of blood separated by physical or mechanical means.

(c) "Common ownership and control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, by voting rights, by contract, or by other means.

(d) "Drug sample" means a unit of a prescription-only drug that is not intended to be sold, is intended to promote the sale of the drug, and is distributed on a gratuitous basis.

(e) "Device" has the meaning specified in K.S.A. 65-656, and amendments thereto.

(f) "Emergency medical reasons" shall include transfers of prescription-only drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage, except that the gross dollar value of these transfers shall not exceed five percent of the total prescription-only drug sales revenue of ei-

ther the transferor or transferee pharmacy during any period of 12 consecutive months.

(g) "Excursion" means a deviation from the range of temperatures specified by the manufacturer for storage or transport of a prescription-only drug or device based on stability data.

(h) "Intracompany sales" and "intracompany distribution" mean any transaction or transfer between any division, subsidiary, parent, affiliated, or related company under the common ownership and control of a corporate entity.

(i) "Primary owner" means any person owning or controlling more than 50 percent of the wholesaler's business.

(j) "Room temperature" means a temperature that is maintained thermostatically and meets the following requirements:

(1) Encompasses the usual and customary working environment of 20° to 25°C (68° to 77°F);

(2) results in a mean kinetic temperature calculated to be not more than 25°C (77°F); and

(3) allows for excursions between 15° and 30°C (59° to 86°F) experienced in facilities, such that the allowable calculated mean kinetic temperature remains in the allowed range.

(k) "Virtual wholesale distribution" means arranging for the distribution of a drug or device, which may include taking actual possession of the drug or device and shall include contracting with another entity for the distribution, purchase, and sale of the drug or device.

(l) "Virtual wholesale distributor" means a business entity that arranges for the distribution of a drug or device, with or without taking actual possession of the drug or device, and contracts with others for the distribution, purchase, and sale.

(m) "Wholesale distribution" means distribution of prescription-only drugs or devices to persons other than a consumer or patient and shall include virtual wholesale distribution and virtual wholesale distributors, but this term shall not include either of the following:

(1) The distribution of drug samples by manufacturers' representatives or representatives of the authorized distributor of record, in accordance with 21 U.S.C. 353; or

(2) the sale, purchase, or trade of blood and blood components intended for transfusion. (Authorized by K.S.A. 65-1630; implementing K.S.A. 65-1626, as amended by L. 2019, ch. 52, sec. 7, K.S.A. 65-1643, K.S.A. 65-1655, K.S.A. 65-1655a, and K.S.A. 65-1655b; effective June 15, 1992; amended July 23, 1999; amended Jan. 3, 2020.)

68-14-3. (Authorized by and implementing K.S.A. 1998 Supp. 65-1655 and 65-1643; effective June 15, 1992; amended July 23, 1999; revoked Jan. 3, 2020.)

68-14-4. Minimum required information for registration. (a) Each wholesale distributor, virtual wholesale distributor, third-party logistics provider, or outsourcing facility shall provide the board with the following minimum information as part of the registration requirements described in K.S.A. 65-1645, and amendments thereto, and as part of any renewal of any registration:

(1) The name, commercial business address, and telephone number of the registrant;

(2) each trade or business name used by the registrant;

(3) the address, telephone number, and name of the contact person for each facility used by the registrant for the storage, handling, and distribution of prescription-only drugs or devices;

(4) the type of ownership or operation, including partnership, corporation, or sole proprietorship;

(5) the name of each owner, operator, facility manager, and designated representative of the registrant, including the following:

(A) If a person, the name, address, and date of birth of the person;

(B) if a partnership, the name, address, and date of birth of each partner and the name of the partnership;

(C) if a corporation, the name, title, address, and date of birth of each corporate officer and director, the corporate name, and the name of the state of incorporation; and

(D) if a sole proprietorship, the name, address, and date of birth of the sole proprietor and the name of the business entity;

(6) a list of all states where the registrant is registered as a wholesale distributor, virtual wholesale distributor, third-party logistics provider, or outsourcing facility;

(7) a copy of any current DEA registration;

(8) all disciplinary actions or sanctions by any state or federal agency against the registrant or any principal, owner, director, officer, facility manager, or designated representative thereof;

(9) if the facility is located outside of Kansas, a record of the following:

(A) A current registration in the state where the registrant is located;

(B) a satisfactory inspection conducted within the previous 36-month period by the registering

entity of the state where the registrant is located. If no such inspection record is readily available, the record of a satisfactory inspection conducted at the expense of the registrant within the previous 36-month period by a third party recognized by the board to inspect may be accepted; and

(C) a designated resident agent in Kansas for service of process, the record of whom shall also be on file with the secretary of state; and

(10) if the registrant is an outsourcing facility, a record of the following:

(A) A current outsourcing facility registration from the food and drug administration (FDA); and

(B) a current inspection report from an FDA inspection conducted within the previous 24-month period that indicates compliance with the requirements of the federal food, drug and cosmetic act, including guidance documents and current good manufacturing practices established by the FDA. If no such inspection record is readily available, the record of a satisfactory inspection conducted at the expense of the registrant within the previous 36-month period by a third party recognized by the board to inspect may be accepted.

(b) Each registrant shall provide the board with a surety bond that meets the requirements of 21 U.S.C. 360eee-2.

(c) Each registrant shall provide and maintain, in readily retrievable form, a list of all manufacturers, wholesale distributors, third-party logistics providers, outsourcing facilities, and dispensers with which the registrant is transacting business.

(d) Each registrant shall submit revised information requested by subsection (a) within 30 days after any change in that information. (Authorized by K.S.A. 65-1630; implementing K.S.A. 65-1643, K.S.A. 65-1645, K.S.A. 65-1655, K.S.A. 65-1655a, and K.S.A. 65-1655b; effective June 15, 1992; amended July 23, 1999; amended Jan. 3, 2020.)

68-14-5. Personnel. (a) Each wholesale distributor registrant, virtual wholesale distributor registrant, third-party logistics registrant, or outsourcing facility registrant shall require each person employed in any wholesale distribution, virtual wholesale distribution, third-party logistics, or outsourcing activity, or any combination of these activities, to receive education, training, and experience sufficient for that person to perform the assigned functions in a manner providing assurance that the drug product quality, safety, and security will at all times be maintained as required by

law. Each registrant shall maintain records of the training, education, and experience for five years.

(b) Each wholesale distributor registrant, virtual wholesale distributor registrant, or third-party logistics provider registrant shall designate an individual as the facility manager, who shall be responsible for all aspects of the registrant's operation.

(c) Each outsourcing facility registrant shall designate a pharmacist-in-charge, as defined by K.S.A. 65-1626 and amendments thereto, who shall be responsible for all aspects of the registrant's operation. (Authorized by K.S.A. 65-1630; implementing K.S.A. 65-1655, K.S.A. 65-1655a, and K.S.A. 65-1655b; effective June 15, 1992; amended July 23, 1999; amended Jan. 3, 2020.)

68-14-7. Wholesale distributors; minimum requirements for the storage and handling of prescription-only drugs and devices and for the establishment and maintenance of prescription-only drug and device distribution records. Each wholesale distributor registrant shall meet the following minimum requirements for the storage and handling of prescription-only drugs and devices and for the establishment and maintenance of prescription-only drug and device distribution records by the registrant and its officers, agents, representatives, and employees:

(a) Facilities. Each facility at which prescription-only drugs and devices are stored, warehoused, handled, held, offered, marketed, transported from, or displayed shall meet the following requirements:

(1) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;

(2) have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;

(3) have a quarantine area for storage of prescription-only drugs and devices that are outdated, damaged, deteriorated, misbranded, adulterated, counterfeit, or suspected of being counterfeit, or that are in immediate or sealed, secondary containers that have been opened or deemed unfit for distribution;

(4) be maintained in a clean and orderly condition;

(5) be free from infestation by insects, rodents, birds, or vermin of any kind;

(6) be a commercial location and not a personal dwelling or residence;

(7) have sufficient storage space to maintain records of all transactions for at least five years; and

(8) be in a location separate from any other wholesale distributor or pharmacy registered by the board or another state.

(b) Security.

(1) Each facility used for wholesale distribution shall be secure from unauthorized entry.

(A) Access from outside the premises shall be kept to a minimum and be well controlled.

(B) The outside perimeter of the premises shall be well lighted.

(C) Entry into areas where prescription-only drugs or devices are held shall be limited to authorized personnel.

(2) Each facility shall be equipped with an alarm system to detect entry after hours.

(3) Each facility shall be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(4) Each registrant shall ensure adequate accountability and control of all controlled substances in compliance with the Kansas uniform controlled substances act, federal drug laws, and all applicable regulations.

(5) Each registrant shall verify that all persons or entities who undertake, either directly or by any other arrangement, to transport prescription-only drugs or devices on behalf of the registrant ensure security.

(c) Storage. All prescription-only drugs and devices shall be stored at appropriate temperatures and under appropriate conditions in accordance with manufacturer's recommendations to preserve the stability of these drugs and devices.

(1) If no storage requirements are established for a prescription-only drug or device, the drug or device may be held at room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(2) Appropriate manual, electromechanical, or electronic temperature and humidity-recording equipment, devices, logs, or a combination of these means shall be utilized to document proper storage of prescription-only drugs and devices at least once during each 24-hour period.

(3) The recordkeeping requirements in subsection (f) shall be followed for all stored prescription-only drugs and devices.

(d) Examination of materials.

(1) Upon receipt, each outside shipping container shall be visually examined to identify and to prevent the acceptance of prescription-only drugs or devices that are contaminated or otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.

(2) Each outgoing shipment shall be carefully inspected to identify the prescription-only drugs or devices and to ensure that there is no delivery of prescription-only drugs or devices that have been damaged in storage or held under improper conditions.

(3)(A) No registrant shall engage in the wholesale distribution of prescription-only drugs or devices that are purchased or received from pharmacies or practitioners or from wholesale distributors that obtained the drugs or devices from pharmacies or practitioners.

(B) Any registrant may receive for redistribution prescription-only drugs or devices returned from pharmacies or practitioners that were distributed by the registrant. Before redistribution, the registrant shall examine the prescription-only drug or device to ensure that it has not been opened or used. If the prescription-only drug or device has been opened, it shall be quarantined and physically separated from other prescription-only drugs or devices until the prescription-only drug or device is destroyed.

(C) Any registrant that also operates as a reverse logistics provider or returns processor may receive prescription-only drugs or devices for destruction from pharmacies and practitioners regardless of where the drugs or devices are obtained. Each registrant shall maintain documentation for the disposition of prescription-only drugs or devices sent for destruction with proof of destruction, including a certificate of destruction, for inventory accountability and shall maintain records documenting any return to the supplier.

(4) The recordkeeping requirements in subsection (f) shall be followed for all incoming and outgoing prescription-only drugs or devices.

(e) Returned, damaged, and outdated prescription-only drugs or devices.

(1) Prescription-only drugs or devices that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other prescription-only drugs and devices until they are destroyed or returned to their supplier.

(2) Each prescription-only drug or device whose immediate or sealed outer or sealed secondary container has been opened or used shall be identified as such and shall be quarantined and physically separated from other prescription-only drugs or devices until the drug or device is either destroyed or returned to the supplier.

(3) If the conditions under which a prescription-only drug or device has been returned cast doubt on the drug's or device's safety, identity, strength, quality, or purity, then the drug or device shall be destroyed or returned to the supplier, unless examination, testing, or other investigations prove that the drug or device meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether or not the conditions under which a drug or device has been returned cast doubt on the drug's or device's safety, identity, strength, quality, or purity, the registrant shall consider, among other factors, the conditions under which the drug or device has been held, stored, or shipped before or during its return and the condition of the drug or device and its container, carton, or labeling, as a result of storage or shipping.

(4) The recordkeeping requirements in subsection (f) shall be followed for all outdated, damaged, deteriorated, misbranded, or adulterated prescription-only drugs or devices.

(f) Recordkeeping.

(1) Each registrant shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription-only drugs and devices. These records shall include the following information:

(A) The source of the drugs and devices, including the name and principal address of the seller or transferor, and the address of the location from which the drugs or devices were shipped;

(B) the identity and quantity of the drugs and devices received and either distributed or disposed of; and

(C) the dates of receipt and either distribution or other disposition of the drugs and devices.

(2) Each record related to the wholesale distribution of prescription-only drugs or devices, including invoices of purchase or sale, packing slips, and shipment records, shall accurately reflect the name of the registrant as that name appears on the registration issued by the board.

(3) Inventories and records shall be made available for inspection and photocopying by an authorized representative of the board for five years

following disposition of the prescription-only drugs or devices.

(4) Records described in this regulation that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two working days of a request by an authorized representative of the board.

(5) Each registrant shall post all current federal and state registrations in a conspicuous place.

(g) Written policies and procedures. Each registrant shall establish, maintain, and adhere to written policies and procedures concerning the receipt, security, storage, inventory, and distribution of prescription-only drugs and devices, including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. In addition, each registrant shall establish, maintain, and adhere to the following written policies and procedures:

(1) A procedure by which the oldest approved stock of a prescription-only drug or device is distributed first. The procedure may permit deviation from this requirement, if the deviation is temporary and appropriate to meet the needs of the receiving facility;

(2) a procedure to be followed for handling recalls and withdrawals of prescription-only drugs and devices. This procedure shall be adequate to deal with recalls and withdrawals due to any of the following:

(A) Any action initiated at the request of the food and drug administration or other federal, state, or local law enforcement or other government agency, including the board;

(B) any voluntary action by the manufacturer to remove defective or potentially defective drugs or devices from the market; or

(C) any action undertaken to promote public health and safety by replacing existing merchandise with an improved product or new package design;

(3) a procedure to ensure that wholesale distributors prepare for, protect against, and handle any crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency;

(4) a procedure to ensure that all outdated

prescription-only drugs or devices are segregated from other drugs or devices and either returned to the manufacturer or destroyed. This procedure shall provide for written documentation of the disposition of outdated prescription-only drugs and devices. This documentation shall be maintained for five years after disposition of the outdated prescription-only drugs or devices; and

(5) a procedure to ensure that prescription-only drugs and devices are distributed only to registered entities with the authority to possess prescription-only drugs or devices in Kansas and to maintain documentation of this authority as part of the distribution record.

(h) Responsible persons. Each registrant shall establish and maintain a list of officers, directors, managers, and other persons in charge of wholesale prescription-only drug and device distribution, storage, and handling, including a description of their duties and a summary of their qualifications. This list shall be made available for inspection by the board.

(i) Compliance with federal, state, and local law.

(1) Each registrant that deals in controlled substances shall register with the DEA.

(2) Each registrant shall permit the board's authorized personnel to enter and inspect the registrant's premises and delivery vehicles and to audit the records and written operating procedures, at reasonable times and in a reasonable manner, to the extent authorized by law.

(3) Each registrant shall operate in accordance with the requirements of 21 U.S.C. 353, 21 U.S.C. 360eee-1, 21 U.S.C. 360eee-2, and any implementing regulation.

(j) Salvaging and reprocessing. Each registrant shall be subject to the provisions of any applicable federal, state, or local laws or regulations that relate to prescription-only drug or device salvaging or reprocessing. (Authorized by K.S.A. 65-1630; implementing K.S.A. 65-1634 and K.S.A. 65-1655; effective June 15, 1992; amended July 23, 1999; amended Jan. 3, 2020.)

68-14-7a. Third-party logistics providers; minimum requirements for operation and maintenance of records. Each third-party logistics provider registrant shall meet the following minimum requirements for operation and the maintenance of records:

(a) Facilities. Each facility at which a third-party logistics provider is located shall meet the following requirements:

(1) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;

(2) have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;

(3) have a quarantine area for storage of prescription-only drugs and devices that are outdated, damaged, deteriorated, misbranded, adulterated, counterfeit, or suspected of being counterfeit or that are in immediate or sealed, secondary containers that have been opened or deemed unfit for distribution;

(4) be maintained in a clean and orderly condition;

(5) be free from infestation by insects, rodents, birds, or vermin of any kind;

(6) be in a location separate from any pharmacy registered by the board or another state;

(7) be a commercial location and not a personal dwelling or residence; and

(8) have sufficient storage space to maintain records of all shipments pertaining to third-party logistics for at least five years.

(b) Security.

(1) Each facility used for third-party logistics shall be secure from unauthorized entry.

(A) Access from outside the premises shall be kept to a minimum and be well controlled.

(B) The outside perimeter of the premises shall be well lighted.

(C) Entry into areas where prescription-only drugs or devices are held shall be limited to authorized personnel.

(2) Each facility shall be equipped with an alarm system to detect entry after hours.

(3) Each facility shall be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(c) Storage. All prescription-only drugs and devices shall be stored at appropriate temperatures and under appropriate conditions in accordance with manufacturer's recommendations to preserve the stability of these drugs and devices.

(1) If no storage requirements are established for a prescription-only drug or device, the drug or device may be held at room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(2) Appropriate manual, electromechanical, or electronic temperature and humidity-recording equipment, devices, logs, or a combination of these means shall be utilized to document proper storage of prescription-only drugs and devices at least once during each 24-hour period.

(3) The recordkeeping requirements in subsection (f) shall be followed for all stored prescription-only drugs and devices.

(d) Examination of materials.

(1) Upon receipt, each outside shipping container shall be visually examined to identify and to prevent the acceptance of prescription-only drugs or devices that are contaminated or otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.

(2) Each outgoing shipment shall be carefully inspected to identify the prescription-only drugs or devices and to ensure that there is no delivery of prescription-only drugs or devices that have been damaged in storage or held under improper conditions.

(3) The recordkeeping requirements in subsection (f) shall be followed for all incoming and outgoing prescription-only drugs or devices.

(e) Returned, damaged, and outdated prescription-only drugs or devices.

(1) Prescription-only drugs or devices that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other prescription-only drugs and devices until they are destroyed or returned to their supplier.

(2) Each prescription-only drug or device whose immediate or sealed outer or sealed secondary container has been opened or used shall be identified as such and shall be quarantined and physically separated from other prescription-only drugs and devices until the drug or device is either destroyed or returned to the supplier.

(3) If the conditions under which a prescription-only drug or device has been returned cast doubt on the drug's or device's safety, identity, strength, quality, or purity, then the drug or device shall be destroyed or returned to the supplier, unless examination, testing, or other investigations prove that the drug or device meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether or not the conditions under which a drug or device has been returned cast doubt on the drug's or de-

vice's safety, identity, strength, quality, or purity, the registrant shall consider, among other factors, the conditions under which the drug or device has been held, stored, or shipped before or during its return and the condition of the drug or device and its container, carton, or labeling, as a result of storage or shipping.

(4) The recordkeeping requirements in subsection (f) shall be followed for all outdated, damaged, deteriorated, misbranded, or adulterated prescription-only drugs or devices.

(f) Recordkeeping.

(1) Each registrant shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription-only drugs and devices. These records shall include the following information:

(A) The source of the drugs and devices, including the name and principal address of the seller or transferor, and the address of the location from which the drugs or devices were shipped;

(B) the identity and quantity of the drugs and devices received and either distributed or disposed of; and

(C) the dates of receipt and either distribution or other disposition of the drugs and devices.

(2) Inventories and records shall be made available for inspection and photocopying by an authorized representative of the board for five years following disposition of the prescription-only drugs or devices.

(3) The records described in this regulation that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two working days of a request by an authorized representative of the board.

(4) Each registrant shall post all current federal and state registrations in a conspicuous place.

(g) Written policies and procedures. Each registrant shall establish, maintain, and adhere to written policies and procedures concerning the receipt, security, storage, inventory, and distribution of prescription-only drugs and devices, including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. In addition, each registrant shall establish, maintain, and adhere to the following written policies and procedures:

(1) A procedure by which the oldest approved stock of a prescription-only drug or device is distributed first. The procedure may permit deviation from this requirement, if the deviation is temporary and appropriate to meet the needs of the receiving facility;

(2) a procedure to be followed for handling recalls and withdrawals of prescription-only drugs and devices. This procedure shall be adequate to deal with recalls and withdrawals due to any of the following:

(A) Any action initiated at the request of the food and drug administration or other federal, state, or local law enforcement or other government agency, including the board;

(B) any voluntary action by the manufacturer to remove defective or potentially defective drugs or devices from the market; or

(C) any action undertaken to promote public health and safety by replacing existing merchandise with an improved product or new package design;

(3) a procedure to ensure that the registrant prepares for, protects against, and handles any crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency; and

(4) a procedure to ensure that all outdated prescription-only drugs or devices are segregated from other drugs and devices and either returned to the manufacturer or destroyed. This procedure shall provide for written documentation of the disposition of outdated prescription-only drugs or devices. Each registrant shall maintain this documentation for five years after disposition of each outdated prescription-only drug or device.

(h) Responsible persons. Each registrant shall establish and maintain a list of officers, directors, managers, and other persons in charge of prescription-only drug and device distribution, storage, and handling, including a description of their duties and a summary of their qualifications. This list shall be made available for inspection by the board.

(i) Compliance with federal, state, and local law.

(1) Each registrant that deals in controlled substances shall register with the DEA.

(2) Each registrant shall permit the board's authorized personnel to enter and inspect the registrant's premises and delivery vehicles and to audit the records and written operating procedures, at reasonable times and in a reasonable manner, to the extent authorized by law.

(3) Each registrant shall operate in accordance with the requirements of 21 U.S.C. 360eee, or any implementing regulation. (Authorized by K.S.A. 65-1630; implementing K.S.A. 65-1634 and K.S.A. 65-1655a; effective Jan. 3, 2020.)

68-14-7b. Outsourcing facilities; minimum requirements for operation and maintenance of records. Each registrant who is the owner of an outsourcing facility shall meet the following minimum requirements for operation and the maintenance of records:

(a) Facilities. Each outsourcing facility shall meet the following requirements:

(1) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;

(2) have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;

(3) have a quarantine area for storage of prescription-only drugs and devices that are outdated, damaged, deteriorated, misbranded, adulterated, or deemed unfit for distribution;

(4) have a quarantine area designated for holding products waiting for testing data before being released for distribution;

(5) be maintained in a clean and orderly condition;

(6) be free from infestation by insects, rodents, birds, or vermin of any kind;

(7) be a commercial location and not a personal dwelling or residence; and

(8) have sufficient storage space to maintain records of all shipments pertaining to outsourcing for at least five years.

(b) Security.

(1) Each facility used for outsourcing shall be secure from unauthorized entry.

(A) Access from outside the premises shall be kept to a minimum and be well controlled.

(B) The outside perimeter of the premises shall be well lighted.

(C) Entry into areas where prescription-only drugs and devices are held shall be limited to authorized personnel.

(2) Each facility shall be equipped with an alarm system to detect entry after hours.

(3) Each facility shall be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against

theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(c) Storage. All prescription-only drugs and devices shall be stored at appropriate temperatures and under appropriate conditions in accordance with manufacturer's recommendations to preserve the stability of these drugs and devices.

(1) If no storage requirements are established for a prescription-only drug or device, the drug or device may be held at room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(2) Appropriate manual, electromechanical, or electronic temperature and humidity-recording equipment, devices, logs, or a combination of these means shall be utilized to document proper storage of prescription-only drugs and devices at least once during each 24-hour period.

(3) The recordkeeping requirements in subsection (f) shall be followed for all stored prescription-only drugs and devices.

(d) Examination of materials.

(1) Upon receipt, each outside shipping container shall be visually examined to identify and to prevent the acceptance of prescription-only drugs or devices that are contaminated or otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.

(2) Each outgoing shipment shall be carefully inspected to identify the prescription-only drugs or devices and to ensure that there is no delivery of prescription-only drugs or devices that have been damaged in storage or held under improper conditions.

(3) The recordkeeping requirements in subsection (f) shall be followed for all incoming and outgoing prescription-only drugs and devices.

(e) Returned, damaged, and outdated prescription-only drugs and devices.

(1) Prescription-only drugs or devices that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other prescription-only drugs and devices until they are destroyed.

(2) Each prescription-only drug or device whose immediate or sealed outer or sealed secondary container has been opened or used shall be identified as such and shall be quarantined and physically separated from other prescription-only drugs until the drug or device is either destroyed or returned to the supplier.

(3) If the conditions under which a prescription-only drug or device has been returned cast doubt on the drug's or device's safety, identity, strength, quality, or purity, then the drug or device shall be destroyed, unless examination, testing, or other investigations prove that the drug or device meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether or not the conditions under which a drug or device has been returned cast doubt on the drug's or device's safety, identity, strength, quality, or purity, the registrant shall consider, among other factors, the conditions under which the drug or device has been held, stored, or shipped before or during its return and the condition of the drug or device and its container, carton, or labeling, as a result of storage or shipping.

(4) The recordkeeping requirements in subsection (f) shall be followed for all outdated, damaged, deteriorated, misbranded, or adulterated prescription-only drugs and devices.

(f) Recordkeeping.

(1) Each registrant shall establish and maintain records of all transactions regarding the receipt and distribution or other disposition of prescription-only drugs and devices and any bulk active pharmaceutical ingredients used in compounding or manufacturing. These records shall include the following information:

(A) The source of the drugs and devices or the active pharmaceutical ingredients, including the name and principal address of the seller or transferor, the address of the location from which the drugs or devices were shipped, and the certificate of analysis if an active pharmaceutical ingredient was received;

(B) the identity and quantity of the drugs and devices or the active pharmaceutical ingredients received and either distributed or disposed of; and

(C) the date of receipt of the drugs and devices and the date of distribution or any other disposition of the drugs and devices.

(2) Records shall be made available for inspection and photocopying by an authorized representative of the board for five years following disposition of the prescription-only drugs or devices.

(3) The records described in this regulation that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the

inspection site and not electronically retrievable shall be made available for inspection within two working days of a request by an authorized representative of the board.

(4) Each registrant shall post all current federal and state registrations in a conspicuous place.

(g) Written policies and procedures. Each registrant shall establish, maintain, and adhere to written policies and procedures concerning the receipt, security, storage, inventory, and distribution of prescription-only drugs and devices, including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. In addition, each registrant shall establish, maintain, and adhere to the following written policies and procedures:

(1) A procedure by which the oldest approved stock of a prescription-only drug or device is distributed first. The procedure may permit deviation from this requirement, if the deviation is temporary and appropriate to meet the needs of the receiving facility;

(2) a procedure to be followed for handling recalls and withdrawals of prescription-only drugs and devices including written notification to the board within 24 hours. This procedure shall be adequate to deal with recalls and withdrawals due to any of the following:

(A) Any action initiated at the request of the food and drug administration or other federal, state, or local law enforcement or other government agency, including the board;

(B) any voluntary action by the registrant to remove defective or potentially defective drugs or devices from the market; or

(C) any action undertaken to promote public health and safety by replacing existing merchandise with an improved product or new package design;

(3) a procedure to ensure that the registrant prepares for, protects against, and handles any crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency;

(4) a procedure to ensure that all outdated prescription-only drugs or devices are segregated from other drugs or devices and destroyed. This procedure shall provide for written documentation of the disposition of outdated prescription-only drug or device. This documentation shall be maintained for five years after disposi-

tion of the outdated prescription-only drug or device; and

(5) a procedure to ensure that prescription-only drugs and devices are sold only to registered entities with the authority to possess prescription-only drugs and devices in Kansas and to maintain documentation of this authority as part of the distribution record.

(h) Responsible persons. Each registrant shall establish and maintain a list of officers, directors, managers, pharmacists, pharmacy technicians, and other persons in charge of drug compounding, distribution, storage, and handling, including a description of their duties and a summary of their qualifications. This list shall be made available for inspection by the board.

(i) Compliance with federal, state, and local law.

(1) Each registrant that deals in controlled substances shall register with the DEA.

(2) Each registrant shall permit the board's authorized personnel to enter and inspect the registrant's premises and delivery vehicles and to audit the records and written operating procedures, at reasonable times and in a reasonable manner, to the extent authorized by law.

(3) Each registrant shall operate in accordance with section 503B of the federal food, drug, and cosmetic act, 21 U.S.C. 353b.

(4) Each drug manufactured, prepared, propagated, compounded, or processed by an outsourcing facility without a registration issued by the board shall be deemed misbranded. (Authorized by K.S.A. 65-1630; implementing K.S.A. 65-1634 and K.S.A. 65-1655b; effective Jan. 3, 2020.)

Article 16.—CANCER DRUG REPOSITORY PROGRAM

68-16-1 and 68-16-2. (Authorized by and implementing K.S.A. 2005 Supp. 65-1667; effective Dec. 1, 2006; revoked Feb. 13, 2015.)

68-16-3. (Authorized by and implementing K.S.A. 2007 Supp. 65-1667; effective Dec. 1, 2006; amended April 10, 2009; revoked Feb. 13, 2015.)

68-16-4. (Authorized by and implementing K.S.A. 2005 Supp. 65-1667; effective Dec. 1, 2006; revoked Feb. 13, 2015.)

68-16-5. (Authorized by and implementing K.S.A. 2005 Supp. 65-1665 and K.S.A. 2005 Supp. 65-1667; effective Dec. 1, 2006; revoked Feb. 13, 2015.)

68-16-6, 68-16-7, 68-16-8, and 68-16-9. (Authorized by and implementing K.S.A. 2005 Supp. 65-1667; effective Dec. 1, 2006; revoked Feb. 13, 2015.)

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;

(3) review each board newsletter published since the last quarterly meeting; and

(4) 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 and newsletters reviewed; and

(C) a description of the steps taken or to be taken to prevent recurrence of each incident reviewed. (Authorized by and implementing K.S.A. 65-1695; effective April 10, 2009; amended Nov. 29, 2019.)

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) A prescription drug order, including that for any controlled substance listed in schedules II, III, IV, and V, may be communicated by electronic transmission in accordance with 21 C.F.R. part 1311.

(d) Each electronic prescription drug order created and transmitted in conformance with 21 C.F.R. part 1311 shall be considered an original, written, signed prescription drug order. (Authorized by K.S.A. 65-1630, K.S.A. 2014 Supp. 65-1642, and K.S.A. 2014 Supp. 65-4102; implementing K.S.A. 2014 Supp. 65-1642, 65-4102, and 65-4123; effective Feb. 5, 1999; amended Dec. 27, 1999; amended April 23, 2010; amended May 20, 2011; amended Feb. 13, 2015.)

68-20-15b. Notification to board; suspected diversion, theft, or loss of controlled substances. Either the pharmacist-in-charge or the pharmacy owner shall notify the board in writing within one day of any suspected diversion, theft, or loss of any controlled substance and, upon completion, shall provide the board with a copy of the completed DEA 106 form issued by the U.S. department of justice. (Authorized by K.S.A. 2017 Supp. 65-4102; implementing K.S.A. 65-4117; effective Jan. 4, 2019.)

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 record-keeping 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 preparations 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.)

68-20-31. 2,5-dimethoxy-4-methyl-n-(2-methoxybenzyl)phenethylamine included in schedule I. 2,5-dimethoxy-4-methyl-n-(2-methoxybenzyl)phenethylamine, including its salts, isomers, and salts of isomers, shall be classified as a schedule I controlled substance. (Authorized by and implementing K.S.A. 2014 Supp. 65-4102; effective, T-68-1-23-15, Jan. 23, 2015; effective June 5, 2015.)

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) “Dispenser identification number” means the drug enforcement administration (DEA) number if available or, if not available, the national provider identifier (NPI).

(c) “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.

(d) “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.

(e) “Patient identification number” means that patient’s unexpired temporary or permanent driver’s license number or state-issued identification card number. If the patient does not have one of those numbers, the dispenser shall use the patient’s insurance identification number. If the patient does not have an insurance identification number, the dispenser shall use the patient’s first,

middle, and last initials, followed by the patient's eight-digit birth date.

(f) "Prescriber identification number" means the DEA number if available or, if not available, the NPI.

(g) "Program" means the Kansas prescription monitoring program.

(h) "Report" means a compilation of data concerning a dispenser, patient, drug of concern, or scheduled substance as defined in K.S.A. 65-1682(g) and amendments thereto.

(i) "Stakeholder" means a person, group, or organization that could be affected by the program's actions, objectives, and policies.

(j) "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.

(k) "Zero report" means an electronic data submission reflecting no dispensing activity for a given period.

This regulation shall take effect 90 days after publication in the Kansas register. (Authorized by K.S.A. 65-1692; implementing K.S.A. 2013 Supp. 65-1682; effective Oct. 15, 2010; amended Aug. 13, 2014.)

68-21-2. Electronic reports. (a)(1) Each dispenser shall file a report with the board for scheduled substances, as defined in K.S.A. 65-1682(g) and amendments thereto, and any drugs of concern dispensed in this state or to an address in this state. This report shall be submitted with-

in 24 hours of the time that the substance is dispensed, unless the board grants an extension as specified in subsection (d).

(2) Each dispenser that does not dispense scheduled substances, as defined in K.S.A. 65-1682(g) and amendments thereto, or any drugs of concern in this state or to an address in this state during the reporting period specified in paragraph (a)(1) shall file a zero report with the board. Each zero report shall meet the following requirements:

(A) Cover not more than a seven-day period in which no such drugs were dispensed; and

(B) be filed the day following the end of the period covered by the zero report.

(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, each report required to be submitted pursuant to subsection (a) 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 any report required to be submitted pursuant to subsection (a) 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 scheduled substances, as defined in K.S.A. 65-1682(g) and amendments thereto, 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 scheduled substances, as defined in K.S.A. 65-1682(g) and amendments thereto, 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.

This regulation shall take effect 90 days after publication in the Kansas register. (Authorized by K.S.A. 2013 Supp. 65-1683 and 65-1692; implementing K.S.A. 2013 Supp. 65-1683; effective Oct. 15, 2010; amended April 15, 2011; amended Aug. 13, 2014.)

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 record-keeping 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 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 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 estab-

lished 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 or government entities to share information. (a) Reciprocal agreements with one or more of the following entities within the United States may be entered into by the board to share program data if the entity's prescription monitoring program is compatible with the program:

- (1) A state, commonwealth, district, or territory;
- (2) a military or veteran health system;
- (3) an Indian health system or service; or
- (4) a city, county, municipality, or township.

(b) In determining the compatibility of the entity's prescription monitoring program, the following may be considered by the board:

- (1) The safeguards for privacy of patient records and the entity's success in protecting patient privacy;
- (2) the persons authorized by the entity to view the data collected by the program;
- (3) the schedules of controlled substances monitored by the entity;

(4) the data required by the entity to be submitted on each prescription; and

(5) the costs and benefits to the board of mutually sharing data with the entity.

(c) Any reciprocal agreement may be reviewed annually by the board to determine its continued compatibility with the program. (Authorized by K.S.A. 65-1692; implementing K.S.A. 65-1685; effective Oct. 15, 2010; amended Nov. 29, 2019.)

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) any compound, mixture, or preparation that contains any detectable quantity of ephedrine, its salts or optical isomers, or salts of optical isomers and is exempt from being reported to the statewide electronic logging system for the sale of methamphetamine precursors;

(3) any compound, mixture, or preparation that contains any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers and is exempt from being reported to the statewide electronic logging system for the sale of methamphetamine precursors;

(4) promethazine with codeine; and

(5) any product, compound, mixture, or preparation that contains gabapentin.

(b) Each request to have a drug added to the program for monitoring shall be submitted in writing to the board.

This regulation shall take effect 90 days after publication in the Kansas register. (Authorized by K.S.A. 2016 Supp. 65-1692; implementing K.S.A. 2016 Supp. 65-1682; effective Oct. 15, 2010; amended Feb. 4, 2015; amended July 25, 2018.)

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 State 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

- 69-1. LICENSING AND QUALIFICATIONS OF COSMETOLOGISTS.
- 69-3. SCHOOLS.
- 69-11. FEES.
- 69-12. TANNING FACILITIES.
- 69-13. INSPECTIONS.
- 69-15. TATTOOING, BODY PIERCING, AND PERMANENT COSMETICS.

Article 1.—LICENSING AND QUALIFICATIONS OF COSMETOLOGISTS

69-1-10. Potentially disqualifying civil and criminal records; advisory opinion; fee.

(a) Conviction of any felony may disqualify an applicant from receiving a license.

(b) Civil records that may disqualify an applicant from receiving a license shall be any records of any court judgment or settlement in which the applicant admitted or was found to have engaged in conduct that would constitute a violation of any practice act under the jurisdiction of the board or any of the board's regulations. Those records shall not be used to disqualify an applicant for more than five years after the applicant satisfied any judgment or restitution ordered by the court or agreed to in the settlement.

(c) Any individual with a criminal or civil record described in this regulation may submit a petition to the board for an informal, advisory opinion concerning whether the individual's civil or criminal record may disqualify the individual from licensure. Each petition shall include the following:

(1) The details of the individual's civil or criminal record, including a copy of court records or the settlement agreement;

(2) an explanation of the circumstances that resulted in the civil or criminal record; and

(3) a check or money order in the amount of \$50.00. (Authorized by K.S.A. 74-120 and 74-2702a; implementing K.S.A. 65-1908, 74-120, and 74-5806; effective Feb. 15, 2019.)

Article 3.—SCHOOLS

69-3-8. Curricula and credits. (a) The document titled "cosmetology school course curricula," as approved by the board on July 24, 2020, is hereby adopted by reference.

(b) Among other teaching tools used to provide a course of training, each cosmetology school shall use a textbook that substantially covers the curriculum areas.

(c) Any instructional classroom may be a place where theory instruction is provided in a traditional classroom setting or in a distance education format.

(d) Any cosmetology school may submit for approval of the board duplicate hours obtained by a student during the completion of manicuring training or esthetics training for credit toward completion of a course of cosmetology training. (Authorized by and implementing K.S.A. 65-1903; effective Jan. 1, 1966; amended, E-67-9, June 16, 1967; amended, E-69-19, Aug. 26, 1969; amended, E-70-12, Jan. 1, 1970; amended Jan. 1, 1971; amended May 1, 1981; amended May 1, 1982; amended, T-85-44, Dec. 19, 1984; amended May 1, 1985; amended June 7, 1996; amended, T-69-9-17-20, Sept. 17, 2020; amended Jan. 8, 2021.)

69-3-27. Disenrolled students. On or before the 10th day of each month, each school administrator shall submit to the board, on a form provided by the board, a list of each student who has been disenrolled in the previous month. The list shall include the following information for each disenrolled student:

(a) The name;
 (b) the apprentice license number;
 (c) the date of birth;
 (d) the total number of hours earned; and
 (e) the social security number, to be used for administrative purposes as authorized by K.S.A. 74-148 and amendments thereto. (Authorized by K.S.A. 2012 Supp. 65-1903 and K.S.A. 74-2702a; implementing K.S.A. 2012 Supp. 65-1903; effective March 22, 1996; amended Feb. 14, 2014.)

69-3-29. Monthly reporting of student hours. Each school administrator shall submit to the board a record of the number of hours earned in the previous month and the total number of hours accumulated through the previous month by each student, on a form approved by the board. The record shall include each student's name, address, and apprentice license number and shall be submitted no later than the 10th day of each month. (Authorized by K.S.A. 2012 Supp. 65-1903 and K.S.A. 74-2702a; implementing K.S.A. 2012 Supp. 65-1903; effective Feb. 14, 2014.)

Article 11.—FEES

69-11-1. Fees. The following fees shall be charged:

Cosmetologist examination fee	\$75.00
Cosmetologist license application fee	60.00
Cosmetologist license renewal fee	50.00
Delinquent cosmetologist renewal fee	25.00
Cosmetology technician license renewal fee	45.00
Delinquent cosmetology technician renewal fee	25.00
Electrologist examination fee	75.00
Electrologist license application fee	60.00
Electrologist license renewal fee	50.00
Delinquent electrologist renewal fee	25.00
Manicurist examination fee	75.00
Manicurist license application fee	60.00
Manicurist license renewal fee	50.00
Delinquent manicurist renewal fee	25.00
Esthetician examination fee	75.00
Esthetician license application fee	60.00
Esthetician license renewal fee	50.00
Delinquent esthetician renewal fee	25.00
Instructor-in-training permit fee	15.00
Instructor examination fee	75.00
Instructor license application fee	75.00
Instructor license renewal fee	50.00
Delinquent instructor renewal fee	25.00
Any apprentice license application fee	15.00
New school license application fee	150.00
School license renewal fee	75.00

Delinquent school license fee	30.00
New salon or clinic application fee	60.00
Salon or clinic renewal fee	50.00
Delinquent salon or clinic renewal fee	30.00
Reciprocity application fee	75.00
Verification of licensure fee	20.00
Fee for any duplicate license	25.00
Temporary permit fee	15.00

(Authorized by K.S.A. 2015 Supp. 65-1904 and K.S.A. 74-2702a; implementing K.S.A. 2015 Supp. 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; amended Feb. 14, 2014; amended Sept. 18, 2015; amended Jan. 6, 2017.)

69-11-2. Expiration dates for practitioner licenses. Each cosmetologist license, esthetician license, electrologist license, and manicurist license shall expire two years from the last day of the month in which the license was issued. (Authorized by K.S.A. 2012 Supp. 65-1904 and K.S.A. 74-2702a; implementing K.S.A. 2012 Supp. 65-1904; effective, T-83-21, July 21, 1982; effective May 1, 1983; amended March 22, 1996; amended Feb. 14, 2014.)

Article 12.—TANNING FACILITIES

69-12-3. Expiration of licenses; renewals; reinstatements. (a) Each tanning facility license shall expire one year from the last day of the month of its issuance unless renewed by payment of the annual renewal fee.

(1) Each application for renewal of a tanning facility license shall be postmarked on or before the expiration date of the current license.

(2) Each application for renewal of a tanning facility license shall be submitted on forms approved by the board and shall be accompanied by the applicable fee.

(b) Any tanning facility operator may renew the tanning facility license within 60 days after the expiration date of the prior license upon payment of the delinquent renewal fee.

(c) Any tanning facility operator may reinstate a tanning facility license within one year of the expiration date of the prior license upon payment of the reinstatement fee. (Authorized by K.S.A. 65-

1925; implementing K.S.A. 2011 Supp. 65-1926; effective Dec. 13, 1993; amended Nov. 9, 2012.)

69-12-5. Fees. The following fees shall be charged:

New tanning facility license fee	\$100.00
Annual renewal fee.....	\$75.00
Delinquent renewal fee	\$100.00
Reinstatement fee	\$200.00

(Authorized by K.S.A. 2012 Supp. 65-1926 and K.S.A. 74-2702a; implementing K.S.A. 2012 Supp. 65-1926; effective Dec. 13, 1993; amended Feb. 14, 2014.)

69-12-18. Access to tanning devices. Each tanning facility operator shall verify that each consumer accessing any tanning device in the tanning facility is at least 18 years of age. Verification shall be obtained by viewing a current state or U.S. government-issued photo identification that includes the consumer's date of birth. (Authorized by and implementing K.S.A. 2016 Supp. 65-1931; effective Jan. 6, 2017.)

Article 13.—INSPECTIONS

69-13-4. Refusal to allow inspection. Refusal to allow, or interference with, any inspection by the board or its designees shall constitute a cause for disciplinary action. (Authorized by K.S.A. 74-2702a; implementing K.S.A. 65-1907; effective Nov. 9, 2012.)

Article 15.—TATTOOING, BODY PIERCING, AND PERMANENT COSMETICS

69-15-1. Definitions. Each of the following terms, as used in this article, shall have the meaning specified in this regulation:

(a) "Antiseptic" means a chemical germicide used on skin and tissue to stop or inhibit the growth of bacteria.

(b) "Clean" means washed with soap or detergent to remove all soil and dirt.

(c) "Closed-book" means without aid from or availability of written material, including materials stored or accessed on an electronic device.

(d) "Completed procedure" means, for the purposes of determining qualification for licensure, a tattoo or piercing that has been finished, including any touchups or additional work following initial healing, with the client released from service.

(e) "Conch," when used to describe an ear piercing, means the piercing of the concha, which is the deep, bowl-shaped central shell of the ear.

(f) "Disinfectant" means an agent used on inanimate surfaces that is intended to destroy or irreversibly inactivate specific viruses, bacteria, or pathogenic fungi.

(g) "Enclosed storage area" means a separate room, closet, cupboard, or cabinet.

(h) "Establishment" means tattoo establishment, body piercing establishment, or cosmetic tattooing establishment.

(i) "Equivalent" means comparable but not identical, and covering the same subject matter.

(j) "Gross incompetence" means a demonstrated lack of ability, knowledge, or fitness to effectively or safely perform services for which one is licensed.

(k) "Infectious or contagious disease" means any disease that is diagnosed by a licensed health care professional as being contagious or transmissible, as designated in K.A.R. 28-1-2, and that could be transmitted during the performance of cosmetic tattooing, tattooing, or body piercing. Blood-borne diseases, including acquired immune deficiency syndrome or any causative agent thereof, hepatitis B, hepatitis C, and any other disease not transmitted by casual contact, shall not constitute infectious or contagious diseases for the purpose of this article.

(l) "Instruments" means needles, probes, forceps, hemostats, or tweezers.

(m) "Labret," when used to describe a piercing, means the piercing of the lips or the area immediately around the lips.

(n) "Linens" means cloths or towels used for draping or protecting a table or similar functions.

(o) "Lower labret," when used to describe a piercing, means the piercing of the lower lip or the area immediately around the lower lip.

(p) "Needle" has the meaning specified in K.S.A. 65-1940, and amendments thereto.

(q) "Needle bar" means the metal device used to attach the needle to a tattoo machine.

(r) "Official transcript" means a document certified by a school accredited by the Kansas board of regents or equivalent regulatory institution in another state or jurisdiction, indicating the hours and types of coursework, examinations, and scores that were completed by a student.

(s) "Piercing gun" means a hand-held tool manufactured exclusively for piercing the earlobe, into which studs and clutches are placed and

inserted into the earlobe by a hand-squeezed or spring-loaded action to create a permanent hole. The tool shall be made of plastic, stainless steel, or a disposable material.

(t) "Place or places of business" means each name, mailing address, and location, not a post office box, where the licensee or applicant for license performs services.

(u) "Protective gloves" means gloves made of nitrile or latex.

(v) "Public view" means open to view and easy for the public to see.

(w) "Repigmentation" means any of the following:

(1) Recoloration of the skin as a result of any of the following:

(A) Dermabrasion, chemical peels, removal or resolution of birthmarks, vitiligo, or other skin conditions that result in the loss of melanin to the skin;

(B) scars resulting from surgical procedures, including face-lifts, mole or wart removal, or cauterization; or

(C) burn grafts and other skin irregularities resulting from burns or photo damage;

(2) recreation of an areola or nipple, following mastectomy; or

(3) use of cheek blush or other blending of pigments into skin in order to camouflage blotchy or irregularly pigmented skin.

(x) "Rook," when used to describe an ear piercing, means the piercing of the upper portion of the antihelix.

(y) "Sanitization" means effective bactericidal treatment by a process that reduces the bacterial count, including pathogens, to a safe level on equipment.

(z) "Sharps" means any object that can penetrate the skin, including needles, scalpel blades, lancets, glass tubes that could be broken during handling, razors, and syringes that have been removed from their original, sterile containers.

(aa) "Sharps container" means a puncture-resistant, leakproof container that can be closed for handling, storage, transportation, and disposal. The container shall be red and shall be labeled with the "biohazard" symbol.

(bb) "Single-use," when used to describe products or items, means that the products or items, including cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze, and sanitary coverings, are disposed of after each use.

(cc) "Snug," when used to describe an ear pierc-

ing, means the horizontal piercing of the vertical portion of the antihelix.

(dd) "Sterilization" means destruction of all forms of microbiotic life, including spores.

(ee) "Universal precautions" means a method of infection control approved by the United States centers for disease control and prevention (CDC), in which all human blood and certain bodily fluids are handled as if the blood and bodily fluids were known to be infected with a blood-borne pathogen. (Authorized by K.S.A. 2014 Supp. 65-1946 and K.S.A. 74-2702a; implementing K.S.A. 2014 Supp. 65-1946 and 65-1949; effective Aug. 22, 1997; amended June 6, 2014; amended Sept. 18, 2015.)

69-15-3. Cosmetic tattoo artist trainer, tattoo artist trainer, and body piercing trainer.

(a) Each applicant for licensure as a cosmetic tattoo artist trainer, tattoo artist trainer, or body piercing trainer shall apply on forms provided by the board and accompanied by the following:

(1) The nonrefundable trainer license fee;

(2) a valid Kansas cosmetic tattoo artist, body piercer, or tattoo artist license number;

(3) documentation outlining the proposed training syllabus, which shall meet the requirements of K.A.R. 69-15-2(a), (b), or (c);

(4) the name and address of the licensed establishment where training will be provided; and

(5) verification of five years of full-time, active practice, consisting of at least 1,500 hours per year, as a licensed cosmetic tattoo artist, tattoo artist, or body piercer in any state.

(b) In addition to meeting the requirements in subsection (a), each applicant seeking approval as an advanced body piercing trainer shall be licensed as an advanced body piercer. (Authorized by K.S.A. 74-2702a; implementing K.S.A. 2012 Supp. 65-1943, 65-1948, and 65-1950; effective Aug. 22, 1997; amended Feb. 14, 2014.)

69-15-4. Out-of-state equivalent course of study. Each applicant who has completed a training program in another state or jurisdiction shall show that all of the following conditions are met, for that training program to be approved by the board:

(a) During the applicant's participation in the training program, the trainer was licensed and in good standing as a cosmetic tattoo artist, tattoo artist, or body piercer in the state or jurisdiction where the training occurred.

(b) The applicant completed the training program under the direct supervision of the trainer or in a school.

(c) The training program covered the areas of theory and practical experience specified in K.A.R. 69-15-2. If the training program completed in another state or jurisdiction included hours allotted to studying the laws and regulations of that state or jurisdiction, those hours may count toward the required number of hours allotted to studying Kansas statutes and regulations.

(d) The training program included the total number of hours of theory and practical experience and the number of completed procedures specified in K.A.R. 69-15-2. (Authorized by K.S.A. 2012 Supp. 65-1949 and K.S.A. 74-2702a; implementing K.S.A. 2012 Supp. 65-1948 and 65-1949; effective Aug. 22, 1997; amended Feb. 14, 2014.)

69-15-5. Application for licensure by examination. (a) Before issuance of a license, each applicant for tattoo, cosmetic tattoo, or body piercing licensure shall have passed an examination as specified in K.A.R. 69-15-7.

(b) Each applicant for the tattoo, cosmetic tattoo, or body piercing examination shall apply on forms provided by the board and accompanied by the following:

(1) The nonrefundable examination application fee, the written examination fee, and the practical examination fee;

(2) verification of the applicant's date of birth, including a copy of a valid driver's license, passport, or birth certificate;

(3) verification of the applicant's graduation from an accredited high school or completion of equivalent education, which shall mean any of the following:

(A) A general education development (GED) credential;

(B) proof of program completion and hours of instruction at a nonaccredited private secondary school registered with the state board of education of Kansas, or of the state in which instruction was completed;

(C) proof of a score in at least the 50th percentile on either the American college test (ACT) or the scholastic aptitude test (SAT); or

(D) proof of admission to a postsecondary state educational institution accredited by the Kansas state board of regents or by another accrediting body having minimum admission standards

at least as stringent as those of the Kansas state board of regents;

(4) verification of the applicant's completion of eight hours of continuing education in infection control and blood-borne pathogens within the previous 12-month period, in addition to the infection control requirements of the training program; and

(5) an official transcript from a school of cosmetic tattooing, tattooing, or body piercing, or a final operating report from a licensed trainer providing direct supervision of the applicant, documenting the applicant's completion of a training program equivalent to the requirements of K.A.R. 69-15-2. (Authorized by K.S.A. 74-2702a; implementing K.S.A. 2012 Supp. 65-1943 and 65-1948; effective Aug. 22, 1997; amended Feb. 14, 2014.)

69-15-7. Examination for cosmetic tattoo artists, tattoo artists, or body piercers. (a) The examinations for tattoo, cosmetic tattoo, and body

piercing shall consist of both a written examination and a practical examination on safety, sanitation, and standards of practice.

(b) The examinations shall test the applicant's knowledge of the following areas:

(1) Basic principles of safety, sanitation, and sterilization;

(2) Kansas laws and regulations;

(3) chemical use and storage;

(4) diseases and disorders including skin disease, HIV, hepatitis B, and infectious or contagious diseases;

(5) equipment, supplies, tools, and implements;

(6) practice standards;

(7) establishment standards; and

(8) definitions.

(c) The written examination shall consist of no more than 150 multiple-choice questions and shall not exceed two hours in duration. The examination shall be closed-book and shall be presented and conducted in English. The examination shall consist of two sections, with one section composed entirely of questions related to Kansas law.

(d) To test the applicant's knowledge of infection-control practices and practice standards, the practical examination shall evaluate the following:

(1) A setup for an actual procedure;

(2) a mock demonstration of a procedure; and

(3) a demonstration of the clean-up process for a procedure.

(e) To be eligible for licensure, each applicant shall attain a score of at least 75 percent on each section of the written examination and a score

of at least 75 percent on the practical examination. (Authorized by K.S.A. 2012 Supp. 65-1943 and 65-1948 and K.S.A. 74-2702a; implementing K.S.A. 2012 Supp. 65-1943 and 65-1948; effective Aug. 22, 1997; amended Feb. 14, 2014.)

69-15-12. Continuing education for license renewal. Each licensed cosmetic tattoo artist, tattoo artist, and body piercer shall participate in continuing education according to the following requirements:

(a) Each individual shall biennially complete five clock-hours, either as one unit or a combination of units, not less than one hour each. Each individual who fails to renew the license before its expiration shall meet the additional continuing education requirements pursuant to K.S.A. 65-1943, and amendments thereto.

(b) Continuing education courses shall be of the same subject matter relating to the practice as the required curricula for training as a cosmetic tattoo artist, tattoo artist, and body piercer and shall consist of either of the following:

(1) Participation in or attendance at an instructional program approved by the board; or

(2) attendance at a meeting of the board, comprising up to one hour of the total requirement, which shall not include the public comment portion of the meeting.

(c) Each licensee seeking credit for attendance at or participation in an educational program that was not previously approved by the board shall submit to the board a request for credit, which shall include the following information:

- (1) The location of the program;
- (2) the date of the program;
- (3) the start and end times of the program;
- (4) a detailed description of the subject covered;
- (5) the name of each instructor and the instructor's qualifications; and
- (6) a sign-in sheet or certificate of attendance, which shall include the date, the program title, and the signature of the instructor.

(d) A license shall not be renewed without the board's receipt and approval of the individual's continuing education as required by K.A.R. 69-15-13. (Authorized by K.S.A. 2012 Supp. 65-1945 and K.S.A. 74-2702a; implementing K.S.A. 2012 Supp. 65-1943 and 65-1945; effective Aug. 22, 1997; amended Feb. 14, 2014.)

69-15-13. Reporting continuing education. (a) Each tattoo licensee, cosmetic tattoo

licensee, and body piercing licensee shall submit to the board the renewal application, renewal fee, and proof of five clock-hours of the required continuing education as a condition of renewal biennially. Proof of completion of the required continuing education shall consist of either of the following:

(1) Submission to the board of evidence documenting attendance at a meeting of the board; or

(2) submission to the board of a certificate of completion or verification, issued by the sponsoring organization or person, of attendance in a course, program, seminar, or lecture and showing the name of the sponsor, the title of the presentation, a description of its content, the name of the instructor or presenter, the date, the duration of the presentation in clock-hours, and any supplemental documentation to support that the sponsor and subject matter meet the requirements and relate to the practice as stated in K.A.R. 69-15-2.

(b)(1) The five clock-hours of continuing education shall be accumulated only in the most recent renewal period. The licensee shall retain the proof of continuing education until submitting the proof to the board at the time of renewal.

(2) Hours of continuing education in excess of the requirement for renewal shall not be carried forward. (Authorized by K.S.A. 74-2702a; implementing K.S.A. 2012 Supp. 65-1943 and 65-1945; effective Aug. 22, 1997; amended Feb. 14, 2014.)

69-15-14. Cosmetic tattoo, tattoo, and body piercing establishment licensing and renewal. (a) Each applicant for an establishment license shall meet the following requirements before opening the establishment for business:

(1) Apply on a form approved by the board and pay the nonrefundable establishment license fee;

(2) comply with all applicable regulations of the board;

(3) certify that the application information is correct; and

(4) provide a map or directions for locating the establishment, if the establishment is in a rural or an isolated area.

(b) Each establishment license shall expire one year from the last day of the month in which the license was issued.

(c) Each establishment license holder shall be responsible for the cleanliness and sanitation of any common area of separately licensed establishments on the premises. Each violation found in the common area shall be cited against all establishment licenses issued and posted on the premises.

(d) Each establishment license holder shall meet the following requirements:

(1) Allow a board inspector to inspect the establishment when it is open for business;

(2) not impede the normal progress of the inspection; and

(3) prevent employees from impeding the normal progress of the inspection.

(e) Establishment licenses shall not be transferable to a new location.

(f) The ownership of establishment licenses shall not be transferred. A partial change in the ownership of any establishment license may be allowed if at least one original owner remains.

(g) Each establishment licensee shall notify the board in writing and surrender the establishment license within 10 days of closure of the establishment.

(h)(1) Each applicant wanting to renew the establishment license shall submit an application and the establishment renewal fee before the expiration date of the current establishment license.

(2) Any establishment licensee may renew the establishment license within 60 days after the expiration date of the prior establishment license upon submission of an application and payment of the establishment renewal fee and the delinquent establishment fee. (Authorized by K.S.A. 74-2702a; implementing K.S.A. 2014 Supp. 65-1944, 65-1948, and 65-1950; effective Aug. 22, 1997; amended Feb. 14, 2014; amended Sept. 18, 2015.)

69-15-15. Cosmetic tattoo artist, tattoo artist, and body piercer practice standards; restrictions. (a) Cosmetic tattoo artists, tattoo artists, and body piercers shall not practice at any location other than a licensed establishment.

(b) Each licensee shall keep an individual record of each client for at least five years. Each record shall include the name and address of the client, the date and duration of each service, the type of identification presented, and the type of services provided.

(c) Each licensee shall give preservice information in written form to the client to advise of possible reactions, side effects, potential complications of the tattooing process, and any special instructions relating to the client's medical or skin conditions, including the following:

(1) Diabetes;

(2) allergies;

(3) cold sores and fever blisters;

(4) epilepsy;

(5) heart conditions;

(6) hemophilia;

(7) hepatitis;

(8) HIV or AIDS;

(9) medication that thins the blood;

(10) moles or freckles at the site of service;

(11) psoriasis or eczema;

(12) pregnant or nursing women;

(13) scarring; and

(14) any other medical or skin conditions.

(d) Each licensee shall give aftercare instructions to the client, both verbally and in writing after every service.

(e) Each licensee providing tattoo or cosmetic tattoo services for corrective procedures shall take photographs before and after service. These photographs shall be maintained according to subsection (b).

(f) Each licensee shall purchase ink, dyes, or pigments from a supplier or manufacturer. No licensee shall use products banned or restricted by the United States food and drug administration (FDA) for use in tattooing and permanent color.

(g) A licensee shall not perform tattooing or body piercing for any of the following individuals:

(1) A person who is inebriated or appears to be incapacitated by the use of alcohol or drugs;

(2) any person who shows signs of recent intravenous drug use;

(3) a person with sunburn or other skin diseases or disorders, including open lesions, rashes, wounds, or puncture marks; or

(4) any person with psoriasis or eczema present in the treatment area.

(h) Use of the piercing gun to pierce shall be prohibited on all parts of the body, except the ear lobe.

(i) Use of personal client jewelry or any apparatus or device presented by the client for use during the initial body piercing shall be prohibited. Each establishment shall provide presterilized jewelry, apparatuses, or devices, which shall have metallic content recognized as compatible with piercing services.

(j) No licensee afflicted with an infectious or contagious disease, as defined in K.A.R. 69-15-1, shall be permitted to work or train in a school or an establishment.

(k) No school or establishment shall knowingly require or permit a student or licensee to provide tattooing, cosmetic tattooing, or body piercing services for a person who has any infectious or

contagious disease, as defined in K.A.R. 69-15-1. (Authorized by K.S.A. 2012 Supp. 65-1946 and K.S.A. 74-2702a; implementing K.S.A. 2012 Supp. 65-1946; effective Aug. 22, 1997; amended Feb. 14, 2014.)

69-15-17. Required equipment. (a) Each cosmetic tattoo artist or tattoo artist shall maintain the following equipment at the establishment:

- (1) A tattoo machine or hand pieces of nonporous material that can be sanitized;
 - (2) stainless steel or carbon needles and needle bars;
 - (3) stainless steel, brass, or medical-grade plastic tubes that can be sterilized;
 - (4) sterilization bags with color strip indicators, if the establishment does not use disposable implements;
 - (5) single-use protective gloves;
 - (6) single-use razors or straight razors;
 - (7) single-use towels, tissues, or paper products;
 - (8) a sharps container and biohazard waste bags;
 - (9) approved inks, dyes, and pigments, as required by K.A.R. 69-15-15;
 - (10) approved equipment for cleaning and sterilizing instruments at the establishment, as required by K.A.R. 69-15-18 and 69-15-20;
 - (11) spore tests, as required by K.A.R. 69-15-20; and
 - (12) body arts industry-accepted ointment or lubricant.
- (b) Each body piercer shall maintain the following equipment at the establishment:
- (1) Single-use stainless steel needles;
 - (2) sterilization bags with color strip indicators, if the establishment does not use disposable implements;
 - (3) single-use protective gloves;
 - (4) single-use towels, tissues, or paper products;
 - (5) a sharps container and biohazard waste bags;
 - (6) approved equipment for cleaning and steril-

izing instruments, as required by K.A.R. 69-15-18 and 69-15-20;

- (7) a piercing table or chair of nonporous material that can be sanitized;
- (8) a covered trash receptacle;
- (9) spore tests, as required by K.A.R. 69-15-20;
- (10) forceps that can be sterilized;
- (11) pliers of various sizes, made of material that can be sterilized;
- (12) bleach or hard-surface disinfectants;
- (13) antibacterial hand soap;
- (14) jewelry disinfectant; and
- (15) body arts industry-accepted ointment or lubricant. (Authorized by K.S.A. 2012 Supp. 65-1946 and K.S.A. 74-2702a; implementing K.S.A. 2012 Supp. 65-1946; effective Aug. 22, 1997; amended Feb. 14, 2014.)

69-15-30. Fees. The following fees shall be charged:

Examination fees	
Examination application.....	\$50.00
Written examination.....	75.00
Practical examination	75.00
Practitioner fees	
Apprentice license.....	15.00
Initial license application	50.00
License renewal.....	50.00
Trainer license	15.00
Delinquent license	25.00
Renewal application	100.00
Duplicate license	25.00
Establishment license fees	
Establishment license application	50.00
Establishment license renewal	50.00
Delinquent establishment.....	30.00
Duplicate license	25.00

(Authorized by K.S.A. 2014 Supp. 65-1950 and K.S.A. 74-2702a; implementing K.S.A. 2014 Supp. 65-1943 and 65-1950; effective Aug. 22, 1997; amended June 6, 2014; amended Sept. 18, 2015.)

Agency 70

State Board of Veterinary Examiners

Editor's Note:

2014 Senate Bill 278 established the State Board of Veterinary Examiners within the Animal Health Division of the Kansas Department of Agriculture for a two-year period beginning July 1, 2014 through June 30, 2016. See L. 2014, Ch. 12.

Articles

- 70-1. DEFINITIONS.
- 70-3. EXAMINATIONS.
- 70-5. FEES.
- 70-6. MINIMUM STANDARDS FOR VETERINARY PREMISES SANITARY CONDITIONS AND PHYSICAL PLANT.
- 70-7. STANDARDS OF VETERINARY PRACTICE.
- 70-8. UNPROFESSIONAL CONDUCT.

Article 1.—DEFINITIONS

70-1-7. “Companion animal”; definition.

The term “companion animal” shall have the meaning specified in K.S.A. 47-816, and amendments thereto. (Authorized by K.S.A. 2016 Supp. 47-821; implementing K.S.A. 2016 Supp. 47-816; effective Dec. 22, 2017.)

Article 3.—EXAMINATIONS

70-3-1. General requirements. Each examination shall be given in the English language. The preparation, administration, and grading of all examinations shall be performed according to the protocol of the international council for veterinary assessment selected by the board for the examinations. (Authorized by and implementing K.S.A. 2016 Supp. 47-825; effective Jan. 1, 1974; amended March 13, 1995; amended Dec. 22, 2017.)

70-3-2. Standard to pass. Each successful examinee shall achieve the following:

- (a) A scaled score of at least 70 on each of the national tests; and
- (b) a score of at least 90 percent on the state jurisprudence examination. (Authorized by and implementing K.S.A. 2016 Supp. 47-825; effective Jan. 1, 1974; amended March 13, 1995; amended Dec. 22, 2017.)

70-3-5. Failing any examination. A candidate for licensure shall not be admitted to take any examination more than five times. No appli-

cant may retake any examination more than five years after that individual's initial attempt, except that the fourth and fifth attempts shall be at least one year after the previous attempt. (Authorized by and implementing K.S.A. 2016 Supp. 47-825; effective Jan. 1, 1974; amended Dec. 22, 2017.)

Article 5.—FEES

70-5-1. Fees. The following fees shall be charged:

- (a) Veterinary medicine license; application..... \$ 125.00
- (b) Veterinary medicine license; annual renewal..... \$ 100.00
- (c) Veterinary medicine license; renewal if renewal is for an initial license that was issued after April 30 of the preceding license year..... \$ 20.00
- (d) Veterinary medicine license; late renewal penalty \$ 100.00
- (e) Veterinary premises registration; application..... \$ 75.00
- (f) Veterinary premises registration; renewal..... \$ 50.00
- (g) Veterinary premises registration; late renewal penalty \$ 50.00
- (h) Veterinary premises; inspection \$ 75.00
- (i) Veterinary premises; audit and compliance inspections \$ 100.00
- (j) Veterinary technician registration; application \$50.00

- (k) Veterinary technician registration; renewal \$ 25.00
- (l) Institutional license; application..... \$ 50.00
- (m) Institutional license; annual renewal \$ 25.00
- (n) Mobile clinic; records audit..... \$ 75.00

(Authorized by K.S.A. 2019 Supp. 47-821 and 47-822; implementing K.S.A. 2019 Supp. 47-822, 47-829, and 47-840; effective May 1, 1985; amended, T-70-6-13-88, June 13, 1988; amended July 3, 1989; amended May 23, 1994; amended Feb. 21, 1997; amended April 9, 2004; amended Dec. 21, 2007; amended May 27, 2016; amended March 10, 2017; amended Dec. 18, 2020.)

Article 6.—MINIMUM STANDARDS FOR VETERINARY PREMISES SANITARY CONDITIONS AND PHYSICAL PLANT

70-6-1. Veterinary premises and mobile veterinary clinic; minimum requirements.

Each veterinary premises, including mobile veterinary clinics (MVCs) except as specified in this regulation, shall meet all of the following minimum requirements:

(a) General. All areas of the veterinary premises, and all instruments, apparatus, and apparel used in connection with the practice of veterinary medicine, shall be maintained in a clean and sanitary condition at all times. Cleaning agents capable of killing viruses and bacteria shall be used to disinfect the veterinary premises. All public areas of the veterinary premises shall be maintained in a safe condition for each client and patient.

(b) Exterior and grounds.

(1) The exterior structure shall exhibit evidence of regular maintenance. All windows shall be kept clean. If windows are open for ventilation, screens shall be required. All signs shall be kept in good repair.

The grounds shall exhibit evidence of regular maintenance. Parking lots shall be large enough for both staff and clientele. Parking lots and sidewalks shall be kept in good repair and free of debris.

(2) The loading and unloading structures of the facility shall be of sufficient strength to ensure the safety and containment of each patient being loaded or unloaded and shall be in good repair. The requirements of this paragraph shall not apply to MVCs.

(3) Companion animals housed outside shall have shelter constructed and maintained to en-

sure the safety and comfort of the companion animals being housed. Shelter shall be adequate based on the species and health status of each companion animal housed. The requirements of this paragraph shall not apply to MVCs.

(c) Holding facilities. The size and design of all holding facilities shall ensure the animals' safety and well-being. The area shall contain provisions for food and water when necessary.

(d) Interior.

(1) Space sufficient to safeguard each patient shall be available.

Hot and cold running water shall be available.

Sanitary storage sufficient for the reasonable and customary operation of the veterinary premises shall be available.

Restraint devices shall be of a design that conforms to standards commonly accepted by the veterinary profession, clean, and in good working order to ensure the safety of the animals and personnel.

Indoor lighting for the halls, wards, reception areas, and examining and surgical rooms shall conform to the standards accepted as reasonable and customary by the veterinary profession for the intended purpose.

Ventilation and cleaning shall be provided to keep odors from lingering in the rooms.

(2) A resource center providing access to current veterinary information, written or electronic, shall be provided.

(3) Heating, cooling, and ventilation necessary to maintain the safety and comfort of the patients, clients, and staff shall be provided.

(e) Reception room. Seating designed for that purpose shall be provided for the clientele. A clean lavatory shall be available to the clients, unless the facility is an MVC. A current premises registration certificate issued by the board of veterinary examiners shall be conspicuously displayed.

(f) Examination room or rooms. An examination room or rooms shall be available for the complete physical examination of patients by a veterinarian. Each examination room shall be of sufficient size to accommodate the doctor, assistant, patient, and client comfortably. The exam table surface shall be disinfected between patients. All diagnostic equipment needed for the physical examination shall be readily available.

(g) Wards. Each veterinary premises, except an MVC, where any animals are retained overnight shall meet all of the following requirements:

(1) Exercise shall be provided for animals hav-

ing to stay in an overnight facility. Walking the animal shall meet this requirement.

(2) The floors shall be smooth, waterproof, non-absorbent, capable of being disinfected, and in good repair. The walls shall be smooth and free of cracks or gaps large enough to interfere with effective cleaning.

(3) The temperature shall be maintained in a range that is comfortable and safe for all patients.

(4) A separate compartment shall be available for each animal. Caging or housing shall be designed with each animal's physical comfort as the primary consideration.

(A) Physical comfort ensuring that each animal is dry and clean shall be provided.

(B) Sufficient space shall be provided to ensure each animal's freedom of movement and normal postural adjustments with convenient access to food and water.

(5) All cages, runs, stalls, pens, and other animal compartments shall be kept in good repair to prevent injury to the animal and to promote physical comfort.

(A) Sharp corners and edges, broken wires, and any dangerous surfaces shall not be present.

(B) Cages made of metal other than stainless steel shall be kept in good repair by regular painting or other maintenance as required.

(6) The compartments shall be disinfected between occupants. The floors and walls shall be regularly disinfected. All waste cans shall be metal or plastic, be leakproof, and have tightfitting lids.

(7) The drains shall be constructed so that they facilitate disinfection between runways. To maintain proper sanitation, the runways shall be cleaned between uses.

(8) Bulk food shall be stored in a verminproof container. Opened canned food shall be refrigerated until used.

(9) Water and feed dishes, if not disposable, shall be disinfected.

(10) Daily feedings suitable for each animal with a wholesome, nutritional, palatable food and daily fresh water suitable for each animal, within easy reach of each animal, shall be provided, unless medically contraindicated.

(11) An animal identification system shall be used.

(12) The veterinary premises shall allow for the effective separation of contagious and noncontagious patients.

(h) Operating room. If other than minor surgical procedures are to be performed, an operating

room for major surgical procedures shall be provided and shall meet the following requirements:

(1) The floors shall be made of terrazzo, sealed cement, linoleum, or any other impervious materials.

(2) A setup for intravenous fluid administration shall be available. Emergency drugs shall be readily available.

(3) The surgery table shall be constructed of impervious material that is easily disinfected. Instruments and equipment accepted as reasonable and customary by the veterinary profession for the type of surgical services shall be provided.

(i) Sterilization. All articles to be used in surgery shall be sterilized by either gas sterilization or steam sterilization. Chemical sterilization shall be acceptable under field situations and in emergency situations. Surgical packs shall be dated to indicate the last time sterilized. A sterile monitor shall be included within each surgical pack to detect proper sterilization. Caps, masks, and gowns and sterile drapes, towels, and gloves shall be available.

(j) Oxygen. A mechanism for oxygen administration shall be available. This subsections shall not apply to MVCs.

(k) Pharmacy. The veterinarian shall ensure the storage, safekeeping, and preparation of all drugs.

(l) Radiology. If radiology services are not available in the facility, clients shall be referred to a facility that does provide those services when these services are indicated.

Permanent identification of the radiograph shall occur at the time of exposure or just before development.

Leaded aprons, thyroid shields, and either gloves or mitts shall be available for anyone helping to restrain or position patients during radiography.

(m) Laboratory. The clinical pathology services shall be available either on the veterinary premises or in a medical facility. All test results shall be made available within a time frame accepted as reasonable and customary by the veterinary profession.

(n) Waste disposal.

(1) The prompt and sanitary disposal of all dead animals and animal tissues shall be required. All animal tissues and dead companion animals weighing up to 150 pounds shall be contained in plastic bags and kept in an area away from the public before being picked up for disposal. Each dead companion animal weighing up to 150

pounds held overnight for pickup shall be contained in one or more plastic bags and placed in a refrigerator or freezer.

(2) Needles and syringes shall be destroyed or adequately disposed of in a safe manner. (Authorized by K.S.A. 2016 Supp.47-821; implementing K.S.A. 2016 Supp. 47-821 and 47-840; effective Dec. 27, 1994; amended Dec. 22, 2017.)

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 the seller of an animal to be inspected for soundness, the veterinarian shall make full disclosure of the dual relationship and shall obtain documented consent from all parties to the transaction.

(d) Certificates of veterinary inspection. A veterinarian shall not issue a certificate of veterinary inspection 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 non-licensed 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 medical 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 that includes the current quantity on hand 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) Upon request of a client, each licensed veterinarian shall provide a written prescription for a prescription drug to the client instead of dispensing the prescription drug.

(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.2016 Supp. 47-821; effective Feb 21, 1997; amended Jan. 20, 2012; amended Dec. 22, 2017.)

Article 8.—UNPROFESSIONAL CONDUCT**70-8-1. Acts of unprofessional conduct.**

Each of the following acts by a Kansas licensed veterinarian shall be considered unprofessional conduct and shall constitute grounds for disciplinary action against the licensee:

(a) Failing to meet the minimum standards for either veterinary premises or veterinary practice;

(b) engaging in conduct likely to deceive, defraud, or harm the public or demonstrating a willful or careless disregard for the health, welfare, or safety of a patient;

(c) claiming to have performed or charging for an act or treatment that was not performed or given;

(d) stating or implying that the veterinarian is a certified or recognized specialist unless the veterinarian is certified in the specialty by the board, as recognized by the American veterinary medical association;

(e) stating or implying any claims of professional superiority in the practice of veterinary medicine that cannot be substantiated by education, training, or experience, or using any certificate, diploma, or degree to which the person is not entitled;

(f) practicing veterinary medicine under a false or assumed name or impersonating another practitioner;

(g) practicing under an expired, revoked, or suspended Kansas veterinary license;

(h) failing to provide a written response, within 30 days, to a written request made by the board pursuant to an investigation by or on behalf of the board;

(i) failing to comply with an order issued by the board;

(j) promoting, aiding, abetting, or permitting the practice of veterinary medicine by an unlicensed person, except as provided by the Kansas veterinary practice act or the implementing regulations;

(k) allowing an unlicensed person to issue pre-signed animal health certificates with the veterinarian's signature affixed to the certificate, or to inoculate or treat animals unless the inoculation or treatment is done under the direct supervision of the licensed veterinarian;

(l) failing to establish a valid veterinarian, client, and patient relationship;

(m) prescribing, providing, obtaining, ordering, administering, dispensing, giving, or delivering controlled drugs to or for an animal solely for

training, show, or racing purposes and not for a medically sound reason;

(n) performing surgery to conceal genetic or congenital defects, in any species, with the knowledge that the surgery has been requested to deceive a third party;

(o) refusing the board or its agent the right to inspect a veterinary facility at reasonable hours, pursuant to an investigation by or on behalf of the board;

(p) representing conflicting interests unless the veterinarian's dual relationship is fully disclosed and all parties to the transaction consent;

(q) failing to report to the proper authorities cruel or inhumane treatment to animals, if the veterinarian has direct knowledge of the cruel or inhumane treatment;

(r) fraudulently issuing or using any of the following documents:

(1) A certificate of veterinary inspection;

(2) a test chart;

(3) a vaccination report; or

(4) any other official form used in the practice of veterinary medicine to prevent the following:

(A) The dissemination of animal disease;

(B) the transportation of diseased animals; or

(C) the sale of edible products of animal origin for human consumption;

(s) issuing a certificate of veterinary inspection for an animal unless the veterinarian performs the inspection and the appropriate tests as required to the best of the veterinarian's knowledge;

(t) issuing a certificate of veterinary inspection that has been falsified or is incomplete;

(u) having a United States department of agriculture accreditation removed for cause by federal authority;

(v) using a corporate or assumed name for a veterinary practice that would be false, deceptive, or misleading to the public;

(w) extending the practice of veterinary medicine to the care of humans, except that any veterinarian may render first aid or emergency care, without expectation of compensation, in an emergency or disaster situation;

(x) guaranteeing a cure or specific results or creating an unjustified or inflated expectation of a cure or specific result;

(y) obtaining any of the following information through theft, unauthorized copying, duplicating, or other means:

(1) Client lists;

(2) mailing lists;

(3) medical records;

- (4) computer records; or
- (5) any other records that are the property of another veterinarian, veterinary partnership, or professional veterinary corporation;
- (z) failing to report to the board within 90 days any disciplinary action taken against the veterinary license issued to the veterinarian by any other licensing jurisdiction, professional veterinary association, veterinary specialty board, or government or regulatory agency;
- (aa) failing to refer a client if additional expertise is advisable, a second opinion is desirable, or the client requests a referral;
- (bb) making a false, deceptive, or misleading claim or statement;
- (cc) failing to provide the public with necessary label warnings on dispensed veterinary products;
- (dd) failing to provide a client with a verbal or written estimated fee range for veterinary services offered when requested by the client;
- (ee) acting in a manner that is likely to injure the professional reputation, standing, prospect of practice, or employment of another member of the profession and that could be deemed malicious, false, or misleading;
- (ff) failing to obtain the client's consent before placing an animal under anesthesia, performing any surgical procedure, or transporting the animal to another facility, except in emergency situations;
- (gg) violating the confidential relationship between the licensed veterinarian and the client;
- (hh) delegating activities within the practice of veterinary medicine in violation of K.A.R. 70-7-1; and
- (ii) using prescription drugs in either of the following ways:
 - (1) Prescribing or dispensing, delivering, or ordering any prescription drug without first having established a veterinary-client-patient relationship and determining that the prescription drug is therapeutically indicated for the health or well-being of the animal or animals; or
 - (2) prescribing, providing, ordering, administering, possessing, dispensing, giving, or delivering prescription drugs to or for any person under either of the following circumstances:
 - (A) The drugs are not necessary or required for the medical care of animals; or
 - (B) the use or possession of the drugs would promote addiction.

For purposes of this subsection, the term “prescription drugs” shall include all controlled substances placed in schedules I through V pursuant to 21 U.S.C. 812, any drug that bears on the label the federal legend indicating that the use of the drug is restricted to, by, or on the order of a licensed veterinarian, and any other drug designated as prescription-only by any Kansas law or regulation. (Authorized by and implementing K.S.A. 2016 Supp. 47-830; effective Feb. 21, 1997; amended Dec. 22, 2017.)

Agency 71

Kansas Dental Board

Articles

- 71-2. SPECIALISTS.
- 71-3. DENTAL HYGIENISTS.
- 71-4. CONTINUING EDUCATION REQUIREMENTS.
- 71-5. SEDATIVE AND GENERAL ANESTHESIA.
- 71-6. DENTAL AUXILIARIES.
- 71-8. MOBILE DENTAL FACILITIES AND PORTABLE DENTAL OPERATIONS.
- 71-11. MISCELLANEOUS PROVISIONS.

Article 2.—SPECIALISTS

71-2-2. Branches of dentistry. The recognized branches of dentistry for which application may be made for a specialist's certificate shall be the following: dental anesthesiology, dental public health, endodontics, oral and maxillofacial pathology, oral and maxillofacial radiology, oral and maxillofacial surgery, orthodontics, pediatric dentistry, periodontics, and prosthodontics. These branches of dentistry shall be defined as follows:

(a) "Dental anesthesiology" means that branch of dentistry dealing with the advanced use of anesthesia, sedation, and pain management to facilitate dental procedures and surgery.

(b) "Dental public health" means that branch of dentistry relating to the science and art of preventing and controlling dental diseases and promoting dental health through organized community efforts. Dental public health is the form of dental practice that serves the community rather than individual patients. This branch of dentistry is concerned with the dental health education of the public, with applied dental research, and with the administration of group dental care programs as well as the prevention and control of dental diseases on a community basis.

(c) "Endodontics" means that branch of dentistry concerning the morphology, physiology, and pathology of the human dental pulp and periradicular tissues. The study and practice encompass the basic and clinical sciences, including the biology of the normal pulp; the etiology, diagnosis, prevention, and treatment of diseases and injuries of the pulp; and associated periradicular conditions.

(d) "Oral and maxillofacial pathology" means that branch of dentistry concerning the nature,

identification, and management of diseases affecting the oral and maxillofacial regions. This branch is a science that investigates the causes, processes, and effects of these diseases. The practice of oral and maxillofacial pathology includes the research and diagnosis of diseases using clinical, radiographic, microscopic, biochemical, and other examinations.

(e) "Oral and maxillofacial radiology" means that branch of dentistry concerning the production and interpretation of images and data produced by all forms of radiant energy that are used for the diagnosis and management of diseases, disorders, and conditions of the oral and maxillofacial region.

(f) "Oral and maxillofacial surgery" means that branch of dentistry concerning the diagnosis and the surgical and adjunctive treatment of disease, injuries, and defects involving both the functional and esthetic aspects of the hard and soft tissues of the oral and maxillofacial region.

(g) "Orthodontics," which shall include "dentofacial orthopedics," means that branch of dentistry concerning the diagnosis, prevention, interception, and correction of malocclusion, as well as neuromuscular and skeletal abnormalities of the developing or mature orofacial structures.

(h) "Pediatric dentistry" means the branch of dentistry that is the age-defined specialty providing both primary and comprehensive prevention and therapeutic oral health care for infants and children through adolescence, including those with special health care needs.

(i) "Periodontics" means that branch of dentistry concerning the prevention, diagnosis, and treatment of diseases of the supporting and surrounding tissues of the teeth or their substitutes

and the maintenance of the health, function, and esthetics of these structures and tissues.

(j) “Prosthodontics” means that branch of dentistry concerning the diagnosis, treatment planning, rehabilitation, and maintenance of the oral function, comfort, appearance, and health of patients with clinical conditions associated with missing or deficient teeth or oral and maxillofacial tissues, or both, using biocompatible substitutes. (Authorized by K.S.A. 74-1406; implementing K.S.A. 65-1427; effective Jan. 1, 1966; amended, E-77-9, March 19, 1976; amended Feb. 15, 1977; amended May 1, 1980; amended March 27, 1989; amended April 1, 2005; amended Dec. 30, 2005; amended Dec. 20, 2019.)

71-2-3. (Authorized by and implementing K.S.A. 65-1427; effective Jan. 1, 1966; amended May 1, 1980; amended March 27, 1989; revoked Dec. 20, 2019.)

Article 3.—DENTAL HYGIENISTS

71-3-9. Extended care permits. (a) Definitions.

(1) “Extended care permit I” shall mean a permit issued pursuant to K.S.A. 65-1456, and amendments thereto.

(2) “Extended care permit II” shall mean a permit issued pursuant to K.S.A. 65-1456, and amendments thereto.

(3) “Extended care permit III” shall mean a permit issued pursuant to K.S.A. 65-1456, and amendments thereto.

(4) “Extended care permit treatment” shall mean the treatment that a hygienist may provide if the hygienist has a valid extended care permit I, extended care permit II, or extended care permit III.

(5) “Patient assessment report” shall mean the report of findings and treatment required by K.S.A. 65-1456, and amendments thereto.

(6) “Sponsoring dentist” shall mean a dentist who fulfills the requirements of K.S.A. 65-1456, and amendments thereto.

(b) Application for permit. Each applicant for an extended care permit I, extended care permit II, or extended care permit III shall file with the board a completed application on a form provided by the board.

(c) Notice of practice location to sponsoring dentist. Before providing extended care permit treatment at a new location, each hygienist shall inform the sponsoring dentist, orally or in writing,

of the new address and the type of procedures to be performed there.

(d) Patient assessment reports.

(1) Each patient assessment report shall include a description of the extended care permit treatment, the date or dates of treatment, and the hygienist’s assessment of the patient’s apparent need for further evaluation by a dentist.

(2) No later than 30 days from the date on which extended care permit treatment is completed, the hygienist providing the treatment shall cause the patient assessment report to be delivered to the sponsoring dentist.

(3) When providing extended care permit treatment at a location operated by an organization with a dental or medical supervisor, the dental hygienist providing the extended care permit treatment shall also cause the patient assessment report to be delivered to the dental or medical supervisor within 30 days from the date on which the extended care permit treatment is completed.

(e) Suspension of extended care permit treatment. If a hygienist’s sponsoring dentist cannot or will not continue to function as a sponsoring dentist, the hygienist shall cease providing extended care permit treatment until the hygienist obtains a written agreement with a replacement sponsoring dentist.

(f) Review of patient assessment reports. A sponsoring dentist shall review each patient assessment report within 30 days of receiving the report. (Authorized by K.S.A. 74-1406; implementing K.S.A. 2012 Supp. 65-1456; effective Sept. 17, 2004; amended May 31, 2013.)

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. At least two of these hours shall be in ethics. 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. At least one of these hours shall be in ethics. 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. 2013 Supp. 65-1431 and K.S.A. 74-1406; implementing K.S.A. 2013 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; amended May 30, 2014.)

Article 5.—SEDATIVE AND GENERAL ANESTHESIA

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; ef-

fective 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 regulations, 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-ental 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 ed-

ucation 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 cardiovascular life support" 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 preceding 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 at least 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 cardiovascular life support" 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 following requirements:

(1) Meet the requirements specified in K.A.R. 71-5-10(e);

(2) continuously monitor for the presence of exhaled carbon dioxide using a capnograph, unless doing so would be precluded or invalidated by the nature of the patient, procedure, or equipment; and

(3) 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. 65-1444, K.S.A. 65-1447, and K.S.A. 74-1406; implementing K.S.A. 65-1444 and K.S.A. 65-1447; effective Nov. 19, 2010; amended Dec. 20, 2019.)

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 6.—DENTAL AUXILIARIES

71-6-5. Duty to notify board. Each supervising dentist who allows a nonlicensed person to coronal scale teeth after the effective date of this regulation shall meet the following requirements:

(a) Verify that the nonlicensed person has proof of completing the training to coronal scale teeth required by K.S.A. 65-1423 (a)(8)(E), and amendments thereto; and

(b) report to the board the name and practice location of the nonlicensed person within 30 days of the effective date of this regulation or within 30 days of the nonlicensed person's first performing the coronal scaling of teeth under the supervision

of the dentist, whichever is later. (Authorized by K.S.A. 74-1406; implementing K.S.A. 2014 Supp. 65-1423; effective Feb. 12, 1999; amended June 4, 2004; amended March 4, 2016.)

Article 8.—MOBILE DENTAL FACILITIES AND PORTABLE DENTAL OPERATIONS

71-8-8. Information for patients. (a) As used in this regulation, each of the following terms shall have the meaning specified in this subsection:

(1) “Nursing home” means an adult care home as defined in K.S.A. 39-923, and amendments thereto.

(2) “School” means any preschool and any public or private elementary or secondary school.

(b) During or at the conclusion of each patient’s visit to the mobile dental facility or portable dental operation, the patient, parent, or guardian shall be provided with an information sheet. If the patient, parent, or guardian has provided consent for a nursing home or school to access the patient’s dental health records, the institution shall also be provided with a copy of the information sheet.

(c) Each information sheet shall include the following information:

(1) The address and telephone number of record required by K.A.R. 71-8-4;

(2) the name of each dentist and dental hygienist who provided services;

(3) a description of the treatment rendered, in-

cluding the billed service codes and fees associated with the treatment, tooth numbers along with surface and quadrant descriptors when appropriate, and the names and telephone numbers of the billing entity and any third party being billed;

(4) the date of the services and the location where the services were rendered;

(5) the name and telephone number of the entity to contact for information regarding the processing and payment for billed services; and

(6) if necessary, referral information to another health care provider. (Authorized by and implementing K.S.A. 65-1469; effective Feb. 17, 2006; amended Dec. 20, 2019.)

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

- 74-1. EXAMINATIONS.
- 74-2. CPA EXAM APPLICATION AND EDUCATION REQUIREMENTS.
- 74-3. ISSUANCE OF CERTIFICATES.
- 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. UNIFORM ACCOUNTANCY ACT.

Article 1.—EXAMINATIONS

74-1-3. Retaking the examination and granting of credits. (a) Each testing candidate shall be deemed to have passed the examination if the candidate obtains credit for passing each of the four test sections. Credit for passing a test section shall be valid from the date of the examination regardless of the date on which the testing candidate receives actual notice of the passing grade.

(b) A testing candidate may take the test sections individually and in any order. Credit for passing any test section shall be valid for 18 months from the date of testing regardless of the number of sections taken or the scores on any failed sections.

(c) Each testing candidate shall pass all four test sections within a rolling 18-month period that begins on the date the first test section passed is taken. If all four test sections are not passed within this 18-month period, credit for any test section passed outside the 18-month period shall expire.

(d) A testing candidate shall not retake a failed test section until the candidate has received the score for the most recent attempt of that test section.

(e) Each testing candidate shall retain credit for any test section passed in another state if the credit would have been given if the testing candidate had taken the examination in Kansas.

(f) Despite the provisions of subsections (a), (b), and (c), the period of time in which to pass all test sections of the examination may be extended by the board upon a showing that the credit was

lost by reason of circumstances beyond the testing candidate's control. (Authorized by K.S.A. 1-202 and K.S.A. 2018 Supp. 1-304; implementing K.S.A. 2018 Supp. 1-304; effective Jan. 1, 1966; amended, E-82-27, Dec. 22, 1981; amended May 1, 1982; amended Jan. 12, 1996; amended Nov. 14, 2003; amended Jan. 11, 2008; amended Feb. 19, 2016; amended Nov. 29, 2019.)

74-1-4. Transfer of examination credit.

An applicant for the certificate of certified public accountant who has passed one or more sections of the uniform certified public accountant examination under the jurisdiction of another state shall be given conditional credit by the board for passing those subjects if the applicant meets the following requirements:

(a) Has established residence in Kansas;

(b) has passed one or more sections of the uniform certified public accountant examination in accordance with K.A.R. 74-1-3, with the grades determined by the advisory grading service of the board of examiners of the American institute of certified public accountants;

(c) meets the education requirement prescribed by K.S.A. 1-302a, and amendments thereto; and

(d) at the time of applying to transfer the credit earned in another state, is still eligible to be reexamined in that state except for reason of change of residence. (Authorized by K.S.A. 1-202; implementing K.S.A. 1-302; effective Jan. 1, 1966; amended, E-82-27, Dec. 22, 1981; amended May 1, 1982; amended May 25, 2012; amended Feb. 19, 2016.)

Article 2.—CPA EXAM APPLICATION AND EDUCATION REQUIREMENTS

74-2-1. Applications for examination.

(a) Each application to take the certified public accountant examination shall be submitted on a form provided by the board or its designee and shall be filed by a date specified in the application.

(b) An application shall not be considered filed until the following conditions are satisfied:

(1) All information requested on the form is provided.

(2) All fees are included with the application.

(3) Official transcripts and any documents that establish that the applicant has satisfied or will satisfy the education requirements in K.A.R. 74-2-7 and K.S.A. 1-302a, and amendments thereto, are provided with the application.

(4) All supporting documents identified in the application form are received, including proof of identity as specified in the application form.

(c) Each testing candidate shall notify the board or its designee of any change of home or business address within 30 days of the change. (Authorized by K.S.A. 1-202 and K.S.A. 2016 Supp. 1-304; implementing K.S.A. 2016 Supp. 1-304; effective Jan. 1, 1966; amended May 1, 1978; amended, E-82-27, Dec. 22, 1981; amended May 1, 1982; amended July 18, 1997; amended Nov. 17, 2000; amended Nov. 14, 2003; amended March 21, 2014; amended Jan. 26, 2018.)

74-2-7. Concentration in accounting. (a) The “concentration in accounting” courses required to qualify for admission to the certified public accountant examination shall be as follows:

(1) At least 42 semester credit hours in business and general education courses, including the following:

(A) A macroeconomics course, a microeconomics course, and one upper-division economics course;

(B) at least two courses in the legal aspects of business or business law;

(C) college algebra or higher-level math course;

(D) statistics and probability theory course;

(E) computer systems and applications course;

(F) finance course;

(G) management and administration course;

(H) marketing course; and

(I) production, operations research, or applications of quantitative techniques to business problems course;

(2) at least 11 semester credit hours in courses in written and oral communications; and

(3) at least 30 semester credit hours in courses in accounting theory and practice, including the following:

(A) Financial accounting and reporting for business organizations course, which may include any of the following:

(i) Intermediate accounting course;

(ii) advanced accounting course; or

(iii) accounting theory course;

(B) managerial accounting beyond an introductory course;

(C) auditing course concentrating on auditing standards generally accepted in the United States as issued by the AICPA auditing standards board or the PCAOB, or both;

(D) U.S. income tax course; and

(E) accounting systems beyond an introductory computer course.

(b) The following types of credits awarded by a college or university approved by the board shall be accepted by the board for purposes of determining compliance with subsection (a), if the credits are related to those areas specified in subsection (a):

(1) Credit for advanced placement;

(2) credit by examination;

(3) credit for military education;

(4) credit for competency gained through experience; and

(5) courses taken for pass-fail credit.

Credits recognized by the board pursuant to this subsection shall not exceed a total of six semester hours.

(c) Credit shall not be allowed for any course that is only audited.

(d) Credit shall not be allowed for any course for which credit has already been received.

(e) Any credits earned for an accounting internship may count toward the overall 150-hour education requirement, but these credits shall not be acceptable in satisfaction of the required concentration in accounting courses.

(f) Credits earned for CPA exam review courses shall not be acceptable in satisfaction of the required concentration in accounting courses. However, these credits may be used toward the overall 150-hour education requirement.

(g) Not to exceed a total of six hours, up to three hours of course requirements specified in paragraph (a)(1), (a)(2), or (a)(3) may be waived by the board, upon the applicant's demonstration

of compelling circumstances and upon receipt of satisfactory verification that the applicant has otherwise met the requirements. (Authorized by K.S.A. 1-202 and K.S.A. 2016 Supp. 1-302a; implementing K.S.A. 2016 Supp. 1-302a; effective Jan. 1, 1973; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1979; amended July 22, 1991; amended Sept. 25, 1998; amended Jan. 11, 2008; amended May 25, 2012; amended March 21, 2014; amended Feb. 19, 2016; amended Jan. 26, 2018.)

Article 3.—ISSUANCE OF CERTIFICATES

74-3-8. Ethics examination requirement for issuance of certificate. Completion of an examination in professional ethics approved by the board, with a passing score of at least 90 percent, shall be required for issuance of the Kansas certificate. (Authorized by K.S.A. 1-202; implementing K.S.A. 1-302; effective Feb. 15, 1977; amended, E-82-27, Dec. 22, 1981; amended May 1, 1982; amended Nov. 17, 2000; amended Jan. 26, 2018.)

Article 4.—PERMITS TO PRACTICE AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

74-4-3a. Permit renewal. (a) Each application for renewal of a permit shall be submitted on a form provided by the board.

(b) A renewal application that is insufficient shall not be processed and shall be returned to the applicant.

(1) An application shall be deemed insufficient if it meets any of the following conditions:

(A) Is not completely filled out;

(B) lacks the required number of continuing education hours;

(C) lacks the required documentation; or

(D) does not include the renewal fee.

(2) If the renewal fee is paid by credit card, the application shall be deemed insufficient if it meets either of the following conditions:

(A) The information necessary to process the credit card payment is deficient.

(B) The credit card company rejects payment. (Authorized by K.S.A. 1-202; implementing K.S.A. 2016 Supp. 1-310; effective Nov. 17, 2000; amended Nov. 2, 2001; amended May 25, 2012; amended Jan. 26, 2018.)

74-4-7. Continuing education requirements. (a)(1) Each applicant for renewal of a per-

mit to practice as a certified public accountant in Kansas shall have completed 80 hours of acceptable continuing education (CE) during each biennial period for renewal and shall be in possession of proof of attendance or completion of the CE hours claimed before the applicant submits an application for renewal. Each applicant for renewal or reinstatement of a permit shall have completed two hours in professional ethics relating to the practice of certified public accountancy as part of the continuing 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.

(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 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 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 education credits that a participant would be entitled to receive, in addition to the time for presentation. No CE 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 in the practice of certified public accountancy. 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 or reinstatement.

(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 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 education required by this regulation, the applicant shall be required by the board to obtain an additional eight hours of continuing 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. 2016 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; amended May 25, 2012; amended Jan. 26, 2018.)

74-4-8. Continuing 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 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 certified public accountant 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 CE 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 course field of study, date and location of the program, delivery method of the course, name of the participant, signature of a representative of the program sponsor, and number of CE contact hours.

(6) A record of registration and attendance is retained for five years by the program sponsor.

(b) The following types of programs addressing the subjects of accounting, auditing, consulting services, specialized knowledge and applications, taxation, management of a practice, ethics, or personal development may qualify as acceptable continuing education if the programs meet the requirements of subsection (a):

(1) Programs of the American institute of certified public accountants, state societies and local chapters of certified public accountants, and providers of continuing education courses;

(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 education credit that equals the number of actual, full 50-minute class hours attended; and

(5) formal, organized, in-firm or interfirm educational programs.

(c) Hours from personal development courses shall not exceed 30 percent of the total number of continuing education hours required for permit renewal or reinstatement. 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.

(d) Any author of a published article or book and any writer of a continuing education program may receive continuing 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.

(e)(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 the American institute of certified public accountants; or

(iii) is 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 (e)(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.

(f) 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 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.

(g) Independent study programs that are designed to allow a participant to learn a given subject under the guidance of a continuing education program sponsor may be eligible for continuing 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.

(h) 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. 2016 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; amended May 25, 2012; amended Feb. 19, 2016; amended Jan. 26, 2018.)

74-4-9. Continuing education controls and reporting. (a) When 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 CE 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 course field of study;

(E) the delivery method of the program or course;

(F) the dates attended or the date the program or course was completed; and

(G) the number of continuing 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 CE hours claimed. Each certificate of completion or attendance shall include the following:

(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;

(E) the delivery method of the program or course;

(F) the name of the participant;

(G) the signature of a representative of the program sponsor; and

(H) the number of continuing education credits that the applicant received for participating in a program or course.

(3) For instruction credit, each applicant shall provide the board with a certificate or other verification supplied by the CE 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 education program or course for five years from the end of the year in which the program or course was completed.

(d) Each applicant required to verify the number of CE hours claimed shall respond to the board's request for verification within 30 days. (Authorized by K.S.A. 1-202 and K.S.A. 75-1119; implementing K.S.A. 1-202, K.S.A. 2016 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; amended March 21, 2014; amended Feb. 19, 2016; amended Jan. 26, 2018.)

74-4-10. Continuing education requirements for renewal of initial or reinstated permits.

(a) To renew an initial or reinstated permit to practice as a certified public accountant in Kansas, each applicant shall complete the number of continuing education (CE) hours proportionate to the number of hours required for the renewal period, given the number of full months from the date of the issuance of the permit to the June 30 renewal date. This requirement shall include two hours of ethics.

(b) CE hours used to reinstate a permit shall not be used toward a subsequent renewal of a permit.

(c) Continuing education credit obtained by the applicant on and after July 1 of the issuance year of the permit may be used to satisfy the continuing education requirement in subsection (a) if the credit meets the requirements specified in K.A.R. 74-4-7 and 74-4-8 and was not used to reinstate a permit. (Authorized by K.S.A. 1-202; implementing K.S.A. 2016 Supp. 1-310; effective, E-82-27, Dec. 22, 1981; effective May 1, 1982; amended Sept. 25, 1998; amended Sept. 10, 1999; amended Nov. 17, 2000; amended May 23, 2008; amended May 25, 2012; amended Jan. 26, 2018.)

Article 5.—CODE OF PROFESSIONAL CONDUCT

74-5-2. Definitions. Each of the following terms, wherever used in this article of the board's regulations, shall have the meaning specified in this regulation:

(a) "AICPA" means American institute of certified public accountants.

(b) "AICPA professional standards" means the standards specified in this subsection, including definitions and interpretations, published by the AICPA, which are hereby adopted by reference. As used in the following AICPA professional standards, "member" shall mean a person or firm subject to the board's regulation:

(1) "U.S. auditing standards—AICPA (clarified)" in "AICPA professional standards," volume 1, pages 37-1364, except pages 1279-1285, as in effect on June 1, 2016, and statement on auditing standards no. 132, "the auditor's consideration of an entity's ability to continue as a going concern," dated February 2017;

(2) "statements on standards for attestation engagements" in "AICPA professional standards," volume 1, pages 1373-1705, as in effect on June 1, 2016;

(3) "U.S. attestation standards—AICPA (clarified)" in "AICPA professional standards," volume 1, pages 1727-2095, as in effect on June 1, 2016;

(4) "statements on standards for accounting and review services [clarified]" in "AICPA professional standards," volume 2, pages 2719-2882, as in effect on June 1, 2016, and the following statements issued after June 1, 2016:

(A) Statement on standards for accounting and review services no. 22, "compilation of pro forma financial information," except the three unnumbered pages before the table of contents, issued September 2016; and

(B) statement on standards for accounting and review services no. 23, "omnibus statement on standards for accounting and review services—2016," except the six unnumbered pages before the table of contents, issued October 2016;

(5) "code of professional conduct" in "AICPA professional standards," volume 2, pages 2883-3076, as in effect on June 1, 2016, except for the following sections in Part 1:

(A) Section 1.800.001, "form of organization and name";

(B) section 1.810.020, "partner designation";

(C) section 1.810.030, "a member's responsibility for nonmember practitioners";

(D) section 1.810.040, "attest engagement performed with a former partner";

(E) section 1.810.050, "alternative practice structures"; and

(F) section 1.820.040, "use of a common brand name in firm name";

(6) "statements on standards for valuation services" in "AICPA professional standards," volume 2, pages 3293-3344, as in effect on June 1, 2016;

(7) "consulting services" in "AICPA professional standards," volume 2, pages 3345-3350, as in effect on June 1, 2016;

(8) "quality control" in "AICPA professional standards," volume 2, pages 3353-3386, as in effect on June 1, 2016;

(9) "standards for performing and reporting on peer reviews" in "AICPA professional standards," volume 2, pages 3387-3588, as in effect on June 1, 2016;

(10) "tax services" in "AICPA professional standards," volume 2, pages 3589-3630, as in effect on June 1, 2016; and

(11) "personal financial planning" in "AICPA professional standards," volume 2, pages 3639-3654, as in effect on June 1, 2016.

All definitions included in the standards adopted in this subsection shall apply only to the documents adopted by reference.

(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 Kansas 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 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. 1-321 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

(FASAB) in “FASAB handbook of federal accounting standards and other pronouncements, as amended,” as in effect on June 30, 2016, except for the following portions: the forward, the preamble, and appendixes A-F. The following standards issued after June 30, 2016 are also adopted:

(A) Statement of federal financial accounting standards 50, “establishing opening balances for general property, plant, and equipment: amending statement of federal financial accounting standards (SFFAS) 6, SFFAS 10, SFFAS 23, and rescinding SFFAS 35,” dated August 4, 2016; and

(B) statement of federal financial accounting standards 51, “insurance programs,” dated January 18, 2017;

(2) accounting principles as adopted by the financial accounting standards board (FASB) and contained in “FASB accounting standards codification,” including accounting standards updates, as contained in volumes 1 through 5, published by the financial accounting standards board (FASB), as in effect on October 31, 2016;

(3) financial accounting principles for state and local governments as adopted by the governmental accounting standards board (GASB) as follows:

(A) “GASB codification of governmental accounting and financial reporting standards,” issued by the governmental accounting standards board, as in effect on June 30, 2016;

(B) GASB statement no. 83, “certain asset retirement obligations,” except appendixes A and B, issued November 2016;

(C) GASB statement no. 84, “fiduciary activities,” except appendixes A and B, issued January 2017; and

(D) GASB statement no. 85, “omnibus 2017,” except appendixes A and B, issued March 2017; and

(4) international accounting and reporting principles established by the international accounting standards board (IASB) as contained in “IFRS® standards,” part A, issued by the international accounting standards board, as in effect on January 1, 2017, except part A, pages A7-A25.

(i) “Government auditing standards” means the “government auditing standards” issued by the United States government accountability office, 2011 revision, revised on January 20, 2012, which is hereby adopted by reference, except pages 1-3 and appendixes I and III.

(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) “PCAOB” means the public company accounting oversight board created by the Sarbanes-Oxley act of 2002.

(l) “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.

(m) “Standards of the PCAOB” means the following, which are hereby adopted by reference:

(1) In “public company accounting oversight board bylaws and rules—rules—professional standards” as in effect on December 31, 2016, section 3, “auditing and related professional practice standards,” part 1, “general requirements,” and part 5, “ethics and independence”;

(2) “auditing standards—reorganized,” issued by the PCAOB as in effect on December 31, 2016; and

(3) “attestation standard no. 1” and “attestation standard no. 2,” issued by the PCAOB as in effect on December 31, 2016.

(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; amended May 25, 2012; amended March 21, 2014; amended Feb. 19, 2016; amended Jan. 26, 2018.)

74-5-2a. Definitions of terms in the AICPA code of professional conduct. (a) The definitions of the terms in ET 0.400 of the AICPA “code of professional conduct,” 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.

(b) The term “member,” as used in the AICPA “code of professional conduct,” shall mean any certified public accountant, firm, or licensed municipal public accountant. (Authorized by and implementing K.S.A. 1-202; effective May 29, 2009; amended Feb. 19, 2016.)

74-5-2b. Applicability of AICPA professional standards. The AICPA professional standards shall apply to each certified public accountant, firm, and licensed municipal public accountant as defined in K.A.R. 74-5-2, regardless of whether the person or entity is a member of the AICPA. (Authorized by and implementing K.S.A. 1-202; effective Feb. 19, 2016.)

74-5-101. Independence. (a) Each certified public accountant, firm, and licensed municipal public accountant shall be independent in the performance of professional services as required by the following standards, as applicable:

(1) AICPA “code of professional conduct,” including the interpretations, as contained in the AICPA professional standards adopted by reference in K.A.R. 74-5-2(b)(5);

(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 September 3, 2013, 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, a firm’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; amended May 25, 2012; amended March 21, 2014; amended Feb. 19, 2016.)

74-5-102. Integrity and objectivity. (a) In the performance of professional services, each certified public accountant, firm, and licensed municipal public accountant shall maintain objectivity and integrity, shall be free of conflicts of in-

terest, 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, firm, 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, firm, and licensed municipal public accountant shall comply with the following applicable standards:

(1) AICPA “code of professional conduct,” including the interpretations, as contained in the AICPA professional standards adopted by reference in K.A.R. 74-5-2(b)(5), 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; amended Feb. 19, 2016.)

74-5-103. Commissions and referral fees. Each certified public accountant or firm shall comply with the AICPA “code of professional conduct” regarding commissions and referral fees, including the interpretations, as contained in the AICPA professional standards adopted by reference in K.A.R. 74-5-2(b)(5). (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; amended Feb. 19, 2016.)

74-5-104. Contingent fees. Each certified public accountant or firm shall comply with the AICPA “code of professional conduct” regarding contingent fees, including the definitions and interpretations, as contained in the AICPA professional standards adopted by reference in K.A.R. 74-5-2(b)(5). (Authorized by and implementing K.S.A. 1-202; effective May 1, 1978; amended July 13, 1992; amended Jan. 8, 1999; amended Sept. 10, 1999; amended May 27, 2005; amended Feb. 19, 2016.)

74-5-201. General standards. (a) Each certified public accountant, firm, or licensed municipal public accountant shall meet the following requirements:

(1) Undertake only those professional services that the CPA, firm, or licensed municipal public accountant can reasonably expect to be completed with professional competence;

(2) exercise due professional care in the performance of professional services;

(3) adequately plan and supervise the performance of professional services; and

(4) obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

(b) The AICPA “code of professional conduct” regarding general standards, including the interpretations as contained in the AICPA professional standards adopted by reference in K.A.R. 74-5-2, shall be used in determining whether there is compliance with the general standards. (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; amended Feb. 19, 2016.)

74-5-202. Compliance with standards.

(a) Each certified public accountant or firm that 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 PCAOB;

(5) the international accounting standards board;

(6) the municipal services team of the office of the chief financial officer, Kansas department of administration;

(7) the AICPA accounting and review services committee;

(8) the AICPA auditing standards board;

(9) the AICPA management consulting services executive committee;

(10) the AICPA tax executive committee;

(11) the AICPA forensic and valuation services executive committee;

(12) the AICPA professional ethics executive committee;

(13) the AICPA personal financial planning executive committee; and

(14) the AICPA peer review board.

(b) Each licensed municipal public accountant shall comply with the generally accepted auditing standards in the 2017 “Kansas municipal audit and accounting guide,” including appendices A through N, prescribed by the director of accounts and reports, department of administration, and hereby adopted by reference. (Authorized by and implementing K.S.A. 1-202 and K.S.A. 75-1119; 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; amended May 25, 2012; amended March 21, 2014; amended Feb. 19, 2016; amended Jan. 26, 2018.)

74-5-203. Accounting principles. Each certified public accountant, firm, or licensed municipal public accountant shall comply with the AICPA “code of professional conduct” regarding accounting principles, including the interpretations, as contained in the AICPA professional standards adopted by reference in K.A.R. 74-5-2(b)(5). (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; amended Feb. 19, 2016.)

74-5-301. Confidential client information. (a) A certified public accountant, firm, or licensed municipal public accountant shall not disclose any confidential client information without the consent of the client.

(b) The AICPA “code of professional conduct,” including the interpretations as contained in the AICPA professional standards adopted by reference in K.A.R. 74-5-2(b)(5), 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; amended Feb. 19, 2016.)

74-5-302. (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; revoked May 25, 2012.)

74-5-401. Acts discreditable. (a) A certified public accountant or firm shall not commit any act discreditable to the profession.

(b) The AICPA “code of professional conduct,” including the interpretations of the AICPA professional standards adopted by reference in K.A.R. 74-5-2(b)(5), shall be used by the board in determining whether a certified public accountant or firm 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; amended Feb. 19, 2016.)

74-5-403. Advertising. (a) A certified public accountant or firm 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 firm not registered with the board as a firm, pursuant to K.S.A. 1-308 and K.S.A. 1-316 and amendments thereto, in any advertisement or publication in any medium or under any heading used for certified public accountants shall be prohibited.

(c) The AICPA “code of professional conduct,” including the interpretations as contained in the AICPA professional standards adopted by reference in K.A.R. 74-5-2(b)(5), 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; amended Feb. 19, 2016.)

74-5-405. (Authorized by K.S.A. 1999 Supp. 1-202, as amended by L. 2000, Ch. 81, § 4; implementing K.S.A. 1999 Supp. 1-311, as amended by L. 2000, Ch. 81, § 13(a)(7); effective May 1, 1978; amended Aug. 23, 1993; amended Nov. 17, 2000; revoked Jan. 26, 2018.)

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 ET section 1.810.010, titled “ownership of separate business,” of the AICPA “code of professional conduct,” as contained in the AICPA professional standards adopted by reference in K.A.R. 74-5-2(b)(5). (Authorized by K.S.A. 1-202; implementing K.S.A. 1-202 and K.S.A. 2014 Supp. 1-311; effective Jan. 11, 2008; amended May 29, 2009; amended Feb. 19, 2016.)

74-5-406. Firm or professional names.

(a) A certified public accountant or firm shall not practice certified public accountancy under a firm or professional name or advertise a firm or professional 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 owners, partners, officers, members, managers, or shareholders of the firm.

(b) A firm or professional 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 or professional 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 Kansas professional corporation or association, limited liability company, limited liability partnership, or general corporation does not include its full name as registered with the board each time the firm or professional name is used.

(5) The name misrepresents the number of partners, shareholders, owners, members, or staff accountants holding CPA certificates and permits who own or provide services on behalf of the firm or business.

(6) The name contains the name or names of one or more former partners, shareholders, or owners without their written consent.

(d) A fictitious firm or professional name shall be defined as a name that contains anything other than the name or names of one or more present or former owners, partners, members, or shareholders or the term “certified public accountant” or “CPA,” or the plural form of either of these two terms. A fictitious firm or professional name may be used if the name is registered with the board and is not false or misleading as determined by the board. Each firm shall utilize its full name as registered with the board each time the name is used.

(e) A fictitious firm or professional name shall be considered to be misleading if the name misrepresents the number of partners, shareholders, owners, members, or staff accountants holding CPA certificates and permits who own or provide services on behalf of the firm or business.

(f) Each certified public accountant or firm that falls out of compliance with this regulation due to any change in 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 or certified public accountant to take corrective action.

(g) If a firm does not have an office in Kansas but is required to register with the board pursuant to K.S.A. 1-308 and amendments thereto, the name shall not be considered misleading even if the name meets the criteria for being “misleading” as specified in paragraph (c)(5) or subsection (e) of this regulation. (Authorized by K.S.A. 1-202; implementing K.S.A. 1-202 and K.S.A. 2016 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; amended March 21, 2014; amended Feb. 16, 2016; amended Jan. 26, 2018.)

74-5-407. Cooperation with the board.

Each certified public accountant, firm, or licensed municipal public accountant shall cooperate in a timely manner with the board in its investigation of complaints or possible violations of the accounting statutes or the regulations of the board. Cooperation shall include responding to written communications from the board, and providing information and documentation as requested by the board, sent by mail to the last known preferred mailing address on file with the board, within a reasonable time frame specified by the board or appearing before the board, or any of its members, upon request. (Authorized by and implementing K.S.A. 1-202 and K.S.A. 75-1119(a); effective May 1, 1978; amended May 1, 1979; amended, E-82-27, Dec. 22, 1981; amended May 1, 1982; amended May 1, 1985; amended Sept. 25, 1998; amended March 21, 2014; amended Feb. 19, 2016.)

74-5-408. Change of name or address.

Each certified public accountant shall notify the board in writing of any change in the person's name, home address, employer name, business address, or electronic-mail address within 30 days of the change. (Authorized by and implementing K.S.A. 1-202; effective Feb. 16, 2007; amended Jan. 26, 2018.)

Article 6.—ADDITIONAL OFFICES

74-6-2. Management of an office.

(a) Each firm or sole proprietorship 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 of the office who is the holder of a current permit to practice as a certified public accountant issued by this state, who oversees the planning, administration, direction, and review of the services being performed in that office, and who devotes more than half of the resident manager's working time to the affairs of that office.

(b) Any firm or sole proprietorship specified in subsection (a) may, however, have additional offices in this state for which the designated resident manager specified in subsection (a) shall also be responsible to notify the board of each additional office by providing a written statement to the board. (Authorized by K.S.A. 1-202; implementing K.S.A. 2016 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; amend-

ed Nov. 29, 2010; amended March 21, 2014; amended Jan. 26, 2018.)

Article 7.—FIRM REGISTRATION

74-7-2. Firms eligible for registration.

(a) Unless exempt from registration pursuant to K.S.A. 1-308 and amendments thereto, before practicing certified public accountancy, a firm, as defined in K.S.A. 1-321 and amendments thereto, shall meet the following requirements:

(1) Register with the board on forms provided by the board;

(2) affirm that any individual who signs or authorizes someone to sign the accountant's report on any audit, review, or compilation or on the examination of prospective financial information on behalf of the firm has met the competency requirements specified in K.A.R. 74-4-1a; and

(3) pay the fee specified in K.A.R. 74-12-1.

(b) Each firm shall renew its registration annually on or before December 31 on forms provided by the board and shall pay the fee specified in K.A.R. 74-12-1. (Authorized by K.S.A. 1-202; implementing K.S.A. 2016 Supp. 1-308; effective Jan. 1, 1966; amended May 1, 1988; amended Jan. 12, 1996; amended Nov. 17, 2000; amended Jan. 11, 2008; amended Jan. 26, 2018.)

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 of the board's regulations, shall have the meaning specified in this regulation:

(a) "AICPA" means American institute of certified public accountants.

(b) "AICPA professional standards" means the standards adopted by reference in K.A.R. 74-5-2 that are contained in the "AICPA professional standards," volumes 1 and 2, published by the AICPA, as adopted by reference in K.A.R. 74-5-2.

(c) "Firm" shall have the meaning specified in K.S.A. 1-321 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 this article of the board's regulations. 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(b)(9).

(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 PCAOB 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. 2016 Supp. 1-312, and K.S.A. 2016 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 May 25, 2012; amended March 21, 2014; amended Feb. 19, 2016; amended Jan. 26, 2018.)

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, if applicable:

(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;

(2) a letter issued by the administering entity stating that the peer review is in process; or

(3) a completed form titled “peer review form,” which shall be provided by the board and completed by the firm.

(b) For the purpose of this regulation, for a peer review to be “in process” shall mean that the peer review report has been issued to the firm and the report and, if applicable, the letter of response have been submitted to the administering entity. However, the letter stating that the peer review has been completed and signifying a due date for the next peer review has not been issued.

(c) 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.

(d) 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. 2014 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; amended March 21, 2014; amended Feb. 19, 2016.)

74-11-15. (Authorized by and implementing K.S.A. 1-202 and K.S.A. 1-501; effective Nov. 2, 2001; amended May 27, 2005; revoked March 21, 2014.)

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)\$50.00
- (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\$165.00
 - (2) For one year or less of a biennial period\$82.50
- (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.....\$165.00
 - (2) If received after July 1 of the renewal year in which the permit expires.....\$247.50
- (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\$247.50
 - (2) For one year or less of a biennial period.....\$123.75
- (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) Firm registration fee:
 - (1) Initial registration.....\$100.00
 - (2) Annual renewal.....\$100.00
 - (3) Late renewal.....\$150.00

(Authorized by and implementing K.S.A. 2016 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 Nov. 29, 1999; amended Nov. 17, 2000; amended Nov. 2, 2001; amended Nov. 14, 2003; amended Nov. 29, 2010; amended Jan. 26, 2018.)

Article 15.—UNIFORM ACCOUNTANCY ACT

74-15-1. Adoption of the uniform accountancy act. For purposes of determining

substantial equivalency, the board hereby adopts by reference sections 5(c), 5(d), and 5(f) of the “uniform accountancy act,” fifth edition, July 2007. In section 5(c), all references to “the effective date of this act” shall be stricken and replaced with “January 1, 2007.” (Authorized by K.S.A. 1-202; implementing K.S.A. 2015 Supp.

1-321 and 1-322; effective Nov. 17, 2000; amended Feb. 19, 2016.)

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 additional 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

- 81-1. DEFINITIONS OF TERMS.
- 81-2. FILING, FEES AND FORMS.
- 81-3. LICENSING; BROKER-DEALERS AND AGENTS.
- 81-4. REGISTRATION OF SECURITIES.
- 81-5. EXEMPTIONS.
- 81-6. PROSPECTUS.
- 81-7. POLICY RELATING TO REGISTRATION.
- 81-14. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES.
- 81-20. GENERAL PURPOSE AND APPLICABILITY.
- 81-21. DEFINITION OF TERMS.
- 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.
- 81-27. ADVERTISING.
- 81-28. EFFECTIVENESS AND INSPECTIONS.
- 81-29. REPORTING REQUIREMENTS.
- 81-30. ADMINISTRATIVE PROCEDURE.

Article 1.—DEFINITIONS OF TERMS

81-1-1. Definition of terms. As used in the act, these regulations, and the forms, instructions, and orders of the administrator, each of the following terms shall have the meaning specified in this regulation, unless the context indicates otherwise:

(a) “The act” means the Kansas uniform securities act, K.S.A. 17-12a101 et seq., and amendments thereto.

(b) “Administrator” means the securities commissioner of Kansas, appointed pursuant to K.S.A. 75-6301 and amendments thereto, or the commissioner’s designee.

(c) “Affiliate” means a person who directly or indirectly controls, is controlled by, or is under common control with another person, or who aids and abets or is aided and abetted by another person.

(d) “AICPA” means the American institute of certified public accountants.

(e) “Branch office” means any location where one or more agents or investment adviser representatives regularly conduct business on behalf of a broker-dealer or investment adviser, or that is

held out as such a location, with the exception of the following locations:

(1) Any location that is established solely for customer service or back office-type functions, where no sales activities are conducted, and that is not held out to the public as a branch office;

(2) any location that is the agent’s or investment adviser representative’s primary residence if all of the following conditions are met:

(A) Only agents or investment adviser representatives who reside at the location and are members of the same immediate family conduct business at the location;

(B) the location is not held out to the public as an office, and the agent or investment adviser representative does not meet with customers at the location;

(C) neither customer funds nor securities are handled at the location;

(D) the agent or investment adviser representative is assigned to a designated branch office, and the designated branch office is reflected on all business cards, stationery, advertisements, and other communications to the public by the agent or investment adviser representative;

(E) the agent's or investment adviser representative's correspondence and communications with the public are subject to the supervision of the broker-dealer or investment adviser with which the individual is associated;

(F) electronic communications are made through the electronic system of the broker-dealer or investment adviser;

(G) all orders for securities are entered through the designated branch office or an electronic system established by a broker-dealer or investment adviser;

(H) written supervisory procedures pertaining to supervision of activities conducted at residence locations are maintained by the broker-dealer or investment adviser; and

(I) a list of all residence locations is maintained by the broker-dealer or investment adviser;

(3) any location, other than a primary residence, that is used for securities or investment advisory business for less than 30 business days in any one calendar year, if the broker-dealer or investment adviser complies with the provisions of paragraphs (e)(2)(B) through (H). For purposes of this paragraph, a business day shall not include any partial business day if the agent or investment adviser representative spends at least four hours of the business day at the agent's or investment adviser representative's designated branch office during the hours that the office is normally open for business;

(4) any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, that is not held out to the public as an office;

(5) any location that is used primarily to engage in non-securities activities and from which the agents or investment adviser representatives effect no more than 25 securities transactions in any one calendar year, if any advertisement or sales literature identifying the location also sets forth the address and telephone number of the location from which the agents or investment adviser representatives conducting business at the non-branch locations are directly supervised;

(6) the floor of a registered national securities exchange where a broker-dealer conducts a direct access business with public customers; and

(7) a temporary location established in response to the implementation of a business continuity plan.

(f) "Close family relationship" means either a person within the third degree of relationship,

by blood or adoption, or a spouse, stepchild, or fiduciary of a person within the third degree of relationship.

(g) "Commission" means any consideration, compensation, fee, or other remuneration that is directly or indirectly incurred, paid, or given in exchange for services in connection with the offer, sale, or purchase of securities, the rendering of investment advice, or the solicitation of prospective purchasers or clients.

(h) "Control" means the possession of the power to direct or influence the direction of the management or policies of a person, directly or indirectly, through the ownership of voting securities, by contract, or by other means.

(i) "Controlling person" means a person who has control of any other person. Either of the following persons shall be presumed to be a controlling person:

(1) An officer, director, partner, or trustee or an individual occupying similar status or performing similar functions; or

(2) a person owning 10 percent or more of the outstanding shares of any class or classes of securities.

(j) "CPA" means certified public accountant or a firm of certified public accountants.

(k) "CRD" means the central registration depository jointly administered by FINRA and NASAA.

(l) "Designated security" means any equity security other than the following:

(1) A security registered, or approved for registration upon notice of issuance, on a national securities exchange;

(2) a security authorized, or approved for authorization upon notice of issuance, for listing on the Nasdaq stock market;

(3) a security issued by an investment company registered under the investment company act of 1940;

(4) a security that is a put option or call option issued by the options clearing corporation; or

(5) a security whose issuer has net tangible assets in excess of \$4,000,000 as demonstrated by financial statements dated within the previous 15 months that the broker-dealer has reviewed and has a reasonable basis to believe are true and complete in relation to the date of the transaction with the person, if either of the following conditions is met:

(i) The issuer is other than a foreign private issuer, and the financial statements are the most re-

cent financial statements for the issuer that have been audited and reported on by a CPA in accordance with the provisions of 17 C.F.R. 210.2-02, as adopted by reference in K.A.R. 81-2-1; or

(ii) the issuer is a foreign private issuer, and the financial statements are the most recent financial statements for the issuer that have been filed with the SEC; published electronically in English pursuant to 17 C.F.R. 240.12g3-2(b), as adopted by reference in K.A.R. 81-2-1; or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

(m) "EFD" means the electronic filing depository administered by NASAA.

(n) "FINRA" means the financial industry regulatory authority, inc., a self-regulatory organization registered with the SEC pursuant to section 15A of the securities exchange act of 1934, 15 U.S.C. § 78o-3, as adopted by reference in K.A.R. 81-2-1, that was organized upon consolidation with NASD, its predecessor, and the regulatory functions of the New York stock exchange.

(o) "GAAP" means generally accepted accounting principles in the United States.

(p) "General solicitation" means an offer to one or more persons by any of the following means or as a result of contact initiated through any of these means:

(1) Television, radio, or any broadcast medium;

(2) newspaper, magazine, periodical, or any other publication of general circulation;

(3) poster, billboard, internet posting, or other communication posted for the general public;

(4) brochure, flier, handbill, or similar communication, unless the offeror has a substantial preexisting business relationship or close family relationship with each of the offerees;

(5) seminar or group meeting, unless the offeror has a substantial preexisting business relationship or close family relationship with each of the offerees; or

(6) telephone, facsimile, mail, delivery service, social media, or electronic communication, unless the offeror has a substantial preexisting business relationship or close family relationship with each of the offerees.

(q) "IARD" means the investment adviser registration depository jointly administered by the SEC and NASAA and operated by FINRA in conjunction with the CRD system.

(r) "NASAA" means the North American securities administrators association, inc.

(s) "NASD" means the national association of securities dealers, inc., a self-regulatory organization that was registered with the SEC pursuant to section 15A of the securities exchange act of 1934, 15 U.S.C. § 78o-3, as adopted by reference in K.A.R. 81-2-1, until its consolidation with the regulatory functions of the New York stock exchange upon organization of its successor, FINRA.

(t) "Nasdaq" means the Nasdaq stock market, which is comprised of the Nasdaq global select market; the Nasdaq global market, formerly the Nasdaq national market; and the Nasdaq capital market, formerly the Nasdaq smallcap market.

(u) "Officer" means a person charged with managerial responsibility or control over a person, including the president, vice president, secretary, treasurer, partner, and any other controlling person.

(v) "Parent" means an affiliate who controls another person.

(w) "PCAOB" means the public company accounting oversight board.

(x) "Predecessor" means a person, a major portion of whose business, assets, or control has been acquired by another.

(y) "Promoter" means a person who, acting alone or in conjunction with one or more other persons, directly or indirectly founds, organizes, reorganizes, or controls the business, financing, or operations of an issuer.

(z) "Prospectus" means any prospectus defined in section 2(a)(10) of the securities act of 1933, 15 U.S.C. 77b(a)(10), as adopted by reference in K.A.R. 81-2-1. This term shall not include any communication meeting the requirements of K.S.A. 17-12a202(16), and amendments thereto, or SEC rule 134, 17 C.F.R. 230.134, as adopted by reference in K.A.R. 81-2-1.

(aa) "Registrant" means a person registered under the act.

(bb) "SCOR" means small company offering registration.

(cc) "SEC" means the United States securities and exchange commission.

(dd) "Subsidiary" means an affiliate who is controlled by another person. (Authorized by and implementing K.S.A. 17-12a605(a); effective Jan. 1, 1966; amended, T-85-45, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended May 31, 1996; amended Jan. 19, 2007; amended Jan. 4, 2016.)

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
D	Notice of exempt offering 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 Model accredited investor exemption uniform notice of transaction

(2) Kansas forms:

FORM	TITLE
IKE	Notice of reliance on the invest Kansas exemption
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
S-1	Registration statement under the securities act of 1933
X-17A-5	FOCUS report (financial and operational combined uniform single report)

(b) Federal statutes. The following federal statutes, as in effect on May 12, 2015, 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, 15, and 15A of the securities exchange act of 1934, 15 U.S.C. §§ 78i, 78j, 78m, 78o, and 78o-3;

(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; and

(4) sections 3, 5, 8, and 54 of the investment company act of 1940, 15 U.S.C. §§ 80a-3, 80a-5, 80a-8, and 80a-53.

(c) SEC rules and regulations. The following rules and regulations of the securities and exchange commission, as in effect on May 12, 2015, except as otherwise specified, 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, as amended by 80 fed. reg. 21895-21902 (2015) and effective June 19, 2015;
- (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 12g3-2(b), 17 C.F.R. 240.12g3-2(b);
- (9) rule 15c2-1, 17 C.F.R. 240.15c2-1;
- (10) rules 15c3-1, 15c3-1a through 15c3-1g, 15c3-3, and 15c3-3a, 17 C.F.R. 240.15c3-1, 240.15c3-1a through 240.15c3-1g, 240.15c3-3, and 240.15c3-3a;
- (11) rules 17a-3, 17a-4, and 17a-5, 17 C.F.R. 240.17a-3, 240.17a-4, and 240.17a-5;
- (12) rule 17a-11, 17 C.F.R. 240.17a-11;
- (13) regulation M, 17 C.F.R. 242.100 through 242.105;
- (14) regulation SHO, 17 C.F.R. 242.200 through 242.204;
- (15) regulation FD, 17 C.F.R. 243.100 through 243.103;
- (16) regulation S-P, 17 C.F.R. 248.1 through 248.18 and 248.30;
- (17) rule 12b-1, 17 C.F.R. 270.12b-1;
- (18) rule 204-4, 17 C.F.R. 275.204-4;
- (19) rule 205-3, 17 C.F.R. 275.205-3; and
- (20) rule 206(4)-1, 17 C.F.R. 275.206(4)-1.

(d) FINRA, NASD, and New York stock exchange rules. The following rules in the “FINRA manual,” dated September 2014 and published by the financial industry regulatory authority, inc., are hereby adopted by reference:

- (1) NASD “conduct rules” within the series of rules 2300, 2400, 2500, 2700, 2800, 3000, and 3100;
- (2) FINRA rules within the series of rules 2100, 2200, 2300, 3100, 3200, 3300, 5100, 5200, and 5300; and
- (3) rule 472 of the New York stock exchange, “communications with the public.”

(e) Whenever terms within the context of statutes, rules, or documents adopted by reference in

these regulations are in conflict with definitions under the act and this regulation, the definition within the statutes, rules, and documents adopted by reference shall apply.

(f) Nothing within these regulations shall be construed to require the SEC, FINRA, or any other regulatory organizations to comply, administer, or enforce the statutes, rules, or policies under their jurisdiction that are adopted by reference under these regulations, or to require the administrator to act on behalf of the SEC, FINRA, or any other regulatory organizations to enforce the statutes, rules, or policies under their jurisdiction. (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; amended Jan. 4, 2016.)

Article 3.—LICENSING; BROKER-DEALERS AND AGENTS

81-3-1. Registration procedures for broker-dealers and agents. (a) General provisions. Each applicant shall be at least 18 years of age. If the applicant is not an individual, then the directors, officers, managing partners, or managing members of the applicant shall be at least 18 years of age.

(b) Registration requirements for broker-dealers.

(1) Initial application.

(A) CRD filing requirements. Each applicant for initial registration as a broker-dealer shall complete form BD in accordance with the form instructions and shall file the form with the CRD, unless the applicant is not required to file with the CRD for FINRA membership or SEC registration. Each application filed with the CRD shall include the following:

(i) The registration fee specified in K.A.R. 81-3-2(a);

(ii) any reasonable fee charged by FINRA for filing through the CRD system; and

(iii) a current list of the addresses of all branch offices and the names of all branch supervisors.

(B) Direct filing requirements. Each applicant for initial registration as a broker-dealer that is required to file with the CRD pursuant to paragraph (b)(1)(A) shall file either of the following, as applicable, directly with the administrator:

(i) The annual report for the applicant's last fiscal year pursuant to SEC rule 17a-5(d), 17 C.F.R. 240.17a-5(d), as adopted by reference in K.A.R. 81-2-1, unless the applicant was not required to file an annual report with FINRA and the SEC, and part II of the applicant's most recent FOCUS report on form X-17A-5 that includes a statement of financial condition dated within 90 days of filing for registration, unless the applicant was not required to file a FOCUS report with FINRA and the SEC; or

(ii) a statement of financial condition with notes to the statement presented in conformity with GAAP dated within 90 days of filing for registration, including disclosure of the applicant's net capital or a supplemental schedule of net capital pursuant to K.A.R. 81-3-7(d).

(C) Filing requirements for an applicant that is not required to file with CRD for FINRA membership or SEC registration. An applicant that is not required to file with CRD shall file the following directly with the administrator:

(i) A printed form BD, completed in accordance with the form instructions;

(ii) the registration fee specified in K.A.R. 81-3-2(a); and

(iii) the statement of financial condition specified in paragraph (b)(1)(B)(ii).

(2) Effective date of registration. Each registration shall become effective the 45th day after a completed application is filed unless approved earlier by the administrator. If the administrator or the administrator's staff has given written notice of deficiencies in the application, the application shall not be considered complete until an amendment is filed to resolve the deficiencies.

(3) Expiration and annual renewal of registration. Each broker-dealer registration shall expire on December 31, and each application for renewal of registration shall be filed as follows:

(i) If the initial application for registration was filed with the CRD, the renewal application shall be filed with the CRD not later than the deadline established by the CRD. Each application for renewal of registration shall include the fee specified in K.A.R. 81-3-2(a) and any reasonable fee charged by FINRA for filing through the CRD system. Each applicant for renewal shall also up-

date information in the CRD system as necessary, on or before December 31, including the addresses of all branch offices and the names of all branch supervisors.

(ii) If the initial application for registration was filed directly with the administrator pursuant to paragraph (b)(1)(C), the renewal application shall be filed directly with the administrator and shall include the fee specified in K.A.R. 81-3-2(a). Each application for renewal filed directly with the administrator shall include an updated form BD with amendments for material changes, if any, as specified in paragraph (b)(4).

(4) Updates and amendments. Each registered broker-dealer shall promptly file an amendment to form BD, in accordance with the instructions to form BD, whenever there is any material change in any information, exhibits, or schedules submitted, or circumstances disclosed in its last filed form BD. An amendment shall be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of an amendment. Material changes shall include the following:

(A) A change in firm name, ownership, management, or control of a broker-dealer, or a change in any of its controlling persons; a change of business address; or the creation or termination of a branch office in Kansas;

(B) a change in the type of entity, general plan, or nature of a broker-dealer's business, method of operation, or type of securities in which it is dealing or trading;

(C) insolvency, dissolution, liquidation, or a material adverse change or impairment of working capital, or noncompliance with the minimum net capital as required by K.A.R. 81-3-7;

(D) termination of business or discontinuance of activities as a broker-dealer;

(E) the filing of a criminal charge or civil action against a registrant, or a controlling person, in which a fraudulent, dishonest, or unethical act is alleged or a violation of a securities law is involved; or

(F) the entry of an order or proceeding by any court or administrative agency against a registrant denying, suspending, or revoking a registration, or threatening to do so, or enjoining the registrant from engaging in or continuing any conduct or practice in the securities business.

(5) Withdrawal and termination of registration.

(A) Each application that has been on file for six months without any action taken by the applicant shall be considered withdrawn.

(B) If a broker-dealer desires to withdraw and terminate registration or registration is terminated by the administrator, the broker-dealer shall immediately file a completed form BDW either with the CRD or, if the broker-dealer was registered pursuant to paragraph (b)(1)(C), directly with the administrator.

(c) Registration requirements for agents.

(1) Initial application. Each applicant for registration as an agent shall complete form U-4 in accordance with the form instructions. The form for an agent of a broker-dealer shall be filed electronically with the CRD. A form U-4 shall be filed directly, in either paper or electronic form, with the administrator for an agent who is associated solely with an issuer or with an intrastate broker-dealer registered pursuant to paragraph (b)(1)(C). Each application for initial registration shall include the following items:

(A) The registration fee specified in K.A.R. 81-3-2(b);

(B) any reasonable fee charged by FINRA for filing through the CRD system; and

(C) proof of completion of the series 63 or series 66 examination with a passing score, in addition to successful completion of one other examination approved by the administrator and required for registration with FINRA. This examination requirement may be waived by the administrator for an applicant who has previously passed the required written examinations and whose last effective registration was not more than two years before the date of the filing of the present registration application. Additional examination requirements may be imposed by the administrator, or any applicant may be exempted from examination requirements pursuant to K.S.A. 17-12a412(e), and amendments thereto.

(2) Effective date of registration.

(A) Initial registration. Each registration shall become effective the 45th day after a completed application is filed unless the application is approved earlier by the administrator. If the administrator or the administrator's staff has given written notice of deficiencies in the application, the application shall not be considered complete until an amendment is filed to resolve the deficiencies.

(B) Transfer of employment or association. If an agent terminates employment by or association with a broker-dealer and begins employment by or association with another broker-dealer, and the second broker-dealer files an application for registration

for the agent within 30 days after the termination, the application shall become effective pursuant to K.S.A. 17-12a408(b), and amendments thereto.

(3) Expiration and annual renewal of registration. Each agent registration shall expire on December 31, and each application for renewal of registration shall be filed not later than the deadline established by the CRD or the administrator, if filed directly with the administrator. Each application for renewal of registration shall include the fee specified in K.A.R. 81-3-2(b) and any reasonable fee charged by FINRA for filing through the CRD system.

(4) Updates and amendments. Each agent's employing or associated broker-dealer or issuer shall promptly file with the CRD or the administrator an amendment to form U-4, in accordance with the instructions to form U-4, whenever there is any material change in any information, exhibits, or schedules submitted, or circumstances disclosed in the agent's last filed form U-4. An amendment shall be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of an amendment. Material changes shall include any change in the registrant's name, residential address, office of employment address, and matters disclosed in the "disclosure questions" portion of form U-4.

(5) Withdrawal and termination of registration.

(A) Each application that has been on file for six months without any action taken by the applicant shall be considered withdrawn.

(B) If an agent's employment by or association with a broker-dealer or issuer is discontinued or terminated, the broker-dealer or issuer shall file a notice of termination within 30 days. If the agent commences employment by or association with another broker-dealer or issuer, that broker-dealer or issuer shall file an original application for registration.

(C) Termination of a broker-dealer's or issuer's registration for any reason shall automatically constitute cancellation of all associated agents' registrations. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a406, 17-12a407, 17-12a408, and 17-12a412(e); 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 May 1, 1987; amended Oct. 7, 1991; amended June 28, 1993; amended May 31, 1996; amended Oct. 26, 2001; amended Aug. 18, 2006; amended Jan. 4, 2016.)

81-3-2. Broker-dealer and agent registration fees. (a) The fee for initial registration or renewal of the registration of each broker-dealer shall be \$200.

(b) The fee for initial registration or renewal of the registration of each agent shall be \$60.

(c) The CRD shall be authorized to receive and store filings and to collect the fees specified in this regulation from broker-dealers and agents on behalf of the administrator. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a410; effective, E-82-24, Dec. 9, 1981; effective May 1, 1982; amended, T-87-41, Dec. 8, 1986; amended May 1, 1987; amended, T-81-9-12-88, Sept. 12, 1988; amended Oct. 25, 1988; amended Jan. 15, 1990; amended Oct. 7, 1991; amended Dec. 19, 1997; amended Oct. 26, 2001; amended Aug. 18, 2006; amended Dec. 19, 2008; amended Oct. 9, 2015.)

81-3-5. Sales of securities at financial institutions. (a) Definitions. For purposes of this regulation, the following definitions shall apply:

(1) "Affiliate" means a company that controls, is controlled by, or is under common control with a broker-dealer as defined in FINRA rule 5121, which is adopted by reference in K.A.R. 81-2-1.

(2) "Broker-dealer services" means the investment banking or securities business that is conducted by a broker-dealer or a municipal or government securities broker or dealer other than a financial institution or department or division of a financial institution and consists of any of the following:

(A) Underwriting or distributing issues of securities;

(B) purchasing securities and offering the securities for sale as a dealer; or

(C) purchasing and selling securities upon the order and for the account of others.

(3) "Financial institution" means any federal-chartered or state-chartered bank, savings and loan association, savings bank, credit union, and any service corporation of these institutions located in Kansas.

(4) "Networking arrangement" and "brokerage affiliate arrangement" mean a contractual or other arrangement between a broker-dealer and a financial institution pursuant to which the broker-dealer conducts broker-dealer services on the premises of the financial institution where retail deposits are taken.

(b) Applicability. This regulation shall apply exclusively to broker-dealer services con-

ducted by any broker-dealer on the premises of a financial institution where retail deposits are taken. This regulation shall not alter or abrogate a broker-dealer's obligations to comply with other applicable laws or regulations that may govern the operations of broker-dealers and their agents, including supervisory obligations. This regulation shall not apply to broker-dealer services provided to nonretail customers.

(c) Standards for broker-dealer conduct. No broker-dealer shall conduct broker-dealer services on the premises of a financial institution where retail deposits are taken unless the broker-dealer complies initially and continuously with the following requirements:

(1) Setting. Broker-dealer services shall be conducted in a physical location distinct from the area in which the financial institution's retail deposits are taken. In all situations, the broker-dealer shall identify its services in a manner that clearly distinguishes those services from the financial institution's retail deposit-taking activities. The broker-dealer's name shall be clearly displayed in the area in which the broker-dealer conducts its broker-dealer services.

(2) Networking and brokerage affiliate arrangements and program management. Networking and brokerage affiliate arrangements shall be governed by a written agreement that sets forth the responsibilities of the parties and the compensation arrangements. Networking and brokerage affiliate arrangements shall stipulate that supervisory personnel of the broker-dealer and representatives of state securities authorities, where authorized by state law, will be permitted access to the financial institution's premises where the broker-dealer conducts broker-dealer services in order to inspect the books and records and other relevant information maintained by the broker-dealer with respect to its broker-dealer services. The broker-dealer shall be responsible for ensuring that the networking and brokerage affiliate arrangement clearly outlines the duties and responsibilities of all parties.

(3) Customer disclosure and written acknowledgment.

(A) When or before a customer's securities brokerage account is opened by a broker-dealer on the premises of a financial institution where retail deposits are taken, the broker-dealer shall perform the following:

(i) Disclose, orally and in writing, that the securities products purchased or sold in a transac-

tion with the broker-dealer are not insured by the federal deposit insurance corporation ("FDIC") or the national credit union share insurance fund ("NCUSIF"), as applicable, are not deposits or other obligations of the financial institution and are not guaranteed by the financial institution, and are subject to investment risks, including possible loss of the principal invested; and

(ii) make reasonable efforts to obtain from each customer during the account opening process a written acknowledgment of the disclosures required by paragraph (c)(3)(A)(i).

(B) If broker-dealer services include any written or oral representations concerning insurance coverage other than FDIC or NCUSIF insurance coverage, then clear and accurate written or oral explanations of the coverage shall also be provided to the customers when these representations are first made.

(4) Communications with the public.

(A) All of the broker-dealer's written confirmations and account statements shall indicate clearly that the broker-dealer services are provided by the broker-dealer.

(B) Recommendations by a broker-dealer concerning nondeposit investment products with a name similar to that of the financial institution shall occur only pursuant to a sales program designed to minimize the risk of customer confusion.

(C) Advertisements and sales literature.

(i) Advertisements and sales literature that announce the location of a financial institution where broker-dealer services are provided by the broker-dealer, or that are distributed by the broker-dealer on the premises of a financial institution, shall disclose that the securities products are not insured by the FDIC or the NCUSIF, as applicable, are not deposits or other obligations of the financial institution and are not guaranteed by the financial institution, and are subject to investment risks, including possible loss of the principal invested.

(ii) To comply with the requirements of paragraph (c)(4)(C)(i), the following logo format disclosures may be used by a broker-dealer in advertisements and sales literature, including material published or designed for use in radio or television broadcasts, internet sites, automated teller machine screens, billboards, signs, posters, and brochures, if these disclosures, as applicable, are displayed in a conspicuous manner: "not FDIC insured," "no bank guarantee," "not NCUSIF insured," "no credit union guarantee," and "may lose value."

(iii) If the omission of the disclosures required by paragraph (c)(4)(C)(i) would not cause the advertisement or sales literature to be misleading in light of the context in which the material is presented, the disclosures shall not be required with respect to messages contained in radio broadcasts of 30 seconds or less; signs, including banners and posters, when used only as location indicators; and electronic signs, including billboard-type signs that are electronic, time and temperature signs, and ticker tape signs. However, the requirements of paragraph (c)(4)(C)(i) shall apply to messages contained in other media, including television, online computer services, and automated teller machines.

(5) Notification of termination. The broker-dealer shall promptly notify the financial institution if any agent of the broker-dealer who is employed by the financial institution is terminated for cause by the broker-dealer.

(d) "Dishonest or unethical practices," as used in K.S.A. 17-12a412(d)(13) and amendments thereto, shall include any conduct that violates subsection (c). (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a412; effective Oct. 26, 2001; amended Aug. 18, 2006; amended Jan. 4, 2016.)

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 and the failure to adhere to standards of conduct specified 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) FINRA, NASD, New York stock exchange, and SEC rules and laws. Failure by a person registered as a broker-dealer or agent under the act to comply with any of the following rules and laws, as adopted by reference in K.A.R. 81-2-1, shall

constitute unethical conduct in violation of this regulation:

(1) NASD conduct rules within the series of rules 2300, 2400, 2500, 2700, 2800, 3000, and 3100 and FINRA rules within the series of rules 2100, 2200, 2300, 3100, 3200, 3300, 5100, 5200, and 5300;

(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; safe-keeping 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 impor-

tance 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 substantially 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 authorized 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.

(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; a fee pursuant to SEC rule 12b-1, 17 C.F.R. § 270.12b-1, as adopted by reference in K.A.R. 81-2-1, or a service fee that in to-

tal 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 federal deposit insurance corporation ("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 despite 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 certificate holders;

(iii) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificate holders for improper or unethical conduct; or

(iv) does not have reasonable continuing education requirements for its designees or certificate holders 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), 17-12a501(3), and 17-12a608; effective Aug. 18, 2006; amended May 22, 2009; amended Jan. 4, 2016.)

81-3-7. Supervisory, financial reporting, recordkeeping, net capital, and operational requirements for broker-dealers. (a) Supervision.

(1) Annual review. Each broker-dealer shall conduct a review, at least annually, of the businesses in which it engages. The review shall be reasonably designed to assist in detecting and preventing violations of and achieving compliance with the act, these regulations, and other applicable laws, regulations, and rules of self-regulatory organizations.

(2) Supervisory procedures. Each broker-dealer shall establish and maintain supervisory procedures that shall be reasonably designed to assist in detecting violations of, preventing violations of, and achieving compliance with the act, these regulations, and other applicable laws, regulations, and rules of self-regulatory organizations. In determining whether supervisory procedures are reasonably designed, relevant factors including the following may be considered by the administrator:

(A) The firm's size;

(B) the organizational structure;

(C) the scope of business activities;

(D) the number and location of offices;

(E) the nature and complexity of products and services offered;

(F) the volume of business done;

(G) the number of agents assigned to a location;

(H) the presence of an on-site principal at a location;

(I) the specification of the office as a non-branch location; and

(J) the disciplinary history of the registered agents.

(3) Supervision of non-branch offices. The procedures established and the reviews conducted

shall provide sufficient supervision at remote offices to ensure compliance with all applicable securities laws and regulations and self-regulatory organization rules. Based on the factors specified in paragraph (a)(2), certain non-branch offices may require more frequent reviews or more stringent supervision.

(4) Failure to supervise. If a broker-dealer fails to comply with this subsection, the broker-dealer may be deemed to have “failed to reasonably supervise” its agents under K.S.A. 17-12a412(d)(9), and amendments thereto.

(b) Annual reports. Each broker-dealer registered under the act shall make and maintain an annual report for the broker-dealer’s most recent fiscal year.

(1) Filing. Each broker-dealer shall file the annual report with the administrator within five days of a request by the administrator or the administrator’s staff.

(2) Contents of annual report. Each annual report shall contain financial statements that include the following:

(A) A statement of financial condition and notes to the statement of financial condition presented in conformity with GAAP; and

(B) disclosure of the broker-dealer’s net capital, which shall be calculated in accordance with subsection (c).

(3) Auditing. Unless otherwise permitted, an independent CPA shall audit the financial statements in accordance with generally accepted auditing standards.

(4) Recognition of federal standards. For purposes of uniformity, a copy of audited financial statements in compliance with SEC rule 17a-5(d), 17 C.F.R. 240.17a-5(d), as adopted by reference in K.A.R. 81-2-1, shall be deemed to comply with paragraphs (b)(2) and (b)(3).

(c) Books and records. Each registered broker-dealer shall maintain and preserve records in compliance with SEC rule 17a-3, 17 C.F.R. 240.17a-3, and SEC rule 17a-4, 17 C.F.R. 240.17a-4, which are adopted by reference in K.A.R. 81-2-1.

(d) Minimum net capital requirements.

(1) Each broker-dealer registered under the act shall comply with SEC rule 15c3-1, 17 C.F.R. 240.15c3-1, SEC rule 15c3-3, 17 C.F.R. 240.15c3-3, and SEC rule 15c3-3a, 17 C.F.R. 240.15c3-3a, as applicable, as adopted by reference in K.A.R. 81-2-1.

(2) Each registered broker-dealer shall comply with SEC rule 17a-11, 17 C.F.R. 240.17a-11, as

adopted by reference in K.A.R. 81-2-1, and shall simultaneously file with the administrator copies of notices and reports required by that rule.

(e) Confirmations. At or before completion of each transaction with a customer, the broker-dealer shall give or send to the customer a written notification that conforms with SEC rule 10b-10, 17 C.F.R. 240.10b-10, as adopted by reference in K.A.R. 81-2-1. (Authorized by K.S.A. 2014 Supp. 17-12a411 and K.S.A. 17-12a605(a); implementing K.S.A. 2014 Supp. 17-12a411, K.S.A. 17-12a412(d)(9), 17-12a605(c), and 17-12a608; effective Aug. 18, 2006; amended Jan. 4, 2016.)

Article 4.—REGISTRATION OF SECURITIES

81-4-1. Registration of securities. (a) Original applications. The following documents and fee shall be required with each original application submitted for registration of securities:

(1) Forms U-1 and U-2;

(2) form U-2A, if applicable;

(3) the documents and exhibits required for registration by coordination as specified in K.S.A. 17-12a303(b), and amendments thereto, or registration by qualification as specified in K.S.A. 17-12a304(b), and amendments thereto, if not already included as required by form U-1;

(4) any other document or information requested by the administrator; and

(5) a registration fee of .05 percent (one twentieth of one percent) of the maximum aggregate offering price at which the securities are to be offered in this state, but not less than \$100 and not more than \$1,500 for each year that the registration is effective. If a registration statement or application is withdrawn before the effective date or a pre-effective stop order is issued under K.S.A. 17-12a306 and amendments thereto, the administrator shall retain the full amount of the registration fee.

(b) Regulation A tier 1 offerings. Each registration application for which an offering statement on form 1-A has been filed with the SEC under regulation A for a tier 1 offering pursuant to SEC rule 251, 17 C.F.R. 230.251, as adopted by reference in K.A.R. 81-2-1, shall be filed by qualification under K.S.A. 17-12a304, and amendments thereto.

(c) Post-effective amendments. If a post-effective amendment for material changes in information or documents is required by K.S.A.

17-12a305(j) and amendments thereto, the amendment shall be filed within two business days after an amendment is filed with the SEC for securities registered by coordination, or within five business days after a material change occurs for securities registered by qualification.

The amendment filing shall include a cover letter that explains the nature of the material changes and copies of all amended documents that are clearly marked to identify the material changes. The registrant shall provide further explanation or information upon request by the administrator. Upon approval by the administrator, the amendment may be filed electronically.

(d) Extensions of registration. The effective period of a registration statement may be extended for an additional year after the original or previously extended registration period expires, or for less than one year if the registered offering is completed and terminated in compliance with subsection (f).

(1) The following documents and fee shall be required with each application submitted to extend the effective period of a registration statement:

(A) Form KSC-1 or a uniform form or document that includes the information required by form KSC-1;

(B) a registration fee as specified in paragraph (a)(5), based on the aggregate amount of securities to be offered during the extended effective period; and

(C) one copy of the prospectus to be delivered to prospective investors for offers during the extended period of effectiveness, which shall include audited financial statements for the most recent fiscal year of the issuer, unless a prospectus meeting this requirement is already on file with the administrator. If the extension application is filed before the most recent audited financial statements are available, the issuer shall undertake to file an updated prospectus containing the statements no later than 90 days after the end of the issuer's fiscal year.

(2) The effective date of each extended registration shall be one year after the previous effective date.

(3) The due date for filing each extension application shall be 10 business days before the date on which the registration is due to expire.

(e) Abandoned applications. If an applicant for registration of securities does not respond in writing within six months after receiving a written inquiry or deficiency letter from the administrator

or the applicant takes no action on a pending application and fails to communicate in writing with the administrator for six months, the application shall be deemed abandoned. Each abandoned application shall be disregarded, and a notice of abandonment shall be issued by the administrator. To obtain further consideration of an abandoned application, the applicant shall file a new, complete application.

(f) Final report. Upon completion of a registered offering or upon expiration of the effective period of a registration statement that is not being extended, the registrant shall file with the administrator a final report of sales of securities in this state on form KSC-1 or a document that includes the information required by form KSC-1. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a303, 17-12a304, and 17-12a305; effective Jan. 1, 1966; amended, E-70-15, Feb. 4, 1970; amended Jan. 1, 1971; amended, T-88-29, Aug. 19, 1987; amended May 1, 1988; amended, T-81-8-23-91, Aug. 23, 1991; amended Oct. 7, 1991; amended May 31, 1996; amended Jan. 19, 2007; amended Jan. 4, 2016.)

81-4-4. Registration requirements for not-for-profit issuers. Before the offer or sale of any note, bond, debenture, or other evidence of indebtedness by a not-for-profit issuer specified in K.S.A. 17-12a201(7) and amendments thereto, the issuer shall register the security pursuant to K.S.A. 17-12a304 and amendments thereto, unless one of the following conditions is met:

(a) The security or transaction is exempt under any provision of the Kansas uniform securities act other than K.S.A. 17-12a201(7), and amendments thereto.

(b) The issuer is excluded from the definition of an investment company, and the security is issued in exchange for assets contributed to a fund pursuant to section 3(c)(10)(B) of the investment company act of 1940, 15 U.S.C. section 80a-3(c)(10)(B), as adopted by reference in K.A.R. 81-2-1. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a201(7)(C); effective, T-81-8-22-05, Aug. 22, 2005; effective Dec. 16, 2005; amended Jan. 4, 2016.)

Article 5.—EXEMPTIONS

81-5-7. Exchange exemption. A security shall be exempt under K.S.A. 17-12a201(6)(B), and amendments thereto, if the security is listed or authorized for listing on either of the following

exchanges or if the security has seniority equal to or greater than the seniority of a security of the same issuer that is listed or authorized for listing on either of the following exchanges:

- (a) Tier I of the Chicago stock exchange; or
- (b) tier II of the NYSE Arca, inc. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a201(6)(B); effective, T-87-28, Oct. 1, 1986; amended May 1, 1987; amended Oct. 24, 1994; amended May 31, 1996; amended Oct. 26, 2001; amended Jan. 19, 2007; amended Aug. 15, 2008; amended Jan. 4, 2016.)

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.)

81-5-15. Notice filings and fees for rule 506 offerings. (a) Each issuer of a security under SEC rule 506, 17 C.F.R. 230.506, as adopted by reference in K.A.R. 81-2-1, shall file a notice of sale on form D with the administrator within 15 days after the first sale of the security in Kansas. The form D shall be completed in accordance with the instructions for the form and shall be filed either through the EFD system electronically or on a paper form D that is mailed to the administrator.

(b)(1) Each issuer of a security specified in subsection (a) shall pay a fee of \$250 to the administrator with each timely filing under subsection (a).

(2) If a form D is not filed as required by subsection (a) within 15 days after the first sale of the security in Kansas, the issuer of the security shall pay to the administrator the greater of the following amounts, unless the administrator agrees to assess a lesser fee pursuant to K.S.A. 17-12a307, and amendments thereto:

(A) \$500; or

(B) one-tenth of one percent of the dollar value of the securities that were sold to Kansas residents before the date on which the form D is filed, not to exceed \$5,000.

(3) For each electronic filing of form D, the fee shall be remitted to the EFD.

(c) This regulation shall not apply if the security or transaction is otherwise exempt from registration under any provision of the Kansas uniform securities act. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 2014 Supp. 17-12a302(c) and K.S.A. 17-12a307; effective, T-81-8-22-05, Aug. 22, 2005; effective Dec. 20, 2005; amended Jan. 4, 2016.)

81-5-17. Standard manuals exemption. The following printed or electronic versions of securities manuals shall be designated by the ad-

ministrator for use under K.S.A. 17-12a202(2)(A) (iv), and amendments thereto:

(a) “S&P capital IQ standard corporation descriptions”; and

(b) “mergent’s manuals.” (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a202; effective Jan. 19, 2007; amended Jan. 4, 2016.)

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, 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 securities 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 \$5,000 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. Two or more individual purchasers residing at the same primary residence who are not accredited investors and have a close family relationship shall be treated as a single purchaser for purposes of the \$5,000 limit.

(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, the issuer shall file a notice with the administrator on form IKE, providing 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) Interaction with other exemptions and sales to controlling persons. This exemption shall not be used in conjunction with any other exemption under these regulations. 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; effective Aug. 12, 2011; amended Jan. 4, 2016.)

Article 6.—PROSPECTUS

81-6-1. Prospectus. (a) Filing. Each application for the registration of securities shall include the prospectus to be used in connection with the proposed securities offering.

(b) Form and content.

(1) Registration by coordination. Each prospectus for a securities offering filed for registration by coordination under K.S.A. 17-12a303, and amendments thereto, shall contain the information required in part I of the registration state-

ment filed by the issuer under the securities act of 1933, unless the administrator modifies or waives the requirements pursuant to K.S.A. 17-12a307, and amendments thereto.

(2) Registration by qualification. Each prospectus for a securities offering filed for registration by qualification under K.S.A. 17-12a304, and amendments thereto, shall contain the information required by that statute unless the administrator modifies or waives the requirements pursuant to K.S.A. 17-12a304 or 17-12a307, and amendments thereto. The prospectus may be submitted on one of the following forms that is applicable to the type of securities offering, in accordance with the instructions to the form:

(A) Part II of SEC form 1-A, regulation A offering statement under the securities act of 1933;

(B) part I of SEC form S-1, registration statement under the securities act of 1933;

(C) form U-7 if the issuer meets the requirements of K.A.R. 81-4-2; or

(D) any other form allowed by the administrator, if the prospectus is filed in compliance with the applicable requirements of the securities act of 1933.

(c) Delivery requirements. As a condition of registration under K.S.A. 17-12a304 and amendments thereto, the issuer shall deliver a copy of the entire prospectus to each person to whom an offer is made, before or concurrently, with the earliest of the events specified in K.S.A. 17-12a304, and amendments thereto. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a303 and 17-12a304; effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1987; amended March 25, 1991; amended May 31, 1996; amended Jan. 19, 2007; amended Jan. 4, 2016.)

Article 7.—POLICY RELATING TO REGISTRATION

81-7-1. General statements of policy for registration of securities. (a) NASAA statements of policy. Each registration statement shall meet the requirements of each NASAA statement of policy that is applicable to the issuer, registration statement, type of security, or other circumstances of the offering. The following NASAA statements of policy are hereby adopted by reference:

(1) “Statement of policy regarding corporate securities definitions,” as amended on March 31, 2008;

(2) “statement of policy regarding the impoundment of proceeds,” as amended on March 31, 2008;

(3) “statement of policy regarding loans and other material transactions,” as amended on March 31, 2008;

(4) “statement of policy regarding options and warrants,” as amended on March 31, 2008;

(5) “statement of policy regarding preferred stock,” as amended on March 31, 2008;

(6) “statement of policy regarding promoter’s equity investment,” as amended on March 31, 2008;

(7) “statement of policy regarding promotional shares,” as amended on March 31, 2008;

(8) “statement of policy regarding specificity in use of proceeds,” as amended on March 31, 2008;

(9) “statement of policy regarding underwriting expenses, underwriter’s warrants, selling expenses and selling security holders,” as amended on March 31, 2008;

(10) “statement of policy regarding unsound financial condition,” as amended on March 31, 2008; and

(11) “statement of policy regarding unequal voting rights,” as amended on March 31, 2008.

(b) Financial statements. Each registration statement shall meet the requirements for financial statements under K.A.R. 81-7-3, unless the administrator waives or modifies the requirements for good cause shown under one of the following circumstances:

(1) The registration statement contains financial statements that meet specific requirements of a statement of policy adopted under subsection (a) or another regulation, and the administrator determines that the financial statements are sufficient in light of the issuer, registration statement, type of security, or other circumstances of the offering.

(2) The registration statement was filed for registration by coordination under K.S.A. 17-12a303, and amendments thereto, and contains financial statements that meet SEC requirements.

(3) The registration statement was submitted for coordinated review under K.S.A. 17-12a608(c) (7), and amendments thereto, and the administrator determines that a waiver or modification would promote uniformity with other states.

(c) Whenever terms within the context of NASAA statements of policy adopted by reference in this regulation are in conflict with definitions under the act and these regulations, the definitions in the

NASAA statements of policy shall apply. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a306(b) and 17-12a608(c); effective Jan. 1, 1966; amended, E-70-15, Feb. 4, 1970; amended Jan. 1, 1971; amended Jan. 1, 1972; amended, T-88-65, Dec. 30, 1987; amended May 1, 1988; amended Oct. 24, 1988; amended June 28, 1993; amended Jan. 19, 2007; amended Jan. 4, 2016.)

81-7-2. Statements of policy for specific types of securities offerings. (a) If one of the NASAA guidelines or statements of policy adopted in subsection (b) applies to a securities offering, the registration statement shall meet the requirements of the applicable NASAA guideline or statement of policy.

(b) The following NASAA guidelines and statements of policy are hereby adopted by reference, except as modified in paragraph (b)(13):

(1) "Registration of asset-backed securities," as amended on May 6, 2012;

(2) "registration of publicly offered cattle-feeding programs," as adopted on September 17, 1980;

(3) "statement of policy regarding church bonds" and the related "cross reference sheet," as adopted on April 14, 2002;

(4) "statement of policy regarding church extension fund securities," as amended on April 18, 2004;

(5) "registration of commodity pool programs," as amended on May 6, 2012;

(6) "statement of policy regarding debt securities," as adopted on April 25, 1993;

(7) "equipment programs," as amended on May 6, 2012;

(8) "NASAA mortgage program guidelines," as amended on May 7, 2007;

(9) "registration of oil and gas programs," as amended on May 6, 2012;

(10) "omnibus guidelines," as amended on May 7, 2007;

(11) "statement of policy regarding real estate investment trusts," as revised and adopted on May 7, 2007;

(12) "statement of policy regarding real estate programs," as revised on May 7, 2007; and

(13) "guidelines regarding viatical investments," including appendix A, as in effect on January 1, 2006, which shall be modified as follows:

(A) In section I.B.14.a of the guidelines, the phrase "[reference to state statute or most recent version of the National Association of Insurance

Commissioners ("NAIC") Model Viatical Settlement Act]" shall be replaced with "K.S.A. 40-5002(o), and amendments thereto";

(B) in section I.B.16, the phrase "[broker dealer]" shall be replaced with "broker-dealer," the term "[agent]" shall be replaced with "agent," and the phrase "[reference to statutory definition of issuer]" shall be replaced with "K.S.A. 17-12a102(17), and amendments thereto";

(C) in section I.B.17, the phrase "[reference to state statute or most recent version of the NAIC Model Viatical Settlement Act]" shall be replaced with "K.S.A. 40-5002(n), and amendments thereto";

(D) in section III.B, the brackets shall be removed, and the bracketed amounts shall remain in effect;

(E) in section VI.14, the phrase "[NAIC Model Viatical Settlement Act or similar viatical regulatory act of the particular state]" shall be replaced with "viatical settlement act of 2002, K.S.A. 40-5002 et seq., and amendments thereto"; and

(F) in the last sentence of section VI, the phrase "[statutory reference]" shall be replaced with "K.S.A. 17-12a411(d), and amendments thereto."

(c) The omnibus guidelines adopted in paragraph (b)(10) shall be applied to limited partnership programs or other entities for which more specific guidelines or statements of policy have not been adopted by NASAA, unless the administrator waives or modifies the requirements of the omnibus guidelines or applies other NASAA guidelines or statements of policy for good cause shown.

(d) In addition to the income and net worth standards and other suitability requirements contained within the NASAA guidelines and statements of policy adopted under subsection (b), the administrator may require that the registration statement include a statement that recommends or requires each purchaser to limit the purchaser's aggregate investment in the securities of the issuer and other similar investments to not more than 10 percent of the purchaser's liquid net worth. For purposes of this subsection, liquid net worth shall be defined as that portion of the purchaser's total net worth that is comprised of cash, cash equivalents, and readily marketable securities, as determined in conformity with GAAP.

(e) Each registration statement subject to a guideline or statement of policy adopted under subsection (b) shall meet the requirements for financial statements under K.A.R. 81-7-3, unless

the administrator waives or modifies the requirements for good cause shown under any of the following circumstances:

(1) The registration statement contains financial statements that meet the specific requirements of another guideline or statement of policy adopted under subsection (b) or another regulation, and the administrator determines that the financial statements are sufficient for the particular type of securities registration.

(2) The registration statement was filed for registration by coordination under K.S.A. 17-12a303, and amendments thereto, and contains financial statements that meet the SEC requirements.

(3) The registration statement was submitted for coordinated review under K.S.A. 17-12a608(c) (7) and amendments thereto, and the administrator determines that a waiver or modification would promote uniformity with other states.

(f) Each application for registration subject to a guideline or statement of policy adopted under subsection (b) shall include a cross-reference table to indicate compliance with the various sections of the applicable guideline or statement of policy.

(g) Whenever terms within the context of NASAA guidelines or statements of policy adopted by reference in this regulation are in conflict with definitions under the act and these regulations, the definitions in the NASAA guidelines or statements of policy shall apply. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a306(b) and 17-12a608(c); effective June 28, 1993; amended May 31, 1996; amended Jan. 19, 2007; amended Aug. 15, 2008; amended Jan. 4, 2016.)

Article 14.—INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

81-14-1. Registration procedures for investment advisers and investment adviser representatives. (a) General provisions.

(1) Each applicant shall be at least 18 years of age. If the applicant is not an individual, then the directors, officers, managing partners, or managing members of the applicant shall be at least 18 years of age.

(2) Each applicant shall be registered or qualified to engage in business as an investment adviser or investment adviser representative in the state of the applicant's principal place of business.

(3) Each registered investment adviser shall maintain registration under the act for at least one investment adviser representative.

(b) Application requirements for investment advisers.

(1) Initial application.

(A) IARD filing requirements. Each applicant for initial registration as an investment adviser shall complete form ADV in accordance with the form instructions and shall file the form, including parts 1 and 2 and all applicable schedules, with the IARD. In addition, the applicant shall submit to the IARD the fee required by K.A.R. 81-14-2 and any reasonable fee charged by FINRA for filing through the IARD system.

(B) Direct filing requirements. Each applicant for initial registration as an investment adviser shall file the following documents with the administrator, unless the documents are filed electronically with the IARD:

(i) The proposed client contract written in accordance with K.A.R. 81-14-5(d)(13);

(ii) a privacy policy written in accordance with K.A.R. 81-14-5(d)(12)(B);

(iii) supervisory procedures written in accordance with K.A.R. 81-14-4(b)(19);

(iv) financial statements that demonstrate compliance with the requirements of K.A.R. 81-14-9(d);

(v) a brochure written in accordance with K.A.R. 81-14-10(b), unless the applicant intends to use part 2 of form ADV as its brochure; and

(vi) any other document related to the applicant's business, if requested by the administrator.

(2) Annual renewal. The application for annual renewal registration as an investment adviser shall be filed with the IARD. The application for annual renewal registration shall include the fee required by K.A.R. 81-14-2 and any reasonable fee charged by FINRA for filing through the IARD system.

(3) Updates and amendments.

(A) Each investment adviser shall file with IARD, in accordance with the instructions in form ADV, any amendments to the investment adviser's form ADV. An amendment shall be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of the amendment.

(B) Within 90 days after the end of an investment adviser's fiscal year, the investment adviser shall file with the IARD an annual updating amendment to form ADV.

(c) Application requirements for investment adviser representatives.

(1) Initial application. Each applicant for initial registration as an investment adviser representative under the act shall complete form U-4 in accordance with the form instructions and shall file the form U-4 with the CRD, except as otherwise provided by order of the administrator. The application for initial registration shall include the following items:

(A) Proof of compliance by the investment adviser representative with the examination requirements of subsection (e);

(B) the fee required by K.A.R. 81-14-2; and

(C) any reasonable fee charged by FINRA for filing through the CRD system.

(2) Annual renewal. The application for annual renewal registration as an investment adviser representative shall be filed with the CRD. The application for annual renewal registration shall include the fee required by K.A.R. 81-14-2 and any reasonable fee charged by FINRA for filing through the CRD system.

(3) Updates and amendments. Each investment adviser representative shall be under a continuing obligation to update the information required by form U-4 as changes occur. Each investment adviser representative and any associated investment adviser shall file promptly with the CRD any amendments to the representative's form U-4. An amendment shall be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of the amendment.

(d) Effective date of registration.

(1) Initial registration. Each registration shall become effective on the 45th day after the completed application is filed, unless the application is approved earlier by the administrator. However, if the administrator or the administrator's staff has notified the applicant of deficiencies in the application, the application shall not be considered complete until an amendment is filed to resolve the deficiencies.

(2) Transfer of employment or association. If an investment adviser representative terminates employment by or association with an investment adviser registered under the act or a federal covered investment adviser who has filed a notice under K.S.A. 17-12a405, and amendments thereto, and begins employment by or association with another investment adviser registered under the act or a federal covered investment adviser who has filed a

notice under K.S.A. 17-12a405, and amendments thereto, and the successor investment adviser or federal covered investment adviser files an application for registration for the investment adviser representative within 30 days after the termination, then the application shall become effective in accordance with K.S.A. 17-12a408(b), and amendments thereto.

(e) Examination requirements.

(1) General requirements. Each individual applying to be registered as an investment adviser or investment adviser representative under the act shall provide the administrator with proof of obtaining a passing score on either of the following:

(A) The series 65 uniform investment adviser law examination; or

(B) the series 7 general securities representative examination and the series 66 uniform combined state law examination.

(2) Requirements for individuals registered on January 1, 2000. An individual who was registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on January 1, 2000, shall not be required to meet the examination requirements for continued registration, except under either of the following conditions:

(A) If the administrator requires examinations for any individual found to have violated any state or federal securities law; or

(B) if the administrator requires examinations for any individual whose registration has lapsed, as specified in paragraph (e)(3).

(3) Lapsed registration. If an individual has met the examination requirements of paragraph (e)(1) but has not been registered as an agent or investment adviser representative in any jurisdiction for the previous two years, the individual shall be required to comply with the examination requirements of paragraph (e)(1) again before applying for registration.

(4) Waivers. The examination requirement may be waived or modified by the administrator pursuant to K.S.A. 17-12a412(e), and amendments thereto, and the examination requirement shall not apply to any individual who currently holds one of the following professional designations:

(A) Certified financial planner (CFP), awarded by the certified financial planner board of standards, inc.;

(B) chartered financial consultant (ChFC), awarded by the American college, Bryn Mawr, Pennsylvania;

(C) personal financial specialist (PFS), awarded by the American institute of certified public accountants;

(D) chartered financial analyst (CFA), awarded by the institute of chartered financial analysts;

(E) chartered investment counselor (CIC), awarded by the investment counsel association of America, inc.; or

(F) any other professional designation that the administrator may by regulation or order recognize.

(f) Expiration, renewal, withdrawal, and termination.

(1) Each registration shall expire on December 31, and each application for renewal shall be filed not later than the deadline established by the IARD or CRD.

(2) If an investment adviser representative's association with an investment adviser is discontinued or terminated, the investment adviser shall immediately file a form U-5 with the CRD. If the investment adviser representative commences association with another investment adviser, that investment adviser shall file an initial application for registration for the investment adviser representative.

(3) If an investment adviser desires to withdraw from registration or if registration is terminated by the administrator, the investment adviser shall immediately file a form ADV-W with the IARD. The form ADV-W shall be completed in accordance with the instructions to the form.

(4) Termination of an investment adviser's registration for any reason shall automatically constitute cancellation of the registration of each investment adviser representative that is affiliated with the investment adviser.

(5) Each application that has been on file for six months without any action taken by the applicant shall be considered withdrawn. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a406, 17-12a407, 17-12a408, and 17-12a412(e); effective Oct. 26, 2001; amended Aug. 18, 2006; amended Aug. 15, 2008; amended Jan. 4, 2016.)

81-14-2. Investment advisers, investment adviser representatives, and federal covered investment advisers; registration fees. (a) The fee for initial registration or renewal of the registration of an investment adviser shall be \$100.

(b) The fee for initial registration or renewal of the registration of an investment adviser representative shall be \$60.

(c) The fee for an initial notice filing or a renewal notice filing for a federal covered investment adviser shall be \$100.

(d) The IARD and the CRD shall be authorized to receive and store filings and to collect the fees specified in this regulation from investment advisers, investment adviser representatives, and federal covered investment advisers on behalf of the administrator. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a410; effective Oct. 26, 2001; amended Aug. 18, 2006; amended Dec. 19, 2008; amended Oct. 9, 2015.)

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, despite 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, despite 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.

(13) Improper advisory contract. An investment adviser shall not engage in the following conduct, even though 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:

(A) Enter into, extend, or renew any investment advisory contract unless the contract is in writing, 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, and an indication of whether the contract grants discretionary power to the adviser, and contains a provision 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 positive 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 pro-

spective 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, FINRA, or the 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 re-

quires 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 adviser 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.

For 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 con-

nection 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) at any time by providing written notice to the investment adviser.

(F) No agency cross transaction in which the same investment adviser recommended the transaction to both any seller and any purchaser is effected.

(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 certificate holders;

(iii) does not have reasonable standards or procedures for monitoring and disciplining its

designees or certificate holders for improper or unethical conduct; or

(iv) does not have reasonable continuing education requirements for its designees or certificate holders 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. 17-12a605(a); implementing K.S.A. 17-12a412(d)(13) and 17-12a502(a)(2) and (b); effective Oct. 26, 2001; amended Aug. 18, 2006;

amended Aug. 15, 2008; amended May 22, 2009; amended Jan. 4, 2016.)

81-14-9. Custody of client funds or securities; safekeeping; financial reporting. (a) Definitions. For the purposes of this regulation, the following definitions shall apply:

(1) "Custody" means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them or the ability to appropriate them.

(A) Each of the following circumstances shall be deemed to constitute custody:

(i) Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving the funds or securities;

(ii) any arrangement, including a general power of attorney, under which an investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the adviser's instruction to the custodian; and

(iii) any arrangement that gives an investment adviser or its supervised person legal ownership of or access to client funds or securities, which may include an arrangement in which the investment adviser or its supervised person is the trustee of a trust, the general partner of a limited partnership, the managing member of a limited liability company, or a comparable position for a pooled investment vehicle.

(B) Receipt of a check drawn by a client and made payable to an unrelated third party shall not meet the definition of custody if the investment adviser forwards the check to the third party within three business days of receipt and the adviser maintains the records required under K.A.R. 81-14-4(b)(22).

(2) "Independent party" means a person that meets the following conditions:

(A) Is engaged by an investment adviser to act as a gatekeeper for the payment of fees, expenses, and capital withdrawals from a pooled investment;

(B) does not control, is not controlled by, and is not under common control with the investment adviser; and

(C) does not have, and has not had within the past two years, a material business relationship with the investment adviser.

(3) "Independent representative" means a person who meets the following conditions:

(A) Acts as an agent for an advisory client, which may include a person who acts as an agent for

limited partners of a pooled investment vehicle structured as a limited partnership, members of a pooled investment vehicle structured as a limited liability company, or other beneficial owners of another type of pooled investment vehicle;

(B) is obliged by law or contract to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;

(C) does not control, is not controlled by, and is not under common control with the investment adviser; and

(D) does not have, and has not had within the past two years, a material business relationship with the investment adviser.

(4) "Qualified custodian" means any of the following independent institutions or entities:

(A) A bank or savings association that has deposits insured by the federal deposit insurance corporation;

(B) a broker-dealer registered under the act who holds client assets in customer accounts and complies with K.A.R. 81-3-7(d);

(C) a futures commission merchant registered under section 6f of the commodity exchange act, 7 U.S.C. § 6f, who holds client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity and options of the commodity for future delivery; and

(D) a foreign financial institution that customarily holds financial assets for its customers, if the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

(b) Safekeeping of client funds and securities.

(1) Requirements. An investment adviser registered or required to be registered under the act shall not have custody of client funds or securities unless the investment adviser meets each of the following conditions. "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 and amendments thereto, shall include any violation of this subsection.

(A) Notice to administrator. The investment adviser shall notify the administrator promptly on form ADV that the investment adviser has or will have custody.

(B) Qualified custodian. A qualified custodian shall maintain the funds and securities in a separate account for each client under each client's name, or in accounts that contain only funds and

securities of the investment adviser's clients under the name of the investment adviser as agent or trustee for each client.

(C) Notice to clients. If an investment adviser opens an account with a qualified custodian on behalf of its client, either under the client's name or under the investment adviser's name as agent, the investment adviser shall notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained. The notice shall be given promptly when the account is opened and following any changes to the information.

(D) Account statements. The investment adviser shall ensure that account statements are sent to each client for whom the adviser has custody of funds or securities.

(i) Statements sent by the qualified custodian. If a qualified custodian maintains accounts containing funds or securities, the qualified custodian may send account statements to clients if the investment adviser has a reasonable basis for believing that the qualified custodian sends an account statement at least quarterly to each of the adviser's clients for whom the custodian maintains funds or securities and that the account statement sets forth all transactions in the account during the period and identifies the amount of funds and amount of each security in the account at the end of the period.

(ii) Statements sent by the adviser. If account statements are not sent by the qualified custodian in accordance with paragraph (b)(1)(D)(i), the investment adviser shall send an account statement at least quarterly to each client for whom it has custody of funds or securities. The account statement shall set forth all transactions in the account during the period and identify the amount of funds and amount of each security of which it has custody at the end of the period.

At least once during each calendar year, a CPA firm that is registered and authorized to provide attest services in compliance with requirements of the state where the investment adviser is domiciled shall be engaged by the investment adviser to attest to the accuracy, in all material respects, of the account statements sent to clients by the investment adviser based on a comparison with records of transactions and balances of funds and securities maintained by the qualified custodian. The attest engagement shall be performed in accordance with attestation standards established by the AICPA and contained in the "AICPA profes-

sional standards,” as specified in K.A.R. 74-5-2. The CPA firm shall perform the attest engagement without prior notice or announcement to the adviser on a date that changes from year to year as chosen by the CPA firm. The CPA firm shall file a copy of its independent accountant’s report with the administrator within 30 days after the completion of the attest engagement. The CPA firm, upon finding any material exceptions during the course of the engagement, shall notify the administrator of the finding within two business days by means of a facsimile transmission or electronic mail, followed by first-class mail, directed to the attention of the administrator.

(iii) Special rule for pooled investment vehicles. If the investment adviser is a general partner of a pooled investment vehicle structured as a limited partnership, is a managing member of a pooled investment vehicle structured as a limited liability company, or holds a comparable position for another type of pooled investment vehicle, the account statements required under this subsection shall be sent to each limited partner, member, or other beneficial owner or that person’s independent representative.

(E) Independent representatives. A client may designate an independent representative to receive, on the client’s behalf, notices and account statements as required under paragraphs (b)(1)(C) and (b)(1)(D). Thereafter, the investment adviser shall send all notices and statements to the independent representative.

(F) Direct fee deduction. Each investment adviser who has custody, as defined in paragraph (a)(1)(A)(ii), by having fees directly deducted from client accounts held by a qualified custodian shall obtain prior written authorization from the client to deduct advisory fees from the account held with the qualified custodian.

(G) Pooled investments. Each investment adviser who has custody, as defined in paragraph (a)(1)(A)(iii), and who does not meet the exception provided under paragraph (b)(2)(C) shall comply with each of the following requirements:

(i) Engage an independent party. The investment adviser shall hire an independent party to review all fees, expenses, and capital withdrawals from the pooled accounts.

(ii) Review of fees. The investment adviser shall send all invoices or receipts to the independent party, detailing the amount of the fee, expenses, or capital withdrawal and the method of calculation so that the independent party can determine that

the payment is in accordance with the agreement governing the pooled investment vehicle and so that the independent party can forward to the qualified custodian approval for payment of an invoice with a copy to the investment adviser.

(iii) Notice of safeguards. The investment adviser shall notify the administrator on form ADV that the investment adviser intends to use the safeguards specified in this subsection.

(2) Exceptions.

(A) Shares of mutual funds. With respect to shares of a mutual fund that is an open-end company as defined in section 5(a)(1) of the investment company act of 1940, 15 U.S.C. 80a-5(a)(1), as adopted by reference in K.A.R. 81-2-1, any investment adviser may use the mutual fund’s transfer agent in lieu of a qualified custodian for purposes of complying with paragraph (b)(1).

(B) Certain privately offered securities. An investment adviser shall not be required to comply with paragraph (b)(1) with respect to securities that meet the following conditions:

(i) Are acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(ii) are uncertificated, with ownership of the securities recorded only on the books of the issuer or its transfer agent in the name of the client; and

(iii) are transferable only with the prior consent of the issuer or holders of the outstanding securities of the issuer.

(C) Limited partnerships subject to annual audit. An investment adviser shall not be required to comply with paragraph (b)(1) with respect to the account of a limited partnership, limited liability company, or other type of pooled investment vehicle that is subject to audit at least annually and that distributes its audited financial statements presented in conformity with GAAP to all limited partners, members, or other beneficial owners within 120 days after the end of its fiscal year. The investment adviser shall notify the administrator on form ADV that the investment adviser intends to distribute audited financial statements.

(D) Registered investment companies. An investment adviser shall not be required to comply with paragraph (b)(1) with respect to the account of an investment company registered under the investment company act of 1940, 15 U.S.C. 80a-1 et seq.

(E) Beneficial trusts. An investment adviser shall not be required to comply with the safekeeping requirements of paragraph (b)(1) if the investment adviser has custody solely because the investment

adviser or an investment adviser representative is the trustee for a beneficial trust, if all of the following conditions are met for each trust:

(i) The beneficial owner of the trust is a parent, grandparent, spouse, sibling, child, or grandchild of the investment adviser representative, including “step” relationships.

(ii) The investment adviser provides a written statement to each beneficial owner of each account setting forth a description of the requirements of paragraph (b)(1) and the reasons why the investment adviser will not be complying with those requirements.

(iii) The investment adviser obtains from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement.

(iv) The investment adviser maintains a copy of both documents described in paragraphs (b)(2)(E)(ii) and (iii) until the account is closed or the investment adviser or investment adviser representative is no longer trustee.

(F) Upon written request and for good cause shown, the requirement to use a qualified custodian may be waived by the administrator. As a condition of granting a waiver, the investment adviser may be required by the administrator to perform the duties of a qualified custodian as specified in paragraph (b)(1).

(c) Financial reporting requirements for investment advisers.

(1) Balance sheet. Each registered investment adviser shall prepare and maintain a balance sheet, as required by K.A.R. 81-14-4(b)(6), each month. The balance sheet shall be dated the last day of the month and shall be prepared within 10 business days after the end of the month. The investment adviser shall file the balance sheet with the administrator, for any month specified by the administrator, within five days after a request by the administrator.

(2) Exemptions. An investment adviser shall be exempt from the requirements of this subsection if the investment adviser has its principal place of business in a state other than Kansas, is properly registered in that state, and satisfies the financial reporting requirements of that state.

(d) Positive net worth requirement.

(1) Each investment adviser that is registered or required to be registered under the act shall maintain at all times a positive net worth.

(2) Notification. Each investment adviser registered or required to be registered under the act shall, by the close of business on the next busi-

ness day, notify the administrator if the investment adviser is insolvent because its net worth is negative as determined in conformity with GAAP. The notification of insolvency shall include the investment adviser’s balance sheet that states the insolvent financial condition on the date the insolvency occurred. Upon receiving the balance sheet, the administrator may require the investment adviser to file additional information by a specified date.

(3) Exception for out-of-state advisers. If an investment adviser has its principal place of business in a state other than Kansas and is properly registered in that state, the investment adviser shall be required to maintain the minimum capital required by the state in which the investment adviser maintains its principal place of business. (Authorized by K.S.A. 17-12a502(b) and 17-12a605(a); implementing K.S.A. 17-12a411, as amended by L. 2013, ch. 65, sec. 3, and 17-12a502(a)(2); effective Aug. 18, 2006; amended Aug. 15, 2008; amended Oct. 25, 2013.)

81-14-11. Kansas private adviser exemption. (a) Exemption from registration. An investment adviser shall be exempt from the registration requirements of K.S.A. 17-12a403, and amendments thereto, if both of the following requirements are met:

(1) The investment adviser shall meet each of the following conditions:

(A) Maintain its principal place of business in Kansas;

(B) provide investment advice solely to fewer than 15 clients;

(C) not hold itself out generally to the public as an investment adviser; and

(D) not act as an investment adviser to any investment company registered pursuant to section 8 of the investment company act of 1940, 15 U.S.C. § 80a-8, as adopted by reference in K.A.R. 81-2-1, or a company that has elected and has not withdrawn its election to be a business development company pursuant to section 54 of the investment company act of 1940, 15 U.S.C. § 80a-54, as adopted by reference in K.A.R. 81-2-1.

(2) Neither the investment adviser nor any of its advisory affiliates or associated investment adviser representatives shall be subject to a disqualification provision as described in rule 262 of SEC regulation A, 17 C.F.R. 230.262, as adopted by reference in K.A.R. 81-2-1.

(b) Notice filing. Each investment adviser that

qualifies for exemption under subsection (a) shall be subject to or exempt from filing a notice with the administrator as follows:

(1) Notice filing requirement. Each investment adviser that manages assets of no more than \$25 million on December 31 each year shall complete the identifying information required by item 1 of form ADV, part 1A and file the printed form with the administrator on or before February 1 of the following year. No fee shall be required with the notice filing required by this subsection.

(2) Exemption from notice filing requirement.

(A) Each investment adviser that manages assets in excess of \$25 million and is registered with the SEC shall be exempt from the notice filing requirements of K.S.A. 17-12a405, and amendments thereto, and of paragraph (1) of this subsection.

(B) Each investment adviser that manages assets in excess of \$25 million, is an exempt reporting adviser, and files reports with the IARD system pursuant to SEC rule 204-4, 17 C.F.R. 275.204-4, as adopted by reference in K.A.R. 81-2-1, shall be exempt from the notice filing requirements of paragraph (1) of this subsection.

(c) Exemption for investment adviser representatives. An investment adviser representative shall be exempt from the registration requirements of K.S.A. 17-12a404, and amendments thereto, if the individual meets the following requirements:

(1) Is employed by or associated with an investment adviser that meets the exemption requirements under subsection (a);

(2) is not subject to a disqualification as described in rule 262 of SEC regulation A, 17 C.F.R. 230.262; and

(3) does not otherwise act as an investment adviser representative.

(d) Transition. Each investment adviser or investment adviser representative who becomes ineligible for the exemption specified in this regulation shall comply with the registration or notice filing requirements under the act within 90 days after the date of ineligibility. (Authorized by K.S.A. 17-12a605(a); implementing K.S.A. 17-12a403(b)(3), 17-12a404(b)(2), and 17-12a405(b)(3); effective Oct. 25, 2013; amended Jan. 4, 2016.)

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 21.—DEFINITION OF TERMS

81-21-1. (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 Oct. 9, 2015.)

Article 22.—PROCEDURES FOR REGISTRATION

81-22-1. (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; revoked Oct. 9, 2015.)

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.)

81-22-3. (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; revoked Oct. 9, 2015.)

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.)

81-23-3. (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; revoked Oct. 9, 2015.)

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.)

81-24-2 and 81-24-3. (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; revoked Oct. 9, 2015.)

**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.)

81-25-4. (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked Oct. 9, 2015.)

**Article 26.—CONTRACTS,
DEEDS AND TITLE**

81-26-1 and 81-26-2. (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; revoked Oct. 9, 2015.)

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 27.—ADVERTISING

81-27-1. (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked Oct. 9, 2015.)

81-27-2. (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; revoked Oct. 9, 2015.)

**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 29.—REPORTING
REQUIREMENTS**

81-29-1. (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; amended Jan. 1, 1972; revoked Oct. 9, 2015.)

81-29-2. (Authorized by K.S.A. 58-3310(a); effective, E-70-34, July 16, 1970; effective Jan. 1, 1971; revoked Oct. 9, 2015.)

**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.
- 82-2. OIL AND GAS CONSERVATION.
- 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 telefac-

simile 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 2.—OIL AND GAS CONSERVATION

82-2-402. (Authorized by K.S.A. 55-1003; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked Aug. 14, 2015.)

82-2-506. (Authorized by K.S.A. 55-134, K.S.A. 1973 Supp. 55-133; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked Aug. 14, 2015.)

82-2-507. (Authorized by K.S.A. 55-135; effective, E-72-4, Jan. 1, 1972; effective Jan. 1, 1973; revoked Aug. 14, 2015.)

Article 3.—PRODUCTION AND CONSERVATION OF OIL AND GAS

82-3-100. Applicability; exception. (a) This article shall apply throughout Kansas unless specifically limited. Special orders may be issued by the commission. These special orders shall prevail over any conflicting regulations.

(b) An exception to the requirements of any regulation in this article may be granted by the commission, after considering whether the exception will prevent waste, protect correlative rights, and prevent pollution. Each party requesting an exception shall file an application with the conservation division. The applicant shall publish notice of the application pursuant to K.A.R. 82-3-135a and notice of any hearing pursuant to K.A.R. 82-3-135. (Authorized by and implementing K.S.A. 2014 Supp. 55-152, K.S.A. 55-604, K.S.A. 55-704; effective T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended April 23, 1990; amended Aug. 14, 2015.)

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 da-

tums 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.)

82-3-106. Surface casing and cement. (a)

Each operator shall set and cement surface casing pursuant to this regulation and the instructions on the notice of intent to drill approved pursuant to K.A.R. 82-3-103 before drilling to any depth to test for or produce oil or gas.

(b) Each operator shall set and cement surface casing in compliance with the following, which are hereby adopted by reference:

(1) Table I and appendix A, as incorporated in the commission order dated August 1, 1991, docket no. 34,780-C (C-1825); and

(2) appendix B, as incorporated in the commission order dated June 29, 1994, docket no. 133,891-C (C-20,079).

(c) Cementing alternatives.

(1) Alternate I cementing shall be performed as follows:

(A) A single string of surface casing shall be set from surface to the depth specified in the documents adopted in subsection (b).

(B) The surface casing shall be cemented continuously from the bottom of the surface casing string to the surface.

(2) Alternate II cementing, which includes a primary surface casing string and additional surface casing, shall be performed as follows:

(A) The primary surface casing string shall be set to a depth at least 20 feet below all unconsolidated material.

(B) The primary surface casing shall be cemented from the bottom of the primary surface casing string to the surface.

(C) All additional surface casing strings next to the borehole shall be set and cemented from the depth specified in the documents adopted in subsection (b) to the surface.

(i) The operator shall notify the appropriate district office before cementing the additional casing.

(ii) The additional cementing shall be completed within 120 days after the spud date unless otherwise provided in the documents adopted in subsection (b).

(iii) A backside squeeze shall be prohibited unless permitted by the appropriate district office with consideration of the cement evaluation method to be utilized and submitted as verification

of cement placement. "Backside squeeze" shall mean the uncontrolled placement of cement from the surface into the annular space between the primary surface casing and the additional casing.

(d) Methods and materials.

(1) The operator shall use a drill bit that is at least two and one-quarter inches larger in diameter than the surface casing, when measured from the outside of the casing.

(2) The annular space between the surface casing and the borehole shall be filled with a portland cement blend and maintained at surface level.

(3) If cement does not circulate, the operator shall notify the appropriate district office immediately and perform remedial cementing sufficient to prevent fluid migration. If the surface casing is perforated, the operator shall pressure-test the surface casing according to district office specifications to ensure mechanical integrity.

(4) The use of any material other than a portland cement blend shall be prohibited.

(5) The cemented casing string shall stand and further operations shall not begin until the cement has been in place for at least eight hours and has reached a compressive strength of 300 pounds per square inch.

(6) The operator shall install centralizers as follows:

(A) If the surface casing is 300 feet or less, a centralizer shall be installed at the top of the shoe joint.

(B) If the surface casing is more than 300 feet, a centralizer shall be installed at approximately 300 feet and at every fourth joint of casing to the bottom of the surface casing.

(7) When total depth has been reached during drilling operations, the operator or contractor shall not move the rig off of the well until the required casing has been run or the well has been plugged. All wells that are subject to the documents adopted in paragraph (b)(2) shall be exempt from the requirements in this paragraph.

(e) Each operator of a well not in compliance with this regulation shall shut the well in until compliance is achieved.

(f) Upon written, timely request by an operator, the director may provide an exception to any of the requirements of this regulation. In considering a request for an exception, the director may require the operator to provide financial assurance sufficient to cover the plugging costs for the well. Each request shall demonstrate that fresh and usable

water will be protected by the proposed exception. (Authorized by K.S.A. 2014 Supp. 55-152; implementing K.S.A. 2014 Supp. 55-152, K.S.A. 55-159, K.S.A. 55-162; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended, T-85-1, Jan. 13, 1984; amended, T-85-51, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1986; amended, T-87-46, Dec. 19, 1986; amended May 1, 1987; amended May 1, 1988; amended May 8, 1989; amended April 23, 1990; amended Feb. 24, 1992; amended March 20, 1995; amended Aug. 14, 2015.)

82-3-109. Well spacing orders and basic proration orders. (a) Any interested party may file an application for a new or amended well spacing order or basic proration order. Each application shall include the following:

- (1) If the application is for amendment, a description of the amendment;
- (2) the well location and depth and the common source of supply;
- (3) a description of the acreage, with an affirmation that all of the acreage is reasonably expected to be productive from the common source of supply;
- (4) the proposed well location restriction and provisions for any exceptions;
- (5) the proposed configuration of units for purposes of acreage attribution;
- (6) a list of the persons provided notice pursuant to K.A.R. 82-3-135a and the date that notice was provided;
- (7) the factors proposed to be used in any proration formula;
- (8) the applicant's license number; and
- (9) any other relevant information required by the commission.

(b) Each applicant for a well spacing order or basic proration order or for amendments adding or deleting acreage in an existing well spacing order or basic proration order shall submit the following evidence with the application:

- (1) A net sand isopachus map of the subject common source of supply;
- (2) a geological structure map of the subject common source of supply;
- (3) to the extent practicable, a cross section of logs representative of wells in the acreage affected by the application;
- (4) data from any available drill stem test;
- (5) an economic analysis, including a reservoir or drainage study; and

(6) any other relevant information required by the commission.

(c) Each applicant shall file an application with the conservation division. The applicant shall publish notice of the application pursuant to K.A.R. 82-3-135a and notice of any hearing pursuant to K.A.R. 82-3-135.

(d) Except as otherwise specified in this subsection, the drilling of any wells within an area subject to an application for spacing or proration shall be prohibited until the commission has issued a final order on the application. However, any operator may drill a well during the pendency of the application if the well location conforms to the most restrictive location provisions in the application. (Authorized by K.S.A. 55-604, K.S.A. 55-704; implementing K.S.A. 55-603, K.S.A. 55-703a, K.S.A. 55-704; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended, T-85-51, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1987; amended May 1, 1988; amended May 8, 1989; amended April 23, 1990; amended Aug. 14, 2015.)

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.)

82-3-135a. Notice of application. (a) Scope. Except as otherwise provided in K.A.R. 82-3-100, 82-3-108, 82-3-109, 82-3-138, 82-3-203, 82-3-208, 82-3-209, 82-3-300, and 82-3-300a, the notice requirements in this regulation shall apply to each application for an order or permit filed pursuant to any regulation, special order, or statutory provision for the conservation of crude oil and natural gas or for the protection of fresh and usable water.

(b) Production matters. Except as otherwise provided in K.A.R. 82-3-100, 82-3-108, 82-3-109, 82-3-138, 82-3-203, 82-3-208, 82-3-209, 82-3-300, and 82-3-300a, each applicant for an order filed pursuant to K.A.R. 82-3-100 through K.A.R. 82-3-314 shall give notice of the application 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 lessee of record within a one-half mile radius of the well or of the subject acreage; and

(2) each owner of record of the minerals in unleased acreage within a one-half mile radius of the well or of the subject acreage.

(c) Environmental matters. Each applicant for an order or permit filed pursuant to K.A.R. 82-3-400 through 82-3-412 and K.A.R. 82-3-600 through 82-3-607 shall give notice of the application 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 lessee of record within a one-half mile radius of the well or of the subject acreage;

(2) each owner of record of the minerals in unleased acreage within a one-half mile radius of the well or of the subject acreage; and

(3) the landowner on whose land the well affected by the application is located.

(d) Publication of notice. Notice of the application shall be published in at least one issue of the official county newspaper of each county in which the lands affected by the application are located. In addition, notice of applications relating to production matters shall also be published in at least one issue of the Wichita Eagle newspaper.

(e) Protest. Once notice of the application is published pursuant to subsection (d), the application shall be held in abeyance for 15 days for production matters and 30 days for environmental matters, pending the filing of any protest pursuant to K.A.R. 82-3-135b. If a valid protest is filed or if the commission, on its own motion, deems that there should be a hearing on the application, a hearing shall be held. The applicant shall publish notice of the hearing pursuant to K.A.R. 82-3-135. (Authorized by K.S.A. 2012 Supp. 55-152, K.S.A. 55-704, K.S.A. 2012 Supp. 55-901; implementing K.S.A. 55-605, K.S.A. 2012 Supp. 55-901, K.S.A. 55-1003; effective April 23, 1990; amended Oct. 24, 2008; amended Aug. 16, 2013.)

82-3-203. Production allowable. (a) An allowable shall be assigned to each well in a nonprorated pool. The allowable shall be set by the following schedule and shall take effect on the date of first production:

Depth of Producing Interval	Daily Production Allowable (barrels per well per day)
0-4000'	100
4001-6000'	200
Below 6000'	300

(b) Any interested party may file an application for an exception to this regulation with the conservation division. The application shall include the following:

(1) The location of the well and the acreage attributed to the well;

(2) the allowable requested;

(3) the geological name of the producing formation;

(4) the top and bottom depths of the producing formation;

(5) a list of the persons provided notice pursuant to K.A.R. 82-3-135a and the date that notice was provided; and

(6) any other relevant information that the commission may require.

(c) The applicant shall publish notice of the application pursuant to K.A.R. 82-3-135a and notice of any hearing pursuant to K.A.R. 82-3-135. (Authorized by and implementing K.S.A. 55-604; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1984; amended, T-85-51, Dec. 19, 1984; amended May 1, 1985; amended May 1, 1986; amended May 1, 1987; amended May 8, 1989; amended April 23, 1990; amended June 6, 1994; amended Aug. 14, 2015.)

82-3-206. Oil conservation assessment.

In order to pay the conservation division expenses and administration costs not otherwise provided for, an oil conservation assessment shall be made as follows:

(a) A charge of 144.00 mills on each barrel of crude oil or petroleum marketed or used each month shall be assessed to each producer. The charge and assessment shall apply only to the first purchase of oil from the producer.

(b) Each month, the first purchaser of the production shall perform the following:

(1) Deduct the assessment per barrel of oil marketed or used from the lease before paying for production;

(2) remit the assessment in a single check to the conservation division when making regular oil payments; and

(3) account for the deductions on the regular payment statements to producers, royalty owners, and other interested persons. (Authorized by K.S.A. 2017 Supp. 55-152; implementing K.S.A. 2017 Supp. 55-176; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1986; amended April 23, 1990; amended Dec. 6, 1993; amended Nov. 15, 1996; amended June 1, 2001; amended Dec. 22, 2006; amended June 15, 2018.)

82-3-207. Oil drilling unit. This regulation shall apply to all oil wells not covered by a special commission order.

(a) Standard drilling unit. The standard drilling unit shall be 10 acres, except that the standard drilling unit for the counties and well depths listed in K.A.R. 82-3-108 (b) shall be 2.5 acres.

(b) Exceptions. Exceptions to the standard drilling unit may be granted by the commission to prevent waste or to protect correlative rights. (Authorized by and implementing K.S.A. 55-604; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983;

amended May 1, 1984; amended May 1, 1986; amended May 1, 1988; amended Aug. 14, 2015.)

82-3-208. Venting or flaring of casing-head gas. (a) The venting or flaring of non-sour casinghead gas may be permitted by the director if the operator files an affidavit with the conservation division that states all of the following:

(1) The well produces 25 mcf/d or less of casing-head gas.

(2) The casinghead gas volume is uneconomic to market due to pipeline or marketing expenses.

(3) The operator has made a diligent effort to obtain a market for the gas.

(b) If the well produces more than 25 mcf/d, venting or flaring may be permitted only by commission order after consideration of the following:

(1) The availability of a market or of pipeline facilities;

(2) the probable recoverable gas reserves;

(3) the necessity for maintenance of reservoir gas pressure to maximize the recoverability of oil reserves from the formation;

(4) the feasibility of reinjecting the gas;

(5) a reasonable testing period;

(6) any anticipated change in the gas-to-oil ratio;

(7) the applicant's compliance with the department's applicable air quality regulations; and

(8) any other relevant fact or circumstance.

(c) Any interested party may file an application to vent or flare more than 25 mcf/d of casinghead gas. Each applicant shall file an application with the conservation division. The applicant shall publish notice of the application pursuant to K.A.R. 82-3-135a and notice of any hearing pursuant to K.A.R. 82-3-135.

(d) Each application shall include a list of the persons provided notice pursuant to K.A.R. 82-3-135a and the date that notice was provided.

(e) The volume of gas vented or flared under this regulation shall be metered, and the records shall be retained for at least two years. This information shall be reported to the commission semi-annually or as designated by the commission.

(f) All gas venting or flaring shall be done in a manner designed to prevent damage to property and injury to persons who are reasonably expected to be in the vicinity for work, pleasure, or business. (Authorized by K.S.A. 55-604, K.S.A. 55-704; implementing K.S.A. 55-604, K.S.A. 55-702, and K.S.A. 55-704; effective May 1, 1984; amended May 1, 1986; amended April 23, 1990; amended Jan. 14, 2005; amended Aug. 14, 2015.)

82-3-209. Flaring of sour gas. (a) Sour casinghead gas may be flared only if permitted by commission order, with consideration of the following factors:

(1) The availability of a market or of pipeline facilities;

(2) probable recoverable gas reserves;

(3) the necessity for maintenance of gas pressure in the formation;

(4) the feasibility of reinjection of sour gas;

(5) any anticipated change in the gas-oil ratio;

(6) the hydrogen sulfide content of the gas;

(7) the feasibility of desulfurization of the gas;

(8) the proposed flaring facility;

(9) the applicant's compliance with the department's air quality regulations; and

(10) any other relevant fact.

(b) Each applicant shall file an application with the conservation division. The applicant shall publish notice of the application pursuant to K.A.R. 82-3-135a and any hearing pursuant to K.A.R. 82-3-135.

(c) Each application shall include a list of the persons provided notice pursuant to K.A.R. 82-3-135a and the date that notice was provided.

(d) All sour gas flared under this regulation shall be metered and analyzed for its hydrogen sulfide content. This information shall be reported to the commission semiannually or as designated by the commission. (Authorized by K.S.A. 55-604, K.S.A. 55-704; implementing K.S.A. 55-604, K.S.A. 55-702, K.S.A. 55-703, K.S.A. 55-704; effective May 1, 1987; amended April 23, 1990; amended Aug. 14, 2015.)

82-3-304. Tests of gas wells. (a) Initial test.

(1) Each operator shall conduct a multipoint back-pressure test and a one-point stabilized flow test, as specified in K.A.R. 82-3-303, on each gas well producing at least 250 mcf per day. The tests shall be conducted within 30 days of the first gas sales. The test results shall be filed with the commission within 60 days of the first gas sales.

(2) Each operator shall conduct a 24-hour shut-in pressure test on each gas well producing less than 250 mcf per day. Each test shall be conducted within 120 days of the first gas sales. The test results shall be filed with the commission within 150 days of the first gas sales.

(b) Annual test. Before April 1 of each calendar year, each operator shall conduct a one-point stabilized flow test on each gas well producing at least 500 mcf per day. The test results shall be

filed with the commission before May 1 of each calendar year.

(c) Test witnessing. Each test shall be conducted under the supervision of the conservation division, which may have an employee witness any test. A test of any individual well may be required by the commission at any time.

(d) Coalbed natural gas exemption.

(1) Any operator of a well producing only coalbed natural gas may seek an exemption from subsection (a) or (b) by filing an application with the conservation division stating that only coalbed natural gas is produced from the well and that testing would be physically impossible or contrary to prudent practices. No well shall be exempt unless the application has been approved by the conservation division.

(2) If the exemption is granted, the exemption shall continue in effect until the well no longer meets the criteria for exemption. The operator shall notify the conservation division immediately if the well begins producing oil or gas other than coalbed natural gas or if the well characteristics change so that testing becomes possible. (Authorized by K.S.A. 55-704; implementing K.S.A. 2014 Supp. 55-164 and K.S.A. 55-703; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended April 23, 1990; amended Aug. 29, 1997; amended Jan. 25, 2002; amended Jan. 14, 2005; amended June 1, 2007; amended Oct. 23, 2015.)

82-3-307. Gas conservation assessment.

In order to pay the conservation division expenses and other costs in connection with the administration of the gas conservation regulations not otherwise provided for, an assessment shall be made as follows:

(a) A charge of 20.50 mills shall be assessed on each 1,000 cubic feet of gas sold or marketed each month. The assessment shall apply only to the first purchaser of gas.

(b) Each month, the first purchaser of the production shall perform the following:

(1) Before paying for the production, deduct an amount equal to the assessment for every 1,000 cubic feet of gas produced and removed from the lease;

(2) remit the amounts deducted, in a single check if the purchaser desires, to the conservation division when the purchaser makes regular gas payments for this period; and

(3) show all deductions on the regular payment statements to producers, royalty owners, and other interested persons.

(c) The assessment established by the commission shall not apply to gas that is being returned to the ground for repressuring purposes within the field, but shall apply to gas that is produced and removed from the lease and returned to the ground for storage purposes. (Authorized by K.S.A. 2017 Supp. 55-152; implementing K.S.A. 2017 Supp. 55-176; effective, T-83-44, Dec. 8, 1982; effective May 1, 1983; amended April 23, 1990; amended Aug. 19, 1991; amended Dec. 6, 1993; amended Nov. 15, 1996; amended June 1, 2001; amended Dec. 22, 2006; amended June 15, 2018.)

82-3-311a. Drilling through CO₂ storage facility or CO₂ 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 CO₂ storage or CO₂ enhanced oil recovery shall seal off the CO₂ stratum or formation by either of the following:

(1) The methods and materials recommended by the operator of the CO₂ storage facility or CO₂ 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 CO₂.

(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 CO₂ storage facility or CO₂ 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 CO₂ storage facility or CO₂ 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 CO₂ storage facility or CO₂ 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 CO₂ storage facility or CO₂ 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 CO₂ storage facility or CO₂ 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 CO₂ storage facility or CO₂ 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 CO₂ storage facility or CO₂ 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 CO₂ storage facility or CO₂ 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 CO₂ storage or CO₂ enhanced oil recovery stratum or formation.

(j) The operator of the CO₂ 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 CO₂ storage facility or CO₂ 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.)

82-3-312. Gas allowables and drilling unit. This regulation shall apply to all gas wells not covered by a special commission order.

(a) Daily allowable. The daily allowable for each well shall be 50 percent of the well's actual open-flow potential, as measured by the testing procedures specified in K.A.R. 82-3-303. Each well in compliance with K.A.R. 82-3-304 shall be entitled to a minimum allowable of 250mcf per day.

(b) Coalbed natural gas exemption. Coalbed natural gas wells that are exempt from the requirements of K.A.R. 82-3-304(a) and (c) shall be exempt from subsection (a) of this regulation.

(c) Standard drilling unit. The standard drilling unit shall be 10 acres.

(d) Drilling unit exceptions. Exceptions to the standard drilling unit may be granted by the commission to prevent waste or to protect correlative rights. (Authorized by K.S.A. 55-704; implementing K.S.A. 55-703; effective May 1, 1985; amended May 1, 1986; amended May 1, 1988; amended April 23, 1990; amended Aug. 29, 1997; amended June 1, 2001; amended Jan. 25, 2002; amended Jan. 14, 2005; amended Aug. 14, 2015.)

82-3-602. Closure of pits; disposal of pit contents; closure form; drilling fluid management; surface restoration. (a) Closure of pits.

(1) Unless otherwise specified in writing by the commission, each operator shall close the following:

(A) Drilling pits or haul-off pits within 365 calendar days after the spud date of a well;

(B) workover pits within 90 days after workover operations have ceased; and

(C) settling pits, burn pits, and emergency pits within 30 days after cessation or abandonment of the lease.

(2) Any operator may request a pit permit extension of not more than three months, and the request may be granted by the director. An extension may be granted due to pit conditions or for other good cause shown by the operator. Any pit permit extension may be renewed upon additional request by the operator, but no pit permit extension shall be extended beyond six months after the original deadline. Failure to close any pit or to file an extension within the prescribed time limits specified in paragraphs (1)(A) through (C) of this subsection shall be punishable by a \$250 penalty.

(b) Disposal of pit contents. Before backfilling any pit, each operator shall dispose of the pit contents according to K.A.R. 82-3-607 and shall submit the required form pursuant to K.A.R. 82-3-608.

(c) Closure form. Each operator of a pit shall file a pit closure form prescribed by the commission within 30 days after the closure of the pit. Failure to file the pit closure form in accordance with this subsection shall be punishable by a \$100 penalty.

(d) Drilling fluid management. Each operator of a reserve pit shall report the drilling fluid management methods utilized for the reserve pit, including the chloride concentration of the drilling fluids, on the affidavit of completion required by K.A.R. 82-3-130.

(1) Except as specified in paragraph (d)(2), the chloride concentration shall be calculated according to the following portions of the American petroleum institute's "recommended practice: standard procedure for field testing water-based drilling fluids," second edition, dated September 1997, which are hereby adopted by reference:

(A) Section 10.3 on pages 21-22;

(B) appendix A; and

(C) tables 1 and 5.

(2) An alternate test for measuring the chloride concentration may be approved by the director if the alternate test is at least as accurate and precise as the required test.

(e) Surface restoration. Upon abandonment of any pit, the operator shall grade the surface of the soil as soon as practicable or as required by the commission. The surface of the soil shall be returned, as nearly as practicable, to the condition that existed before the construction of the pit. (Authorized by K.S.A. 2012 Supp. 55-152, K.S.A. 74-623; implementing K.S.A. 55-171; effective, T-87-46, Dec. 19, 1986; effective May 1, 1987; amended May 1, 1988; amended July 29, 1991; amended April 23, 2004; amended Aug. 16, 2013.)

82-3-603. Spill notification and cleanup; penalty; lease maintenance. (a) Spill prevention. Each operator shall act with reasonable diligence to prevent spills and safely confine saltwater, oil, and refuse in tanks, pipelines, pits, or dikes.

(b) Notification.

(1) Each operator shall notify the appropriate district office in accordance with subsection (c) immediately upon discovery or knowledge of any spill that has reached or threatens to reach surface water or that has impacted or threatens to impact groundwater. Each operator shall take immediate action in accordance with procedures specified or approved by the district office to contain and prevent the saltwater, oil, or refuse from reaching surface water or impacting groundwater.

(2) Except as otherwise specified in this regulation, each operator shall notify the appropriate district office of any spill, as defined in K.A.R. 82-3-101. This notification shall meet the requirements of subsection (c) and shall be made not later than the next business day following the date of discovery or knowledge of the spill.

(3) The notification requirement for spills in paragraph (b)(2) shall not apply to very minor amounts of saltwater, oil, or refuse that unavoidably or unintentionally leak or drip from pumps, machinery, pipes, valves, fittings, well rods, or tubing during the conduct of normal prudent operations and that are not confined in dikes or pits or within the vicinity of the well. This exception shall not apply to ongoing, continual, or repeated leaks or drips, or to leaks or drips that are the result of intentional spillage or abnormal operations, including unrepaired or improperly maintained pumps, machinery, pipes, valves, and fittings.

(4) For purposes of this regulation, the point of "discovery or knowledge" shall mean that point when the operator knew or reasonably should have known of the spill.

(5) The notification requirement in this subsection shall apply even if the operator knows or believes that the appropriate district office is already aware of the spill.

(c) Information required with notification. Each operator shall submit the following information in conjunction with the notification requirement in subsection (b):

- (1) The operator's name and license number;
- (2) the lease name, legal description, and approximate spill location;
- (3) the time and date the spill occurred;
- (4) a description of the spilled materials, including type and amount;
- (5) a description of the circumstances creating the spill;
- (6) the location of the spill with respect to the nearest fresh and usable water resources;
- (7) the proposed method for containing and cleaning up the spill; and
- (8) any other information that the commission may require.

(d) Penalty for failure to notify. The failure to comply with subsection (b) shall be punishable by a \$250 penalty for the first violation, a \$500 penalty for the second violation, and a \$1,000 penalty and an operator license review for the third violation.

(e) Cleanup of spill.

(1) Each operator shall clean up any spill that requires notification under this regulation in accordance with the cleanup method approved by the appropriate district office. The cleanup techniques deemed appropriate and acceptable to the appropriate district office shall be physical removal, dilution, treatment, and bioremediation. Except as otherwise required by law or regulation, each operator shall complete the cleanup of the spill within 10 days after discovery or knowledge, or by the deadline prescribed in writing by the district office.

(2) Each operator shall clean up all leaks, drips, and escapes that are excepted from notification under this regulation in accordance with cleanup techniques recognized as appropriate and acceptable by the commission. The following cleanup techniques shall be deemed appropriate and acceptable to the commission: physical removal, dilution, treatment, and bioremediation. Each operator shall accomplish this cleanup upon completion of the routine operation or condition that caused the leak, drip, or escape or within 24 hours of discovery or knowledge of the leak, drip, or escape, whichever occurs sooner.

(3) If refuse is transferred in conjunction with a cleanup pursuant to paragraph (e)(1) or (e)(2), each operator shall submit any required forms according to K.A.R. 82-3-608.

(f) Penalties. Failure to contain and clean up the spill in accordance with this regulation shall be punishable by the following penalties:

- (1) \$1,000 for the first violation;
- (2) \$2,500 for the second violation; and
- (3) \$5,000 and an operator license review for the third violation. (Authorized by K.S.A. 2012 Supp. 55-152; implementing K.S.A. 2012 Supp. 55-164, K.S.A. 55-172, K.S.A. 74-623; effective, T-87-46, Dec. 19, 1986; effective May 1, 1987; amended May 1, 1988; amended April 23, 1990; amended April 23, 2004; amended Aug. 16, 2013.)

82-3-604. Discharges into emergency pits and diked areas; removal of fluids; penalties.

(a) Notification of discharge. Each operator shall notify the appropriate district office within 24 hours of discovery or knowledge of any oil field-related discharge of five or more barrels of saltwater, oil, or refuse into an emergency pit or diked area.

(b) Removal of fluids from pit or dike. Each operator of an emergency pit or diked area shall remove any fluid from the pit or diked area with-

in 48 hours after discovery or knowledge, or as authorized by the appropriate district office, and shall dispose of the fluid according to K.A.R. 82-3-607. The operator shall submit forms pursuant to K.A.R. 82-3-608, unless the fluid is removed to an on-site tank.

(c) “Discovery or knowledge” defined. For purposes of this regulation, the point of “discovery or knowledge” shall mean that point when the operator knew or reasonably should have known of the discharge.

(d) Penalties. The failure to timely notify the district office of an oil field-related discharge into an emergency pit or diked area in accordance with subsection (a), or the failure to timely remove fluids from an emergency pit or diked area in accordance with subsection (b), shall be punishable by the following penalties:

- (1) \$250 for the first violation;
- (2) \$500 for the second violation; and
- (3) \$1,000 and an operator license review for the third violation. (Authorized by K.S.A. 2012 Supp. 55-152; implementing K.S.A. 2012 Supp. 55-164, K.S.A. 55-172, and K.S.A. 74-623; effective April 23, 1990; amended June 6, 1994; amended April 23, 2004; amended Aug. 16, 2013.)

82-3-607. Disposal of dike and pit contents. (a) Each operator shall perform one of the following when disposing of dike or pit contents:

(1) Remove the liquid contents to a disposal well or other oil and gas operation approved by the commission or to road maintenance or construction locations approved by the department;

(2) dispose of reserve pit waste down the annular space of a well completed according to the alternate I requirements of K.A.R. 82-3-106, if the waste was generated during the drilling and completion of the well; or

(3) dispose of the remaining solid contents in any manner required by the commission. The requirements may include any of the following:

(A) Burial in place, in accordance with the grading and restoration requirements in K.A.R. 82-3-602 (e);

(B) removal of the contents to an on-site disposal area approved by the commission;

(C) removal of the contents to an off-site disposal area on acreage owned by the same landowner or to another producing lease or unit operated by the same operator, if prior written permission from the landowner has been obtained; or

(D) removal of the contents to a permitted off-site disposal area approved by the department.

(b) Each violation of this regulation shall be punishable pursuant to K.A.R. 82-3-608(d).

(c) If refuse is transferred pursuant to this regulation, the operator shall submit forms pursuant to K.A.R. 82-3-608, unless the refuse is removed to the same on-site tank or facility from which the refuse originated. (Authorized by and implementing K.S.A. 2012 Supp. 55-152 and K.S.A. 2012 Supp. 55-164; effective April 23, 2004; amended Aug. 16, 2013.)

82-3-608. Transfer of refuse. (a) Each operator shall file a form prescribed by the commission within 30 days after the operator transfers refuse from any pit or diked area or refuse relating to any remediation or cleanup activity.

(b) The failure to timely submit the form specified in subsection (a) shall be punishable by the following penalties:

- (1) \$250 for the first violation;
- (2) \$500 for the second violation; and
- (3) \$1,000 and an operator license review for the third violation.

(c) The conservation division central office and the district offices may require any operator to transfer refuse from any pit or diked area or refuse relating to any remediation or cleanup activity, if it is reasonably likely that the refuse would cause pollution without the transfer.

(d) The failure to timely transfer refuse shall be punishable by the following penalties:

- (1) \$1,000 for the first violation;
- (2) \$2,500 for the second violation; and
- (3) \$5,000 and an operator license review for the third violation. (Authorized by and implementing K.S.A. 2012 Supp. 55-152, K.S.A. 2012 Supp. 55-164, and K.S.A. 74-623; effective Aug. 16, 2013.)

82-3-1100, 82-3-1101, 82-3-1102, 82-3-1103, 82-3-1104, 82-3-1105, 82-3-1106, 82-3-1107, 82-3-1108, 82-3-1109, and 82-3-1110. (Authorized by and implementing K.S.A. 2007 Supp. 55-1637; effective Feb. 26, 2010; revoked Aug. 14, 2015.)

82-3-1111. (Authorized by K.S.A. 2008 Supp. 55-1637 and 55-1640; implementing K.S.A. 2008 Supp. 55-1637; effective Feb. 26, 2010; revoked Aug. 14, 2015.)

82-3-1112, 82-3-1113, 82-3-1114, 82-3-1115, and 82-3-1116. (Authorized by and implementing K.S.A. 2007 Supp. 55-1637; effective Feb. 26, 2010; revoked Aug. 14, 2015.)

82-3-1117. (Authorized by and implementing K.S.A. 2008 Supp. 55-1637; effective Feb. 26, 2010; revoked Aug. 14, 2015.)

82-3-1118 and 82-3-1119. (Authorized by and implementing K.S.A. 2007 Supp. 55-1637; effective Feb. 26, 2010; revoked Aug. 14, 2015.)

82-3-1120. (Authorized by and implementing K.S.A. 2007 Supp. 55-1639; effective Feb. 26, 2010; revoked Aug. 14, 2015.)

82-3-1200. Definitions; compressed air energy storage. The terms and definitions in K.A.R. 82-3-101, with some definitions modified as follows, shall apply to these regulations for compressed air energy storage, in addition to the new terms and definitions specified: (a) "Abandonment" means the process of plugging all compressed air energy storage wells and removing all surface equipment at a storage facility.

(b) "Air" means the portion of the atmosphere, external to buildings, to which the general public has access.

(1) "Cushion air" means the volume of air maintained as permanent air storage inventory throughout compressed air energy storage operations.

(2) "Working air" means any air in a compressed air energy storage cavern or reservoir in addition to the cushion air.

(c) "Certified laboratory" means a laboratory certified by the Kansas department of health and environment.

(d) "Class I injection well" means any of the following:

(1) Any well used by a generator of hazardous waste, or an owner or operator of a hazardous waste management facility, to inject hazardous waste beneath the lowermost formation containing an underground source of drinking water within one-quarter mile of the wellbore;

(2) any industrial or municipal disposal well that injects fluids beneath the lowermost formation containing an underground source of drinking water within one-quarter mile of the wellbore; or

(3) any radioactive waste disposal well that injects fluids below the lowermost formation containing an underground source of drinking water within one-quarter mile of the wellbore.

(e) "Compressed air energy storage" means the process of compressing and injecting air into an underground geologic stratum and withdrawing the air to generate electricity.

(f) "Compressed air energy storage cavern" and "cavern" mean an underground cavity, created in a bedded salt formation by solution mining, where compressed air is stored.

(g) "Compressed air energy storage reservoir" and "reservoir" mean a porous geologic stratum, vertically separated from overlying usable water formations by a laterally continuous vertical flow barrier, where compressed air is stored.

(h) "Compressed air energy storage well" and "storage well" mean a well capable of injecting air from the surface into a cavern or reservoir, or withdrawing air from the cavern or reservoir to the surface, including any wellbore tubular good, wellhead, air flow line, brine line, and surface equipment used to maintain cavern or reservoir integrity, through the last positive shutoff valve.

(1) "Active well" means a storage well that is not in plugging-monitoring status and is not plugged.

(2) "Cavern storage well" means a storage well used to inject air into or withdraw air from a cavern.

(3) "Reservoir storage well" means a storage well used to inject air into or withdraw air from a reservoir.

(A) "Injection well" means a reservoir storage well used to inject compressed air from the surface into a reservoir.

(B) "Withdrawal well" means a reservoir storage well used to withdraw compressed air from the reservoir to the surface.

(i) (1) "Compressed air energy storage facility" and "storage facility" mean the cavern or reservoir, the leased acreage above a cavern or reservoir and within a storage facility boundary, and the following:

(A) Electrical generating facility;

(B) equipment used to maintain cavern or reservoir storage integrity;

(C) injection and withdrawal flow line, valve, and equipment connecting the electrical generating facility to a storage well; and

(D) storage well, observation well, and monitoring well.

(2) (A) "Cavern storage facility" means a storage facility that utilizes a cavern.

(B) "Reservoir storage facility" means a storage facility that utilizes a reservoir.

(j) "Corrosion control system" means any process used to prevent corrosion at a storage facility, including cathodic protection, metal coating, corrosive inhibiting fluid, and non-corrosive internal lining.

(k) "Decommission" means to declare in writing that air injection and withdrawal activities will cease at the operator's storage facility.

(l) "Electrical generating facility" means a building or area that contains the equipment used to generate electricity, including any air compressor train, recuperator, expander, and combustion turbine, but not including any brine line, air flow line located outside the electrical generating facility, or surface equipment used to maintain cavern or reservoir mechanical integrity.

(m) "Excavated mine cavity" means a rock formation with a portion of the rock material removed, not including any cavern created by solution mining.

(n) "First fill" means the process of filling the cavern storage well and cavern with air and displacing saturated brine to the surface.

(o) "Fracture gradient" means the ratio of pressure per unit of depth, measured in pounds per square inch per foot, that if applied to a subsurface formation would cause the formation to physically fracture.

(p) "Kansas board of technical professions" means the state board responsible for licensing persons to practice engineering, geology, and land surveying in Kansas.

(1) "Licensed professional engineer" means a professional engineer licensed to practice engineering in Kansas by the Kansas board of technical professions.

(2) "Licensed professional geologist" means a geologist licensed to practice geology in Kansas by the Kansas board of technical professions.

(3) "Licensed professional land surveyor" means a professional land surveyor licensed to practice land surveying in Kansas by the Kansas board of technical professions.

(q) "Leak" means any loss of air or harmful substances at the surface, including a loss from the wellhead, tubing, casing, around the packer, or an air flow line located outside an electrical generating facility.

(r) "Leak detector" means any device capable of detecting, by chemical or physical means, a leak of harmful substances or air.

(s) "License" means the revocable, written permission issued by the director to an operator to conduct compressed air energy storage activities.

(t) "Liner" means steel casing installed and cemented in the production casing.

(u) "Liquefied petroleum gas" and "LPG" mean any byproduct or derivative of oil or gas, including

propane, butane, isobutane, and ethane, maintained in a liquid state by pressure and temperature conditions.

(v) "Loss of containment" means any migration of air beyond any boundary of a cavern storage well or reservoir storage facility.

(w) "Maximum allowable operating pressure" means the maximum pressure authorized by the director and measured at the wellhead.

(x) "Maximum operating pressure" means the maximum pressure measured at the wellhead over a 24-hour period.

(y) "Monitoring well" means a well used to sample and monitor a usable water aquifer.

(1) "Deep monitoring well" means a monitoring well used to sample and monitor the deepest usable water aquifer at a storage facility.

(2) "Shallow monitoring well" means a monitoring well used to sample and monitor the shallowest usable water aquifer at a storage facility.

(z) "Natural thermal gradient" means the ratio of degrees Fahrenheit per foot that exists in a subsurface formation before any well-drilling activity.

(aa) "Normal operating condition" means that the wellhead master valve, each positive shutoff valve, and each manual valve at a storage facility can be fully opened and closed with reasonable ease and can hold pressure in the closed position.

(bb) "Observation well" means a well used to detect or monitor a loss of containment associated with a cavern or reservoir.

(cc) "Operator" means the person recognized by the director as responsible for the physical operation and control of a storage facility.

(dd) "Packer" means an expandable mechanical device used to seal off any section of a well to cement, test, or isolate the well from a completed interval.

(ee) "Permit" means the revocable, written permission issued by the director for a compressed air energy storage facility to be used by a licensee.

(ff) "Pit" means any constructed, excavated, or naturally occurring depression upon the surface of the earth. This term shall include any surface pond.

(1) "Containment pit" means a temporary pit constructed to aid in the cleanup and to temporarily contain fluids resulting from oil and gas activities that were spilled as a result of immediate, unforeseen, and unavoidable circumstances.

(2) "Drilling pit" means any pit, including reserve pits and working pits, used to temporarily confine fluid or waste generated during the drill-

ing or completion of any storage well, monitoring well, or observation well.

(3) "Emergency pit" means a permanent pit that is used for the emergency storage of fluid discharged as a result of any equipment malfunction.

(4) "Haul-off pit" means a pit used to store spent drilling fluids and cuttings that have been transferred from an area where surface geological conditions preclude the use of an earthen pit.

(5) "Reserve pit" means a pit used to store spent drilling fluids and cuttings that have been transferred from a working pit.

(6) "Settling pit" means a pit used for the collection or treatment of fluids.

(7) "Working pit" means a pit used to temporarily confine fluids or waste resulting from the drilling or completion of any storage well, monitoring well, or observation well.

(8) "Workover pit" means a pit used to contain fluids during the performance of remedial operations on a previously completed well.

(gg) "Plugged well" means a well that is filled with cement and abandoned.

(hh) "Plugging-monitoring status" means the status of a cavern storage well that is filled with saturated brine to monitor cavern pressure stabilization from the surface.

(ii) "Saturated brine" means saline water with a sodium chloride concentration greater than or equal to 90 percent.

(jj) "Solutioning" means the process of injecting fluid into a well to dissolve or remove any rocks or minerals, including salt.

(kk) "Supervisory control and data acquisition system" and "SCADA system" mean an automated surveillance system used to monitor and control storage activities from a remote location.

(ll) "Usable water" means water containing not more than 10,000 milligrams of total dissolved solids per liter. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

82-3-1201. Licensing; financial assurance. (a) License required.

(1) No operator shall perform either of the following without first obtaining or renewing a license:

(A) Test, construct, convert, operate, or abandon any storage facility; or

(B) drill, complete, service, operate, or plug any storage well.

(2) Each operator shall maintain a current license until the storage facility has been abandoned

and each storage well has been plugged and abandoned, in accordance with commission regulations.

(3) Each operator shall submit a completed license renewal form to the conservation division annually on or before November 1.

(b) License requirements. Each applicant for a new license or a license renewal shall be in compliance with all applicable laws as required in subsection (f) and shall submit the following items to the conservation division:

(1) An application meeting the requirements of subsection (c);

(2) a license application fee of \$1,500;

(3) financial assurance pursuant to subsection (e); and

(4) a detailed written estimate, signed by a licensed professional engineer or licensed professional geologist, of the current cost to plug all storage wells and abandon the storage facility.

(c) License application. Each applicant for a new license or a license renewal shall file with the conservation division an application providing the applicant's contact information, full legal name, and any other names under which the applicant transacts or intends to transact business under the license. If the applicant is a partnership, association, or similar entity, the application shall include the name and address of each partner or member. If the applicant is a corporation, limited liability company, or similar entity, the application shall contain the name and address of each principal officer and the resident agent.

(d) Signature. Each applicant for a new license or a license renewal shall sign the license application. If the applicant is a partnership, association, or similar entity, at least one partner or member shall sign. If the applicant is a corporation, limited liability company, or similar entity, at least one principal officer shall sign.

(e) Financial assurance. Each operator shall provide financial assurance in an amount determined by the director. The financial assurance shall be signed as specified in subsection (d). The operator shall continue to provide financial assurance until all storage wells are plugged and abandoned and the storage facility is abandoned, according to commission regulations.

(f) Compliance with applicable laws.

(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 K.S.A. 66-1272 through 66-1279 and amendments thereto, all implementing regulations, and all commission orders and compliance agreements. The applicant shall file a list of any past or pending administrative proceedings and court proceedings filed in Kansas in which the applicant was a party. The list shall include a brief description of the outcome of each proceeding.

(2) (A) 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 K.S.A. 66-1272 through 66-1279 and amendments thereto, all implementing regulations, and all commission orders and compliance agreements:

- (i) The applicant;
- (ii) any officer, director, partner, or member of the applicant; and
- (iii) any stockholder owning in the aggregate more than five percent of the stock of the applicant.

(B) The applicant shall file a list of any past or pending administrative proceedings and court proceedings filed in Kansas in which any person or entity listed in paragraphs (f)(2)(A)(i) through (iii) was a party. The list shall include a brief description of the outcome of each proceeding.

(g) License issuance; term. If the application is approved by the conservation division, a license shall be issued to the applicant. Each license shall be effective for a maximum of one year, unless suspended or revoked by the commission, and shall expire on January 31 of each year.

(h) Denial of application. An application for a license or a license renewal may be denied by the conservation division 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. Denial pursuant to paragraph (f)(1) or (f)(2) shall be considered a license revocation.

(i) License revocation. If a license is revoked, no new license shall be issued to the operator or contractor until one year has passed since the revocation date and the operator has satisfied the requirements of this regulation.

(j) Notification of changes. Each operator shall notify the conservation division in writing within five business days of any change in information provided as part of the license application. If the change would result in the operator being required to provide additional financial assurances, the operator shall submit the additional financial

assurances within 30 days of the change. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

82-3-1202. Signatory; signature for reports. (a) Each operator shall designate one signatory to sign and verify any permit application, amendment application, and facility permit transfer, who shall be one of the following:

(1) If the applicant is a sole proprietor, the signatory shall be that person.

(2) If the applicant is a partnership, association, or similar entity, the signatory shall be a partner or member.

(3) If the applicant is a corporation, limited liability company, or similar entity, the signatory shall be a principal officer.

(b) The signatory specified in subsection (a) shall submit a signature statement to the director on a form provided by the conservation division.

(c) Each operator shall ensure that each submitted report that is not required to be signed by a licensed professional geologist, licensed professional engineer, or licensed professional land surveyor is signed by one of the following:

- (1) A plant or operations manager;
- (2) a superintendent;
- (3) a cavern or reservoir storage specialist; or
- (4) a person holding a position with responsibility at least equivalent to those positions specified in paragraphs (c)(1) through (3). (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

82-3-1203. Permit required; permit application. (a) No operator shall test, construct, convert, operate, or abandon a storage facility, or drill, complete, service, operate, or plug any storage well, without first obtaining a permit from the conservation division. No operator shall be eligible for a permit without first obtaining a license.

(b) Each operator applying for a permit shall submit a permit application on a form provided by the conservation division at least 180 days before the operator intends to perform any compressed air energy storage activities. The operator shall submit an original and two copies of the application.

(c) Each operator shall submit the following with the permit application:

- (1) The operator name and license number;
- (2) the name of the proposed compressed air energy storage facility;

(3) the permit application fee and any applicable plan fees pursuant to K.A.R. 82-3-1223;

(4) a signed statement verifying that the operator possesses the necessary surface and mineral rights for operation of the storage facility;

(5) plan view maps pursuant to subsection (d);

(6) a site selection plan pursuant to K.A.R. 82-3-1208;

(7) a drilling and completion plan pursuant to K.A.R. 82-3-1209;

(8) a storage facility integrity plan pursuant to K.A.R. 82-3-1210;

(9) if the permit application is for cavern storage, a cavern storage well workover plan pursuant to K.A.R. 82-3-1211;

(10) a storage well integrity plan pursuant to K.A.R. 82-3-1212 or K.A.R. 82-3-1213;

(11) a long-term monitoring, measurement, and testing plan pursuant to K.A.R. 82-3-1214 or K.A.R. 82-3-1215;

(12) a safety and emergency response plan pursuant to K.A.R. 82-3-1216;

(13) a plugging-monitoring status plan pursuant to K.A.R. 82-3-1218;

(14) a plugging plan pursuant to K.A.R. 82-3-1219;

(15) a decommissioning plan pursuant to K.A.R. 82-3-1221; and

(16) any other information that the conservation division may require, if clarification of submitted information is needed for the director to consider the application.

(d) Each operator shall submit the following maps with the permit application:

(1) A plan view map showing the locations of all plugged or unplugged wells of any type, including any well used for production of oil or gas, water supply or injection, solution mining, storage operations, monitoring, or corrosion control, within a one-quarter mile radius of the proposed storage facility boundary;

(2) the plan view map listed in paragraph (d)(1) overlaid with a surface topography map; and

(3) a plan view map, surface topography map, and aerial photo identifying any of the following within a two-mile radius of each proposed storage facility boundary:

(A) Manufactured surface structure, including any industrial or agricultural facility;

(B) utility having a right-of-way, including any wind generator, electrical transmission line, or pipeline;

(C) incorporated city or township;

(D) active or abandoned excavated mine cavity, including the room and tunnel layout;

(E) active or abandoned solution mining facility, including any well;

(F) active or abandoned LPG, crude oil, or natural gas storage facility, including any well;

(G) active or abandoned underground porosity gas storage facility;

(H) navigable water; and

(I) floodplain or area prone to flooding.

(e) After reviewing any permit application, one of the following shall be issued by the director:

(1) A permit pursuant to the permit application;

(2) a permit that includes additional requirements agreed upon by the applicant and the director; or

(3) a permit denial, including an explanation of why the permit is denied.

(f) Each operator shall submit the updated information in paragraphs (c)(5) through (c)(16) within 30 days of a request by the director, if updated information is necessary for full consideration of the permit application. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

82-3-1204. Notice of application; publication; protest. (a) Each operator applying for a permit shall provide a copy of the application to the following:

(1) Each operator of record of a mineral lease within one-quarter mile of each boundary of the proposed storage facility;

(2) each owner of record of the minerals in unleased acreage within one-quarter mile of each boundary of the proposed storage facility; and

(3) each surface owner of land where the proposed storage facility will be located.

(b) The operator shall publish notice of the application once each week for two consecutive weeks in the official county newspaper of each county where any lands affected by the application are located, once in the Kansas register, and once in a newspaper of general circulation in Sedgwick County.

(c) The operator shall include the following information in the published notice:

(1) The name and address of the operator;

(2) a brief description of the operations that will be performed at the proposed storage facility, including whether cavern storage or reservoir storage operations will be performed;

(3) the name, address, and telephone number

of a contact person for further information, including copies of the application;

(4) the name and address of the conservation division's central office; and

(5) a brief statement that any interested party may file a protest with the conservation division within 30 days and request a hearing.

(d) Any interested party may file a protest within 30 days after publication of the notice of the application.

(1) The protest shall be submitted in writing and shall include the following information:

(A) The name and address of the protester;

(B) A clear and concise statement of the direct and substantial interest of the protester in the proceeding;

(C) if the protester opposes only a portion of the proposed application, a description of the objectionable portion; and

(D) a statement of whether the protester requests a hearing on the application.

(2) The failure to file a timely protest shall preclude the person from appearing as a protester.

(3) The protester shall serve the protest upon the applicant in the manner described in K.A.R. 82-1-216(a) at the same time or before the protester files the protest with the conservation division.

(e) The application shall be held in abeyance for 30 days from the date of last publication or delivery of notice in subsection (a), whichever is later. If a protest with a request for hearing is filed pursuant to subsection (d) within the 30-day waiting period or if the director deems that a hearing is necessary to protect public safety, usable water, or soil, a hearing on the application shall be held.

(f) The operator shall publish notice of the hearing in the same manner as that required by subsection (b). The notice shall include the following information:

(1) The information specified in paragraphs (c) (1) through (c)(4);

(2) a statement that any member of the public who is not intervening in the matter may attend the hearing without prior notice, except that each person requiring special accommodations under the Americans with disabilities act shall notify the conservation division at least 10 days before the hearing;

(3) a statement that the applicant and any intervening person shall prefile written direct testimony pursuant to K.A.R. 82-1-229; and

(4) the date, time, and location of the hearing. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

82-3-1205. Permit amendment. (a) Each operator shall file an application to amend that operator's permit if any of the following conditions is met:

(1) The proposed activity would result in a substantial change to the storage facility, including a change in the rate, pressure, or volume of injected air.

(2) The proposed activity could result in a threat to public safety, usable water, or soil.

(3) The size of the storage facility would be expanded or contracted.

(4) A storage well would be drilled, or an existing well would be converted to a storage well.

(5) An amendment is necessary for the permit to meet the requirements of any statute, regulation, or commission order.

(b) Each operator seeking a permit amendment shall file a signed application to amend the permit, on a form provided by the conservation division, at least 90 days before the proposed date of the activity described in the application. The operator shall submit an original and two copies of the application to the conservation division.

(c) Notice of the amendment application and the protest period shall be as provided in K.A.R. 82-3-1204. Each protest shall address a change proposed by the application for a permit amendment. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

82-3-1206. Permit transfer. (a) No operator shall transfer a permit to another operator without the prior approval of the director.

(b) The transferring operator shall notify the conservation division, on a form provided by the conservation division, of the intent to transfer the permit at least 30 days before the proposed date of the transfer.

(c) The notification shall contain the following information:

(1) The name, address, and license number of the transferring operator;

(2) the permit number and the name of the storage facility;

(3) a list of all storage wells listed on the permit;

(4) the proposed effective date of transfer;

(5) the signature of the transferring operator and the date signed;

(6) the name, address, and license number of the transferee operator;

(7) a signature statement form signed by the signatory for the transferee operator, pursuant to K.A.R. 82-3-1202; and

(8) any other information that the conservation division may require, if clarification of any of the submitted information is needed for the director to review the permit transfer.

(d) The transferee operator shall provide financial assurance pursuant to K.A.R. 82-3-1201(e) before the transfer may be approved by the director.

(e) The transferee operator shall reproduce and sign the most recent version of each plan that was previously submitted pursuant to K.A.R. 82-3-1203(c) by the transferring operator.

(f) Within 90 days of approval of a permit transfer, the transferee operator shall update the identification signs at the storage facility to include the transferee operator information. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

82-3-1207. Permit modification, suspension, and cancellation. (a) A permit may be modified, suspended, or canceled by the director after notice and opportunity for hearing if any of the following conditions is met:

(1) A substantial change in the operation of the storage facility, including a change in the rate, pressure, or volume of injected air, has occurred.

(2) Material deviations from the information originally provided to the conservation division occur or are discovered and could affect the ability of the storage facility or storage wells to be operated in a manner that protects public safety, usable water, and soil.

(3) The permit, for any reason, no longer meets the requirements of any statute, regulation, or commission order.

(b) All operations at a storage facility shall cease upon suspension or cancellation of the permit for that storage facility. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

82-3-1208. Site selection. (a) No operator shall test, construct, convert, or operate a storage facility without a site selection plan approved by the director. The operator shall submit a proposed site selection plan to the conservation division that includes all information specified in,

and demonstrates compliance with, subsections (b) through (k).

(b) Each operator shall submit to the conservation division an area of review evaluation, signed by a licensed professional engineer or licensed professional geologist, identifying any plugged or unplugged well of any type, including any well used for production of oil or gas, water supply or injection, solution mining, storage operations, monitoring, or corrosion control, that penetrates the storage facility and is located within one-quarter mile of any proposed boundary. The area of review evaluation shall contain any information available from public records, publicly accessible data, or the operator's records.

(1) The operator shall indicate whether each well has been properly constructed or plugged to protect public safety, usable water, and soil.

(2) The operator shall include a schedule to correct or plug any well that is not properly constructed or plugged to protect public safety, usable water, and soil, including any well that does not have adequate cement to isolate any storage cavity or storage reservoir from any reservoir in the well, or adequate cement behind the casing.

(c) Each operator shall submit the proposed boundaries of the storage facility.

(1) No reservoir storage facility boundary may be approved by the conservation division unless each reservoir storage well is located at least 150 feet from each boundary.

(2) No storage facility boundary may be approved by the conservation division unless the boundary is located at least two miles from each of the following:

(A) Active or abandoned excavated mine cavity;
(B) solution mining operation facility boundary;
(C) LPG, crude oil, or natural gas storage facility boundary;

(D) underground porosity gas storage facility boundary; and

(E) any incorporated city or organized township.

(d) (1) Each operator of a cavern storage facility shall demonstrate that any potential surface subsidence event would remain within the storage facility boundary. No cavern storage facility boundary may be approved by the director unless each of the following is located at least 100 feet from the cavern wall:

(A) Land owned by a surface owner who has not submitted to the operator a signed consent form stating that there is no objection to storage;

(B) any building or structure not owned by the cavern storage facility's owner;

(C) any utility with a right-of-way, including any wind generator, electrical transmission line, or pipeline; and

(D) any railroad, road, or highway.

(2) A distance greater than 100 feet may be required if the director determines that a greater distance is necessary to protect public safety, usable water, or soil.

(e) No cavern having a maximum horizontal diameter of greater than 300 feet may be approved by the director.

(f) Each cavern storage well shall be located so that each cavern wall is at least 100 feet from each cavern wall of any offset storage cavern. The operator shall consider the cavern spacing-to-diameter ratio, cavern pressure differentials, frequency of cavern injection and withdrawal cycles, and cavern shape, size, and depth.

(g) Each operator of a cavern storage facility shall submit the proposed salt roof thickness, which shall be at least 100 feet measured from the top of the bedded salt formation to the cavern roof, unless otherwise approved by the director.

(h) Each operator shall submit a regional geological evaluation and a local geological evaluation covering an area within one-quarter mile outside each storage facility boundary, for all formations between the surface and the top of the proposed cavern or reservoir, and all formations below the base of the proposed cavern or reservoir to a depth of 300 feet below the base.

(1) If the proposed storage facility is a cavern storage facility, the applicant shall submit the following:

(A) A structure map and stratigraphic cross section identifying any bedded salt formation proposed to be solution mined, usable water formation, regional or local fault zone, structural anomaly, salt thinning due to stratigraphic change, dissolution zone in the salt, and migration pathway that could cause a loss of containment; and

(B) an isopach map of the bedded salt formation identifying any regional or local faulting, dissolution zone in the salt, salt thinning due to any stratigraphic change, and migration pathway that could cause a loss of containment.

(2) If the proposed storage facility is a reservoir storage facility, the applicant shall submit the following:

(A) A structure map and stratigraphic cross section identifying the reservoir and any usable water

formation, regional or local fault zone, structural anomaly, structural spill point controlling the containment of air, and migration pathway that could cause a loss of containment; and

(B) an isopach map of the storage reservoir formation identifying any regional or local faulting and any migration pathway that could cause a loss of containment.

(3) Each operator shall submit an updated local geologic evaluation pursuant to subsection (h) within 30 days after any new storage well is drilled and completed, unless otherwise approved by the director.

(i) (1) Each operator shall submit the proposed layout of the storage facility and the equipment design parameters, including the minimum and maximum pressure, temperature, and flow rate requirements for the following:

(A) Each electrical generating facility component, including any compressor train used to increase air pressure, compressor intercooler or aftercooler used to reduce air temperature before injection into any cavern storage well, recuperator, expander, exhaust air stack, and fuel-fired combustion turbine;

(B) any equipment, alarm, or safety device that prevents the injection of water and moisture into a cavern;

(C) each air injection and withdrawal flow line connecting any storage well to the electrical generating facility; and

(D) any flow line, equipment, and class I injection well that is used to dispose of fluids and solids produced during storage well operations.

(2) The operator shall list any air sample location that will be used to monitor the quality of air injected into any storage well.

(3) The layout of the proposed storage facility shall include the following:

(A) Each storage well;

(B) for any plugged or unplugged cavern storage well, the cavern configuration and dimensions associated with each historical sonar survey;

(C) the corrosion control system;

(D) any well in the area of review evaluation submitted pursuant to subsection (b);

(E) any navigable water, floodplain, or area prone to flooding;

(F) any utility having a right-of-way, including any wind generator, electrical transmission line, or pipeline; and

(G) any manufactured surface structure, including any industrial or agricultural facility.

(4) Within 30 days after construction of the storage facility is completed, the operator shall submit an updated layout of the storage facility and the updated equipment design parameters to the conservation division.

(j) No person shall test, construct, convert, or operate a storage facility or drill, complete, service, plug, or operate any storage well in either of the following types of geological strata:

(1) A porous geologic stratum containing usable water; or

(2) an excavated mine cavity.

(k) No site selection plan may be approved by the director if underground communication between cavern storage wells exists. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

82-3-1209. Design and construction of storage well. (a) Each operator shall drill and complete each storage well, including the conversion of an existing well of any type to a storage well or the conversion of a storage well to any other type of well, according to a drilling and completion plan signed by a licensed professional engineer or licensed professional geologist and approved by the director. The operator shall submit the plan on a form provided by the conservation division at least 90 days before the proposed date of drilling or completion. The operator shall supplement the plan by submitting open hole logs within 30 days after completing the well. The operator submitting a proposed drilling and completion plan shall include the following:

(1) (A) The operator shall submit, within 30 days of completing any well, the following open hole logs, one on a scale of five inches equals 100 feet, and one on a scale of two inches equals 100 feet, from the surface to the deeper of the base of the storage cavern or reservoir or the total depth of the storage well:

(i) Spectral gamma ray;

(ii) spontaneous potential;

(iii) density;

(iv) photoelectric;

(v) caliper;

(vi) for cavern storage wells, dipole sonic for evaluating mechanical rock properties, logged at least from the base of the cavern or the total depth of the storage well to 100 feet above the top of the confining layer of the bedded salt formation; and

(vii) neutron log, with the source registered in Kansas.

(B) The operator may submit an open hole log that is substantially similar to an open hole log specified in paragraph (a)(1)(A) if the operator demonstrates that the substitute open hole log provides sufficient data for the director to determine whether the well is constructed in a manner that protects public safety, usable water, and soil.

(2) (A) The operator shall submit, within 30 days of completing any well, the following cased hole logs, with one on a scale of five inches equals 100 feet and one on a scale of two inches equals 100 feet:

(i) Casing collar log and gamma ray;

(ii) temperature survey showing the natural thermal gradient of the cavern; and

(iii) cement evaluation log, performed after the neat cement has cured for at least 72 hours.

(B) The operator may submit a cased hole log that is substantially similar to the cased hole logs specified in paragraph (a)(2)(A) if approved by the director.

(3) The operator shall submit a water quality test performed by a certified laboratory demonstrating that there is no usable water in the proposed storage reservoir.

(4) The operator shall provide at least one core for each cavern storage facility, including both the bedded salt formation interval and a portion of the overburden. The applicant shall use core drilling procedures, a coring interval, and a core analysis that are approved by the director. The operator may use an offset storage facility core if the offset storage facility core represents the local geology at the proposed storage facility. The operator shall make the core available for inspection if requested by the director. The operator shall submit a core analysis report to the conservation division within 30 days after the core analysis is completed.

(5) (A) The core analysis shall include petrographic, geochemical, and geomechanical rock properties for the overburden and bedded salt formation at intervals approved by the director. The core analysis and the petrographic, geochemical, and geomechanical rock properties shall include the following:

(i) Indirect tensile strength tests;

(ii) triaxial compression tests; and

(iii) triaxial creep tests defining the time-dependent creep deformation characteristics of the salt.

(B) The core analysis shall include a geomechanical and geochemistry evaluation used to predict reactions between air and shale and reactions

between salt and shale, including any potential contaminant from fuel-fired combustion turbine exhaust at the electrical generating facility.

(C) The overburden pressure for the bedded salt formation shall be considered when determining geomechanical rock properties.

(D) Permeability and porosity shall be determined for any rock formations layered within the salt formation, except shale layers deposited within the salt formation or the upper confining layer of the layered salt formation.

(E) A gamma ray log of the core shall be correlated with the well's cased hole gamma ray and casing collar locator logs.

(6) The operator shall provide documents demonstrating that each storage well will be drilled and completed pursuant to subsections (b) through (u).

(b) Each operator of a storage well shall equip, complete, and operate the storage well to protect public safety, usable water, and soil, and to confine air in the tubing, production casing, and the storage cavern or reservoir.

(c) Each operator shall use only equipment that can withstand exposure to injected and withdrawn air, including surface, intermediate, and production casing, production tubing, packers, and packer elements.

(d) Each operator shall equip each storage well with surface casing.

(1) The surface casing shall be set below all usable water formations in accordance with "table I: minimum surface casing requirements," dated February 2003 and incorporated into commission order in docket number 34,780-C (C-1825), which is hereby adopted by reference.

(2) The surface casing string shall be equipped with centralizers. The number of centralizers shall be determined as follows:

(A) If the surface casing string is less than 250 feet long, the operator shall at a minimum install one centralizer on the collar of the second joint of the surface casing and one centralizer on the collar of the last joint of the surface casing.

(B) If the surface casing string is 250 feet long or more, the operator shall install the two centralizers specified in paragraph (d)(2)(A) and shall ensure that at least one centralizer is installed every four joints of casing throughout the surface casing string.

(3) The annular space between the casing and the formation shall be filled with cement, and the cement shall be circulated to the surface.

(e) Each operator shall ensure that the surface casing, production casing, and tubing strings 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, including the appendices and including the errata published in May 1999, but not including the publications listed in section 2.1.

(f) Each operator shall use a casing guide shoe or equivalent device to guide and protect the surface, intermediate, and production casing.

(g) Each operator shall use surface, intermediate, and production casing and tubing strings that are either new or reconditioned and the equivalent of new and that have been pressure-tested at the greater of the storage well's maximum allowable operating pressure or the storage facility's air compressor train design. If the casing used is new, the pressure test performed at the manufacturing mill or fabrication plant shall fulfill this requirement.

(h) The operator shall use surface, intermediate, and production casing, tubing, and liners that are rated for at least 125 percent of the maximum allowable operating pressure for the storage well or 125 percent of the storage facility's air compressor train design, whichever is greater.

(i) Each operator shall equip all intermediate and production casing with centralizers and scratchers.

(j) Each operator shall ensure that any cavern storage well is constructed as follows:

(1) The production casing shall be set in the upper part of the bedded salt formation. The production casing shall not extend less than 105 feet into the upper part of the bedded salt formation unless otherwise approved by the director if the operator demonstrates that the installation of the production casing will protect public safety, usable water, and soil.

(A) No permeable formation within the bedded salt formation shall be exposed to the cavern.

(B) Each operator shall demonstrate that any shale layer within the bedded salt formation will not lose integrity if exposed to storage operations.

(2) Liners shall extend from the surface to a

depth near the bottom of the production casing, allowing room for any workover operation.

(3) Each operator shall obtain the director's approval before performing any remedial casing repair.

(k) Each operator shall ensure that each storage well is cemented as follows:

(1) Production casing set in a cavern storage well and any intermediate casing string shall be cemented with sufficient cement to fill the annular space between the casing and wellbore to the surface, including the innermost casing or liner that extends the entire length of the production casing.

(2) All intermediate or production casing strings set in a reservoir storage well shall be cemented with sufficient cement to fill the annular space either to 500 feet above the top of the storage reservoir or to the surface.

(3) The cement shall be compatible with the rock formation waters and drilling fluids. Salt-saturated cement shall be used in any bedded salt formation.

(4) Liners set in the casing shall have cement circulated from the bottom of the liner to the top of the liner. If the cement does not circulate, the annulus between the liner and casing shall be equipped to allow the annulus to be monitored and tested for mechanical integrity.

(5) Circulated cement shall have a compressive strength of at least 1,000 pounds per square inch.

(6) Each operator shall perform remedial cementing if there is evidence of either of the following:

(A) Communication between the confining zone and other horizons; or

(B) annular voids that could allow fluid contact with the casing or channeling across or above the confining zone.

(l) Each operator shall equip each reservoir storage well as follows:

(1) The well shall have a tubing and packer completion if any intermediate or production casing string does not have cement circulated to the surface or if the cement is not circulated from the bottom to the top of a liner set in the casing.

(2) The packer shall be set at a depth that is opposite a cemented interval of the production casing and no more than 50 feet above the uppermost perforation or open hole for the storage reservoir.

(m) Each operator shall equip the wellhead of any storage well with manual isolation valves and

shall equip each port on the wellhead with either a valve or blind flange, which shall be rated at the same pressure as that of the wellhead.

(n) Each operator shall ensure that the wellhead master valve on each storage well is capable of opening fully and sized to the diameter of the casing or tubing string attached to the valve. The operator shall use a wellhead master valve rated at the same pressure as that of the wellhead.

(o) Each operator shall install a leak detector at any storage well located within 330 feet of an inhabited residence, commercial establishment, church, school, park, or public building.

(p) Each operator shall equip each storage well with a corrosion control system.

(q) Each operator of a cavern storage well shall submit to the conservation division all monitoring, testing, and reporting documents, including any correspondence with the Kansas department of health and environment, relating to any solution mining operation.

(r) Each operator shall ensure that a licensed professional engineer or licensed professional geologist supervises the installation of each storage well personally or through an agent.

(s) Each operator shall post at each storage well a sign large enough to be legible under normal daytime conditions at a distance of 50 feet, which shall include the following:

(1) The operator's name and license number;

(2) the storage facility's name and the storage well number;

(3) the location of the storage well by quarter section, section, township, range, and county; and

(4) the operator's emergency contact phone number.

(t) Each operator shall submit to the conservation division all supporting documents, logs, and tests within 30 days of drilling or completing any storage well.

(u) Each operator shall use only a pit that is permitted pursuant to K.A.R. 82-3-600. Each operator shall dispose of any waste or fluid pursuant to K.A.R. 82-3-602, 82-3-603, 82-3-604, 82-3-606, and 82-3-607. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

82-3-1210. Storage facility construction and integrity. (a) Each operator shall equip the storage facility according to a storage facility integrity plan signed by a licensed professional engineer and a licensed professional geologist. The

operator shall submit a storage facility integrity plan that includes the following:

(1) A description of how each storage facility will be constructed, equipped, operated, maintained, and abandoned to protect public safety, usable water, and soil; and

(2) information demonstrating that the storage facility and each storage well will meet the requirements of subsections (b) through (l).

(b) Each operator shall equip each air injection flow line and withdrawal flow line connecting the electrical generating facility to any storage well with a manually operated positive shutoff valve at the following locations:

(1) Within 20 feet of the electrical generating facility;

(2) on the wellhead of each storage well; and

(3) within 15 feet of any class I injection well located within the storage facility boundary.

(c) Each operator shall ensure that all components of the storage facility meet the following requirements:

(1) Are composed of material capable of withstanding the corrosive nature of the compressed air injected or withdrawn; and

(2) are rated at a minimum of 125 percent of either the maximum allowable operating pressure for each storage well or the air compressor train design, whichever is greater. Each operator shall ensure that the pressure ratings are clearly identified on each flow line, valve, and fitting connecting the storage facility to each storage well.

(d) Each operator shall install equipment to sample and monitor injected air quality, with the air sampling location located at least 30 feet from the electrical generating facility and at each storage well.

(e) (1) Each operator shall install the following at each cavern storage facility:

(A) Within 30 feet of the electrical generating facility or at each cavern storage well, equipment that prevents the injection of water and moisture, including any alarm and safety device; and

(B) a continuously operating SCADA system approved by the director that includes meters and gauges that measure pressure, temperature, water and moisture content, total volume, and flow rate and that automatically closes any air injection and withdrawal line, air compressor train, and brine or water line if an emergency occurs or if any pressure, temperature, total volume, or flow rate meter or gauge fails.

(2) Warning systems for the SCADA system

shall consist of pressure, temperature, water and moisture content, total volume, and flow rate sensors connected to an alarm and emergency shutdown instrumentation. The equipment shall be capable of automatically closing all of the following if an emergency occurs:

(A) Air injection and withdrawal flow lines at the storage facility;

(B) the air compressor train;

(C) the brine or water flow lines; and

(D) all wells of any type that are associated with the cavern storage facility and located within the storage facility boundary.

(3) The SCADA system circuitry shall be designed so that the failure of a pressure, temperature, water and moisture content, total volume, or flow rate meter or gauge will activate the warning system.

(4) The total volume, rate, temperature, and pressure of air injected into or withdrawn from each cavern storage well shall be measured, metered, or gauged with sufficient accuracy and precision to allow the director to determine whether the storage well is operating within the conditions in the permit. The original field record consisting of magnetic tapes, digital electronic data, meter charts, or records of air injected and withdrawn shall be retained for at least five years and made available to the conservation division upon request.

(f) Each operator shall equip each reservoir storage facility as specified in this subsection.

(1) Each operator shall install a continuously operating SCADA system that includes meters and gauges that measure pressure, total volume, and flow rate and that automatically closes any air injection or withdrawal line, air compressor train, and brine or water line if an emergency occurs or if a pressure, total volume, or flow rate meter or gauge fails.

(2) Warning systems for the SCADA system shall consist of pressure, total volume, and flow rate sensors connected to an alarm and emergency shutdown instrumentation. The equipment shall be capable of automatically closing all of the following if an emergency occurs:

(A) Air injection and withdrawal flow lines at the storage facility;

(B) the compressor train at the storage facility;

(C) brine, water, or oil flow lines; and

(D) all wells of any type that are associated with the reservoir storage facility and located within the storage facility boundary.

(3) The SCADA system circuitry shall be designed so that the failure of a pressure, total volume, or flow rate meter or gauge will activate the warning system.

(4) The total volume, rate, and pressure of air injected into or withdrawn from each reservoir storage well shall be measured, metered, or gauged with the accuracy and precision approved by the director. The original field record consisting of magnetic tapes, digital electronic data, meter charts, or records of air injected and withdrawn shall be retained for at least five years and shall be made available to the conservation division upon request.

(g) Each operator shall ensure that each SCADA system is connected by a communication link to the local control room and each remote control center.

(h) Each operator shall ensure that an audible manual warning system is available to storage facility personnel in the local control room and each remote control center.

(i) Each operator shall install and maintain a corrosion control system.

(1) Each operator shall evaluate the corrosion control system in a manner and pursuant to a schedule recommended by the system manufacturer and shall submit the results to the conservation division annually on or before April 1.

(2) Each operator shall ensure that the corrosion control system for cavern storage wells protects the following:

(A) Any storage well casing or liner;

(B) any surface equipment and injection or withdrawal flow line connecting the electrical generating facility to any storage well;

(C) any brine disposal flow line, including the last positive shutoff valve connecting the storage facility with any well of any type at the storage facility; and

(D) any surface equipment, including any brine tank and piping network used for first fill operations or conversion of an active storage well and cavern to plugging-monitoring status.

(3) Each operator shall ensure that the corrosion control system for reservoir storage wells protects the following:

(A) Any storage well casing and liner;

(B) any brine, water, or oil disposal flow line, including the last positive shut off valve connecting the storage facility with any well of any type at the storage facility; and

(C) any surface equipment and injection or withdrawal flow line connecting the electrical generating facility to any storage well.

(j) Each operator shall ensure that the storage facility is equipped with security measures to prevent access by individuals without authorization or a legal right to enter the storage facility, including the following:

(1) Each operator shall post a sign at each entrance to the storage facility large enough to be legible at 50 feet during normal daytime conditions that states the following: the storage facility name; the operator name and license number; the storage facility location by quarter section, section, township, range, and county; and the operator emergency contact phone number.

(2) Each operator shall ensure that the electrical generating facility is equipped with security lighting and surrounded by a fence located approximately 25 feet outside the electrical generating facility boundary.

(3) Each operator shall ensure that the electrical generating facility is protected from accidental damage by vehicular or shipping traffic.

(k) Each operator shall drill and complete shallow monitoring wells and deep monitoring wells to determine the initial groundwater quality and the effects of any spill or loss of containment on groundwater.

(l) Each operator shall install a leak detector at any storage well located within 330 feet of an inhabited residence, commercial establishment, church, school, park, or public building. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

82-3-1211. Storage well workover. (a)

Each operator shall submit a workover plan to the conservation division at least 10 days before performing any downhole or wellhead work that involves dismantling or removing the wellhead, unless the work is only routine maintenance or the replacement of any gauge, sensor, or valve. If an emergency situation exists, the workover plan requirement may be temporarily waived by the director. Each operator shall submit a detailed summary of the work performed to the conservation division within 30 days of the completion of the workover activity.

(b) Each operator shall determine how long any cavern storage well can safely operate below the minimum allowable pressure limit or cushion air requirement to perform storage facility maintenance or storage well workover activities. If storage facility maintenance or storage well workover activities are not performed within this time

frame, the operator shall test or log the storage well according to the long-term monitoring, measurement, and testing plan.

(c) Each operator shall use, during any workover, a blowout preventer with a pressure rating that is sufficient for the anticipated workover operations.

(d) Each operator shall perform all logging procedures through a lubricator unit with a pressure rating that is sufficient for the anticipated workover operations.

(e) Each operator shall provide all relevant well information to any contractor logging a storage well or performing a workover before commencing the log or workover. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

82-3-1212. Operation, monitoring, and measurement requirements for cavern storage wells. (a) Each operator shall monitor each cavern storage well according to the storage well integrity plan signed by a licensed professional engineer and a licensed professional geologist. The operator shall submit a storage well integrity plan that includes information required by, and demonstrates compliance with, subsections (b) through (n).

(b) Each operator shall monitor the quality of the air to be injected into each storage well before the commencement of storage operations and at least once every 90 days after operations have commenced. The operator shall test for fuel-fired turbine exhaust contaminants, water, and moisture.

(c) Each operator shall report the monitoring results for each cavern storage well to the conservation division, on a form provided by the conservation division, annually on or before April 1.

(d) Each operator shall monitor cavern storage wells daily. If the cavern storage wells consistently operate in a manner that appears to be protective of public safety, usable water, and soil, monitoring according to a time frame based on the air injection and withdrawal cycles may be allowed by the director.

(e) Each operator shall include in the storage well integrity plan descriptions of the equipment, processes, and criteria used to determine the pressure, temperature, water and moisture content, total volume, and air flow rate. Each operator shall report any change in the equipment, processes, and criteria by submitting updated de-

scriptions to the conservation division within 30 days after the change.

(f) Each operator shall install, within 30 feet of the electrical generating facility or at each cavern storage well, equipment including any alarm and safety device that prevents the injection of water and moisture.

(g) Each operator shall equip each cavern storage well with sensors and safety devices to continuously monitor the well and prevent the well from operating outside of the allowable operating limits for pressure, temperature, water and moisture, total volume, and air flow rate. If the cavern storage well is constructed with tubing and a packer, the sensors and safety devices shall also monitor the pressure in the annulus between the casing and tubing for any unexpected increase or decrease in pressure.

(1) The sensors shall be capable of recording maximum and minimum values during a 24-hour period.

(2) Each operator shall submit any monitoring data, including historic continuous monitoring, to the conservation division within 48 hours of a request by the conservation division.

(h) Each operator shall ensure that any cavern storage well conforms to the maximum allowable operating pressure according to the following requirements:

(1) The operator shall perform a site-specific geomechanical core analysis of the fracture gradient that is calibrated to the open hole log for each storage well and determines mechanical rock properties for the bedded salt formation.

(2) The operator shall not subject the cavern to pressures in excess of the maximum allowable operating pressure associated with abnormal operating conditions, including pressure pulsations from the electrical generating facility.

(3) No operator shall allow the maximum allowable operating pressure or test pressure to exceed the lower of either 80 percent of the fracture gradient for the cavern measured in PSIG or 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 cavern roof.

(i) If underground communication exists between cavern storage wells due to fracturing or coalescing, each operator shall immediately plug all cavern storage wells that are in communication according to a plugging plan submitted pursuant to K.A.R. 82-3-1219.

(j) Each operator shall operate any cavern storage well according to the minimum allowable operating pressure according to site-specific geomechanical studies from core analysis or any representative offset operating history, including any site-specific geomechanical core analysis for LPG, natural gas, or crude oil storage facilities.

(k) Each operator shall operate any cavern storage well within the injection and withdrawal rates and based on casing and tubing limitations, the placement of any production tubing and packer in relation to the salt roof, the stability of the cavern, and the flow rate requirements for the electrical generating facility.

(l) Each operator shall operate each cavern storage well at or below the maximum wellhead temperature based on the natural thermal gradient of the cavern, air temperature variations due to injection and withdrawal operations, heat transfer across the storage cavern wall, and core analysis of the bedded salt formation.

(m) The wellhead injection temperature and the normal thermal gradient of the salt formation shall be in a range that will not significantly increase the time-dependent salt creep of the bedded salt formation.

(n) The operator shall develop an inventory balance plan, as part of the cavern storage well integrity plan, that demonstrates the maximum air injection or withdrawal volume from each storage well. The inventory balance plan shall include the cushion air and working air volumes. The operator shall reevaluate the inventory balance plan whenever monitoring, testing, or logging data indicate that a change in cavern volume has occurred. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

82-3-1213. Operation, monitoring, and measurement requirements for reservoir storage wells. (a) Each operator shall monitor each reservoir storage well according to a storage well integrity plan signed by a licensed professional engineer and a licensed professional geologist. The operator shall submit a storage well integrity plan that includes information pursuant to, and demonstrates compliance with, subsections (b) through (i).

(b) Each operator shall monitor the quality of air to be injected into each reservoir storage well before the commencement of storage operations and at least once each 12 months after storage operations commence. The analysis of the quality

of air shall include consideration of fuel-fired turbine exhaust contaminants.

(c) Each operator shall evaluate the formation water in the reservoir before commencing storage operations.

(d) Each operator shall report the monitoring results for each reservoir storage well to the conservation division, on a form provided by the conservation division, annually on or before April 1.

(e) Each operator shall monitor each reservoir storage well daily. If the reservoir storage well consistently operates in a manner that appears to be protective of public safety, usable water, and soil, monitoring on a time frame based on the air injection and withdrawal cycles may be allowed by the director.

(f) Each operator shall include in the reservoir storage well integrity plan a description of the equipment, processes, and criteria used to determine pressure, total volume, and air flow rate wellhead conditions. Each operator shall monitor and report the pressure, total volume, and air flow rate. If the reservoir storage well is constructed with tubing and a packer, the operator shall also monitor and report the pressure in the annulus between the casing and tubing for any unexpected increase or decrease.

(g) (1) Each operator shall ensure that any reservoir storage well is operated at or below the maximum allowable operating pressure and based on either of the following criteria:

(A) Site-specific geomechanical core analysis of the fracture gradient calibrated to the open hole log for each storage well that determines mechanical rock properties; or

(B) sufficient testing of the reservoir.

(2) The operator shall not subject the reservoir to pressures in excess of the maximum allowable operating pressure associated with abnormal operating conditions, including pressure pulsations from the electrical generating facility.

(3) No operator shall allow the maximum allowable operating pressure to exceed the lower of either 80 percent of the fracture gradient for the storage reservoir or 0.8 pounds per square inch per foot of depth, measured at the top of the reservoir.

(h) Each operator shall operate any reservoir storage well within the injection and withdrawal rates based on casing and tubing limitations, the formation compressibility of the reservoir, and the flow rate requirements for the electrical generating facility.

(i) The operator shall develop an inventory balance plan as part of the reservoir storage well integrity plan that demonstrates the maximum air injection or withdrawal volume for each storage well. The storage volume calculations shall include the cushion air and working air volumes. The operator shall reevaluate the inventory balance plan whenever an additional storage well is drilled and completed. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

82-3-1214. Long-term monitoring, measurement, and testing for cavern storage facilities and cavern storage wells. (a) Each operator shall perform long-term monitoring, measurement, and testing on any cavern storage facility and cavern storage well pursuant to a long-term monitoring, measurement, and testing plan signed by a licensed professional engineer, a licensed professional geologist, and a licensed professional land surveyor. The operator shall submit a long-term monitoring, measurement, and testing plan that includes the information required by, and demonstrates compliance with, subsections (b) through (n) and includes the information specified in this subsection.

(1) Each operator shall determine the thickness of the salt roof for each cavern storage well with a gamma ray and density log.

(2) Each operator shall demonstrate that each cavern storage well has internal mechanical integrity by performing a nitrogen-brine interface test, liquid-brine interface test, hydraulic casing test, or storage well and cavern pressure test. If the well is constructed with tubing and a packer, the operator may demonstrate internal mechanical integrity by performing a pressure test of the production tubing and production casing annulus.

(3) Each operator shall demonstrate that all cavern storage wells and all caverns have external mechanical integrity by performing a nitrogen-brine interface test, liquid-brine interface test, or storage well and cavern pressure test.

(4) The operator shall evaluate the cement outside the production casing with a cement evaluation log verifying that the cement is adequately bonded, including any innermost casing or liner that extends the entire length of the production casing.

(5) Each operator shall meet the long-term monitoring, measurement, and testing requirements in paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) according to the following:

(A) At least once each five years;
(B) before first fill operations commence;
(C) after first fill operations have been completed;

(D) after any workover involving production casing cemented in the bedded salt formation or the innermost casing or liner that extends the entire length of the production casing;

(E) after converting the storage well to plugging monitoring status;

(F) before commencing plugging operations, if the most recent tests or logs were not performed within the previous five years; and

(G) whenever required by the director, if the director determines that it is necessary to protect public safety, usable water, or soil.

(6) Each operator shall monitor the cavern's storage capacity and geometry with a sonar survey according to the following:

(A) Before first fill operations commence;

(B) after any storage well is converted to plugging-monitoring status;

(C) before plugging the storage well, if the sonar survey was not performed within the previous five years; and

(D) whenever required by the director, if the director determines that it is necessary to protect public safety, usable water, or soil.

(7) Each operator shall evaluate the production casing set and cemented in the bedded salt formation or the innermost casing or liner that extends the entire length of the production casing with a magnetic flux log if the conservation division determines that it is necessary to protect public safety, usable water, or soil.

(8) Each operator shall demonstrate every two years that surface ground subsidence is not occurring at the storage facility by performing a land survey at each storage well until the storage facility is abandoned.

(b) Each operator performing a nitrogen-brine mechanical integrity test to demonstrate internal or external mechanical integrity shall ensure that the test is witnessed by a licensed professional engineer and shall use a pressure for the nitrogen-brine test pressure that is equal to the maximum allowable operating pressure.

(1) The cavern storage well shall be considered to have internal mechanical integrity if the calculated nitrogen leak rate is less than 100 barrels of nitrogen per year.

(2) The cavern storage well and cavern shall be considered to have external mechanical integrity

ty if the calculated nitrogen leak rate is less than 1,000 barrels of nitrogen per year.

(c)(1) Each operator performing a liquid-brine mechanical integrity test to demonstrate internal or external mechanical integrity shall ensure that the test is witnessed by a licensed professional engineer and shall meet the following requirements:

(A) Use a type of liquid that allows verification of mechanical integrity without harming the cavern storage well or cavern storage facility; and

(B) use a pressure for the liquid test pressure that is equal to the maximum allowable operating pressure.

(2) The cavern storage well shall be considered to have internal mechanical integrity if the calculated liquid leak rate is less than 10 barrels of liquid per year.

(3) The cavern storage well shall be considered to have external mechanical integrity if the calculated liquid leak rate is less than 100 barrels of liquid per year.

(d) Each operator performing a storage well and cavern pressure test shall test the well at the maximum allowable operating pressure. The operator shall first monitor the conditions at the wellhead until the pressure variations at the wellhead can reasonably be shown to correlate with ambient temperature changes. Then the operator shall monitor the surface shut-in pressure for at least 24 hours. The well shall be considered to have internal and external mechanical integrity if the pressure does not vary by more than three percent, with adjustments made to the pressure for changes in temperature.

(e) Each operator performing a hydraulic casing test shall meet the following requirements:

(1) The operator shall set a retrievable bridge plug or packer in the storage well within 25 feet of the top of the cavern.

(2) The operator shall test the storage well at the maximum allowable operating pressure. The operator shall test the well for at least 30 minutes, and the well shall be considered to have internal mechanical integrity if the pressure does not decrease by more than 10 percent.

(f) Any operator may perform a pressure test of the production tubing and production casing annulus if the well is constructed with tubing and a packer. The operator performing a pressure test of the production tubing and production casing annulus shall use a minimum fluid pressure of 300 psig 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.

(g) Any operator may use an alternative method for the long-term monitoring, measurement, and testing activity if approved by the director. The alternative method shall be approved by the director if this method will allow the conservation division to verify mechanical integrity according to the following information submitted by the operator:

(1) A description of the alternate method and the theory for its operation;

(2) a description of the conditions at the cavern storage well that are necessary for the use of the alternate method;

(3) specifications of the logging tool, survey, or test, including the tool dimensions, maximum temperature and pressure rating, recommended logging speed, approximate image resolution, and casing or hole size range;

(4) the procedure for interpreting the results of the alternate method; and

(5) an interpretation of the results after the alternate method has been used.

(h) No operator shall inject air into or withdraw air from a cavern storage well that fails to demonstrate mechanical integrity through the performance of any test or log in subsections (a) through (g) until the well has been repaired, if necessary, and successfully retested.

(i) Each operator shall submit the long-term monitoring, measurement, and testing plan at least 60 days before commencing any long-term monitoring, measurement, and testing activity. Each operator shall ensure that an employee witnesses any activity. The operator shall schedule the activity to facilitate witnessing by a conservation division agent.

(j) Each operator shall submit a summary, including all supporting documents, of the long-term monitoring, measurement, or testing activity to the conservation division within 30 days after completion.

(k) On or before April 1 of each year, each operator shall submit a report and all supporting documents to the conservation division, on a form provided by the conservation division, listing any activity in subsection (a) performed during the previous calendar year at any storage well.

(l) Each operator shall monitor, measure, sample, and report water quality at any shallow monitoring well and deep monitoring well in a manner that allows the director to determine whether

groundwater has been affected by any spill or loss of containment.

(m) Each operator shall monitor, measure, and sample at any leak detector in a manner that allows the director to determine that leaks are not occurring.

(n) Each operator shall ensure that a professional land surveyor performs a land survey for each cavern storage well every two years, pursuant to the following requirements:

(1) The operator shall report to the conservation division the method used in performing the elevation survey.

(2) The operator shall report to the conservation division the criteria used to establish any monument, benchmark, and wellhead survey point.

(3) The operator shall monitor subsidence by performing level measurements with an accuracy of .01 foot. The operator shall report changes in excess of .1 foot to the conservation division within 24 hours of actual knowledge.

(4) The operator shall not change any benchmark without approval by the director. If a benchmark is changed, the operator shall report the elevation change from the previous benchmark to the conservation division.

(5) The operator shall report the elevation to the conservation division before and after any wellhead work that results in a change in the survey point at the wellhead.

(6) The operator shall submit the survey reports, including certified and stamped field notes, to the conservation division within 90 days after completion of the survey. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

82-3-1215. Long-term monitoring, measurement, and testing for reservoir storage facilities and reservoir storage wells. (a) Each operator shall perform long-term monitoring, measurement, and testing for each reservoir storage facility and reservoir storage well pursuant to a long-term monitoring, measurement, and testing plan signed by a licensed professional engineer and a licensed professional geologist. Each operator shall submit a long-term monitoring, measurement, and testing plan that includes the information required by, and demonstrates compliance with, subsections (b) through (j) and includes the information specified in this subsection.

(1) Each operator shall demonstrate that each reservoir storage well has internal mechanical in-

tegrity by using a hydraulic casing test or, if the well is constructed with tubing and packer, a pressure test of the production tubing and production casing annulus.

(2) Each operator shall demonstrate that each reservoir storage well has external mechanical integrity by running gamma ray, neutron, noise, and temperature logs from 50 feet above the point of injection continuously to the surface. A depth lower than 50 feet may be required by the director if the director deems that this requirement is necessary to determine whether the reservoir storage well has external mechanical integrity.

(3) Each operator shall meet the long-term monitoring, measurement, and testing requirements in paragraphs (a)(1) and (a)(2) according to the following:

(A) At least once each five years;

(B) after any workover involving the production casing cemented in the storage reservoir or the innermost casing or liner inside the production casing;

(C) before commencing plugging operations if the most recent tests or logs were not performed within the previous five years; and

(D) whenever required by the director, if the director determines that it is necessary to protect public health, usable water, or soil.

(4) Each operator shall evaluate the production casing or innermost casing or liner that extends the entire length of the production casing with a magnetic flux log if the director determines that it is necessary to protect public safety, usable water, or soil.

(b) Each operator performing a hydraulic casing test shall perform the following:

(1) The operator shall set a retrievable bridge plug or packer in the storage well opposite a cemented interval at a point immediately above the uppermost perforation or open-hole interval.

(2) The operator shall test the storage well at the maximum allowable operating pressure. The operator shall test the well for at least 30 minutes, and the well shall be considered to have internal mechanical integrity if the pressure does not decrease by more than 10 percent.

(c) Any operator may perform a pressure test of the production tubing and production casing annulus if the well is constructed with tubing and a packer. The operator performing a pressure test of the production tubing and production casing annulus shall apply a minimum fluid pressure of 300 psig to the tubing casing annulus at the sur-

face for 30 minutes, and the well shall be considered to have mechanical integrity if the pressure does not decrease by more than 10 percent.

(d) Any operator may use an alternative method for the long-term monitoring, measurement, and testing activity if approved by the director. The alternative method shall be approved by the director if this method will allow the conservation division to verify mechanical integrity according to the following information submitted by the operator:

(1) A description of the alternate method and the theory for its operation;

(2) a description of the reservoir storage well conditions necessary for the use of the alternate method;

(3) specifications for the logging tool, surveys, or tests including the tool dimensions, maximum temperature and pressure rating, recommended logging speed for the tool, approximate image resolution, and casing and hole size range;

(4) the procedure for interpreting the results of the alternate method; and

(5) an interpretation of the results after the alternate method has been used.

(e) No operator shall inject air into or withdraw air from a reservoir storage well that fails to demonstrate mechanical integrity through the performance of any test or log in subsections (a) through (d), until the storage well is repaired, if necessary, and successfully retested.

(f) Each operator shall submit the long-term monitoring, measurement, and testing plan at least 60 days before commencing any long-term monitoring, measurement, and testing activity. Each operator shall ensure that an employee witnesses any activity. The operator shall schedule the activity to facilitate witnessing by a conservation division agent.

(g) Each operator shall submit a summary, including all supporting documents, of the long-term monitoring, measurement, or testing activity to the conservation division within 30 days after completion of the activity.

(h) Each operator shall submit a report to the conservation division, annually on or before April 1 on a form provided by the conservation division, listing any activity in subsection (a) performed on any reservoir storage well during the previous calendar year.

(i) Each operator shall monitor, measure, sample, and report water quality at any shallow monitoring well and deep monitoring well in a manner

that allows the director to determine whether groundwater has been affected by any spill or loss of containment.

(j) Each operator shall monitor, measure, and sample at any leak detector in a manner that allows the director to determine that leaks are not occurring. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

82-3-1216. Safety and emergency response plan.

(a) Each operator shall construct, convert, operate, and abandon the storage facility in accordance with a safety and emergency response plan signed by a licensed professional engineer or licensed professional geologist. The operator shall submit a safety and emergency response plan that includes the following:

(1) Brine spill and flood assessment, which shall meet the following requirements:

(A) The applicant shall identify on a map the location of any navigable water, floodplain or area prone to flooding, and potential drainage path of a brine spill to navigable water, within a two-mile radius of each storage facility boundary;

(B) the applicant shall submit the design criteria for any storage well and facility equipment located in an area prone to flooding; and

(C) the applicant shall submit procedures for responding to a brine spill and flood that address water containment and soil remediation and state the names of specific contractors and equipment vendors available to respond to an emergency;

(2) procedures to respond to the following:

(A) Surface subsidence event;

(B) unexpected air release;

(C) storage well drilling, completion, workover, conversion to plugging-monitoring status, and plugging; and

(D) storage well blowout;

(3) a description of the storage facility communication, warning, alarm, manual and automatic shutdown, and SCADA systems; and

(4) an identification of potential risks to the storage facility from activities performed at any facilities located within two miles of each storage facility boundary, including any utility having a right-of-way, road, highway, or railroad.

(b) Each operator shall perform a review of the safety and emergency response plan with storage facility field staff at least once every 12 months and at any additional time required by the director if conditions indicate that additional reviews

are necessary to ensure that public safety, usable water, and soil are protected. The operator may request, for good cause, an extension to perform the annual review, which may be granted by the director. The review shall address the following:

(1) Emergency procedures in response to surface subsidence, cavern collapse, brine spill, air release, storage well blowout, and flooding if the storage facility is located on a floodplain or in an area prone to flooding;

(2) the company name, telephone number, and contact person for any utility having a right-of-way within one-quarter mile of the storage facility boundary, including any wind generator, electrical transmission line, and oil or gas pipeline;

(3) names of specific contractors and equipment vendors capable of providing necessary services and equipment in response to an emergency;

(4) the address and phone number for each person within one-quarter mile of the storage facility boundary;

(5) procedures to coordinate an emergency response with any local emergency planning entity;

(6) a report of the safety training drills that occurred during the previous year, including a list of attendees and the date each drill was performed;

(7) a report of the safety meetings that occurred during the year, including a list of attendees and the date each safety meeting occurred; and

(8) a review of the safety plan to ensure that the plan is current and correct.

(c) Each operator shall notify the conservation division at least 30 days before the annual review. The operator shall schedule the review on a date that facilitates attendance by an agent of the conservation division. Each operator shall submit a written summary of the annual review to the conservation division within 30 days after the review.

(d) Each operator shall maintain a copy of the safety and emergency response plan at the storage facility and at the company headquarters. Each operator shall provide the conservation division with a copy of the safety and emergency response plan within 48 hours of receipt of the request.

(e) Each operator shall provide a copy of the applicable portions of the safety and emergency response plan to any public or private entity involved with the implementation of the safety and emergency response plan.

(f) Each operator shall update the safety and emergency response plan at least once every 12 months, after any change in safety features at the storage facility, after the approval of an applica-

tion to amend, transfer, or modify the permit, and upon the director's determination that an update is necessary to protect public safety, usable water, or soil. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

82-3-1217. Safety inspection. (a) Each operator shall perform a safety inspection of the storage facility at least once every 12 months. One extension of one month for the performance of the safety inspection may be granted by the director, upon written request. Each operator shall ensure that all of the following conditions are met in the safety inspection:

(1) Each automatic shut-in safety valve at the surface is in normal operating condition and each alarm is operating.

(2) Each wellhead and any equipment attached to the wellhead is connected and functioning.

(3) Each valve, annulus, and blowdown opens and closes with reasonable ease, including the storage wellhead manual valve.

(4) Each communication link between any control room and remote control center is connected and functioning.

(5) The SCADA system is connected and functioning.

(6) The wellhead pressure monitoring associated with the plugging-monitoring status plan is in working order.

(7) Each corrosion control system is functioning.

(8) Each sign is properly posted, updated, and maintained.

(9) The safety fences or barriers, security equipment, and lighting are properly installed and maintained.

(b) Each operator shall notify the conservation division of the inspection at least 30 days before the inspection. Each operator shall schedule the inspection to facilitate the presence of an agent of the conservation division.

(c) Each operator shall submit to the conservation division a written report that includes the inspection procedures and results. The report shall be submitted within 30 days after the safety inspection.

(d) Each operator shall maintain the following at the storage facility and at the operator's main office in Kansas, for inspection by the conservation division:

(1) The maps specified in K.A.R. 82-3-1203(d);

(2) the local geological evaluation specified in K.A.R. 82-3-1208(h); and

(3) the layout of the storage facility specified in K.A.R. 82-3-1208(i). (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

82-3-1218. Plugging-monitoring status. (a) Any operator may place a cavern storage well in plugging-monitoring status according to a plugging-monitoring status plan signed by a licensed professional engineer or licensed professional geologist. The operator shall submit the plugging-monitoring status plan at least 60 days before placing the cavern storage well in plugging-monitoring status.

(b) Each operator submitting a plugging-monitoring status plan shall include the following:

(1) The portion of the safety and emergency response plan specified in K.A.R. 82-3-1216 that is applicable to the plugging-monitoring status plan;

(2) the saturated brine information, including the source, volume, transportation logistics, and time necessary to fill each cavern storage well;

(3) the storage well filling, monitoring, and reporting procedures used to ensure that saturated brine will stabilize the cavern;

(4) a list of additional storage well requirements and storage facility equipment, including wellhead gauges, surface brine tanks, pumps, and piping network used in implementing the plugging-monitoring status plan;

(5) a wellbore schematic of the storage well;

(6) a record of each historical internal and external mechanical integrity test, salt roof thickness evaluation log, cement evaluation log, casing inspection log, and sonar survey for the cavern storage well;

(7) a schedule to perform sonar surveys and internal and external mechanical integrity tests after the storage well is filled with saturated brine;

(8) a schedule to perform surface pressure monitoring at the wellhead to determine whether the cavern storage well has been stabilized;

(9) a cost estimate of converting the cavern storage well to plugging-monitoring status;

(10) updated maps specified in K.A.R. 82-3-1203(d);

(11) the updated local geological evaluation specified in K.A.R. 82-3-1208(h); and

(12) the updated layout of the storage facility specified in K.A.R. 82-3-1208(i).

(c) The operator shall perform additional testing or logging before placing the cavern storage well in plugging-monitoring status if required

by the conservation division due to the absence of current logs or tests or due to a lack of cavern storage well mechanical integrity that could result in a threat to public safety, soil, or usable water.

(d) Each operator converting an active cavern storage well to plugging-monitoring status shall fill the cavern storage well with saturated brine pursuant to the plugging-monitoring status plan. The operator shall submit all documents, logs, and tests regarding the conversion to the conservation division within 30 days after the storage well is converted.

(e) Each operator of a cavern storage well in plugging-monitoring status shall monitor the surface wellhead pressure with a pressure transducer connected to a SCADA system. The operator shall, within 24 hours of actual knowledge, report to the director any unexpected increase or decrease in the surface wellhead pressure, including a description of whether the condition threatens public safety, usable water, or soil. The operator shall perform any additional testing, logging, or other measures required by the conservation division to determine whether the increase or decrease indicates potential harm to public safety, usable water, or soil.

(f) Each operator shall submit a report to the conservation division each year on or before April 1, on a form provided by the conservation division, listing the monitored wellhead pressure of each well in plugging-monitoring status.

(g) No operator shall convert a storage well in plugging-monitoring status to an active well without the director's prior written approval. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

82-3-1219. Storage well plugging. (a) Any operator may plug any storage well pursuant to a well plugging plan signed by a licensed professional engineer or licensed professional geologist. Each plugging plan for a cavern storage well shall also be signed by a licensed professional land surveyor. The operator shall submit the plugging plan to the conservation division at least 60 days before the anticipated plugging date.

(b) Each operator submitting a plugging plan for any cavern storage well shall include the following:

(1) The portion of the safety and emergency response plan specified in K.A.R. 82-3-1216 that is applicable to the well plugging plan;

(2) a wellbore schematic of the storage well to be plugged;

(3) the updated local geological evaluation specified in K.A.R. 82-3-1208(h) and the updated layout of the storage facility specified in K.A.R. 82-3-1208(i);

(4) a record of each historical internal and external mechanical integrity test, salt roof thickness evaluation log, cement evaluation log, casing inspection log, and sonar survey for the storage well;

(5) evidence regarding whether the wellhead pressure for the cavern storage well has stabilized according to the plugging-monitoring status plan;

(6) procedures to set a mechanical bridge plug or other control device in the long string casing;

(7) procedures to place a cement plug above the storage cavern by a method that will prevent migration of fluid into or out of the storage cavern;

(8) procedures to establish a monument at the surface for elevation survey purposes for monitoring ground subsidence;

(9) procedures to perform land surveys every two years until the storage facility is abandoned pursuant to commission regulations; and

(10) a reasonable estimate of the cost to plug each cavern storage well currently in plugging-monitoring status.

(c) The operator of a cavern storage well shall perform additional testing or logging before plugging the cavern storage well if required by the conservation division due to the absence of current logs or tests or due to a lack of mechanical integrity of the cavern storage well that could result in a threat to public safety, usable water, or soil.

(d) Each operator shall plug any cavern storage well in plugging-monitoring status according to the plugging plan if both of the following conditions are met:

(1) The cavern storage well has been in plugging-monitoring status for at least five years.

(2) The director determines that the cavern storage well has been stabilized according to the plugging-monitoring status plan.

(e) (1) Each operator submitting a well plugging plan for any reservoir storage well shall include the following:

(A) The portion of the safety and emergency response plan specified in K.A.R. 82-3-1216 that is applicable to the well plugging plan;

(B) a wellbore schematic of the storage well to be plugged;

(C) the updated local geological evaluation specified in K.A.R. 82-3-1208(h) and the updated layout of the storage facility specified in K.A.R. 82-3-1208(i);

(D) a record of each historical internal and external mechanical integrity test, cement evaluation log, and casing inspection log;

(E) procedures to set a mechanical bridge plug or other control device in the long string casing;

(F) procedures to place a cement plug above the storage reservoir by a method that will prevent migration of fluid into or out of the storage reservoir; and

(G) a reasonable estimate of the cost to plug each reservoir storage well.

(2) The operator shall perform additional testing or logging before plugging the reservoir storage well if required by the conservation division due to the absence of current logs or tests or due to a lack of mechanical integrity of the reservoir storage well that could result in a threat to public safety, usable water, or soil.

(f) Each operator shall plug any storage well within a time frame specified by the director if the director determines that the storage well presents a danger to public safety, usable water, or soil.

(g) Each operator shall submit a well plugging report within 30 days after plugging any storage well. This report shall contain the following information:

(1) The date the storage well was drilled and completed;

(2) the location of the storage well;

(3) the method used to plug the storage well; and

(4) any other information that is necessary to allow the director to determine whether the well was plugged in a manner that will protect public safety, usable water, and soil. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

82-3-1220. Temporary abandonment of reservoir storage wells and reservoir storage facilities.

(a) Each operator of a reservoir storage well shall, within 90 days after any reservoir storage well ceases operation, plug the storage well according to K.A.R. 82-3-1219 or file an application with the conservation division requesting temporary abandonment status, on a form provided by the conservation division.

(1) An application for temporary abandonment status may be approved by the director for one year if approval will not threaten public safety, usable water, or soil. Each operator shall file any subsequent one-year application before the expiration of the previous approved temporary abandonment period. No well that has been tem-

porarily abandoned for 10 years or longer shall be approved for temporary abandonment status.

(2) If a temporary abandonment application is denied, the operator shall plug the well pursuant to K.A.R. 82-3-1219.

(b) Any operator of a reservoir storage facility may request temporary abandonment status for the storage facility. The operator shall submit a written application to the conservation division for temporary abandonment at least 90 days before the temporary abandonment. The application shall include the following:

(1) The date the storage facility will be temporarily abandoned;

(2) the projected temporary abandonment period, which shall be less than 10 years;

(3) the monitoring procedures to be used during temporary abandonment;

(4) temporary abandonment applications for each reservoir storage well, pursuant to subsection (a), except for any reservoir storage well that is currently approved for temporary abandonment; and

(5) any additional information necessary to allow the director to determine whether the reservoir storage facility can be temporarily abandoned in a manner that protects public safety, usable water, and soil.

(c) Any application for temporary abandonment status of a reservoir storage facility pursuant to subsection (b) may be approved by the director for less than 10 years if the approval will not threaten public safety, soil, and usable water. Each operator shall file any subsequent application before the expiration of the previous approved temporary abandonment period. No storage facility that has been temporarily abandoned for 10 years or longer shall be approved for temporary abandonment status. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

82-3-1221. Decommissioning and abandonment of a storage facility. (a) No operator shall permanently abandon a storage facility unless an application is approved by the director. Each operator decommissioning and abandoning a storage facility shall file an application at least 90 days before any decommissioning activities. The application shall contain a detailed decommissioning plan that includes the following:

(1) The anticipated date and a schedule for plugging each storage well;

(2) a schedule for abandoning the storage facility, including when and how any equipment and building will be abandoned;

(3) the name and address of persons responsible for any equipment and buildings that will be abandoned or will remain in use;

(4) a reasonable estimate of the cost to perform the activities specified in subsection (b); and

(5) any additional information necessary for the director to determine whether the decommissioning plan will protect public safety, usable water, and soil.

(b) Each operator decommissioning and abandoning a storage facility shall plug all storage wells according to K.A.R. 82-3-1219 and perform the following:

(1) Dispose of any liquid or solid waste in an environmentally safe manner;

(2) clear the area of debris;

(3) drain or fill all excavations;

(4) remove any unused concrete base, machinery, and material;

(5) level and restore the site; and

(6) perform any additional activities that may be required by the director, if additional activities are necessary to protect public safety, usable water, and soil.

(c) After all decommissioning and abandonment activities are complete, a determination of whether the decommissioning and abandonment of the storage facility are protective of public safety, soil, and usable water shall be made by the director. If the director determines that public safety, soil, and usable water will be protected and no further activities are required from the operator, the operator's financial assurance shall be released.

(d) If the application to decommission and abandon the storage facility is denied, the operator shall proceed according to instructions by the director. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

82-3-1222. Reporting required; record retention. (a) Each operator shall meet the requirements in subsection (b) if any safety inspection reveals any regulatory or permit deficiencies at the storage facility, if any threat to public safety, usable water, or soil is discovered, or if the storage facility or any storage well fails any monitoring activity, test, survey, or log specified in the following plans:

(1) The site selection plan in K.A.R. 82-3-1208;

(2) the drilling and completion plan in K.A.R. 82-3-1209;

(3) the storage facility integrity plan in K.A.R. 82-3-1210;

(4) the storage well workover plan in K.A.R. 82-3-1211;

(5) the storage well integrity plan in K.A.R. 82-3-1212 or K.A.R. 82-3-1213;

(6) the long-term monitoring, measurement, and testing plan in K.A.R. 82-3-1214 or K.A.R. 82-3-1215;

(7) the safety and emergency response plan in K.A.R. 82-3-1216;

(8) the plugging-monitoring status plan in K.A.R. 82-3-1218;

(9) the well plugging plan in K.A.R. 82-3-1219; and

(10) the decommissioning plan in K.A.R. 82-3-1221.

(b) Each operator shall, upon the occurrence of any condition in subsection (a), perform the following, which may include repairs, retesting, plugging, or abandonment activities as required by the director:

(1) Notify the conservation division of the condition in subsection (a) within 24 hours of actual knowledge, including a description of whether the condition threatens public safety, usable water, or soil;

(2) submit a detailed written plan to correct the condition in subsection (a) within three days of actual knowledge;

(3) if the conservation division determines that the condition in subsection (a) threatens public safety, usable water, or soil, comply with instructions from the conservation division and correct the condition within 30 days; and

(4) if the conservation division determines the condition in subsection (a) does not threaten public safety, usable water, or soil, comply with instructions from the conservation division and correct the violation within 90 days.

(c) Each operator shall keep and maintain for at least five years all data obtained from the SCADA system, including any magnetic tape, electronic data, and meter chart, and any reports submitted to the conservation division pursuant to K.A.R. 82-3-1201(b)(4), K.A.R. 82-3-1212, and K.A.R. 82-3-1213.

(d) (1) Each operator shall keep and maintain for the life of the storage facility and any storage well, until the storage facility is abandoned pursuant to K.A.R. 82-3-1221, all logs, updated maps, tests, records, data, and correspondence with the conservation division or Kansas department of health and

environment specified in the following plans and regarding the construction, drilling, completion, solutioning, mechanical integrity, and abandonment of the storage facility or any storage well:

(A) The permit application specified in K.A.R. 82-3-1203;

(B) the site selection plan specified in K.A.R. 82-3-1208;

(C) the drilling and completion plan specified in K.A.R. 82-3-1209;

(D) the storage facility integrity plan specified in K.A.R. 82-3-1210;

(E) the storage well workover plan specified in K.A.R. 82-3-1211;

(F) the long-term monitoring, measurement, and testing plan specified in K.A.R. 82-3-1214 or K.A.R. 82-3-1215;

(G) the plugging-monitoring status plan specified in K.A.R. 82-3-1218;

(H) the well plugging plan specified in K.A.R. 82-3-1219; and

(I) the decommissioning plan specified in K.A.R. 82-3-1221.

(2) The record retention requirement in this subsection shall also include any shallow or deep groundwater monitoring data and leak detector monitoring data.

(e) Each transferring operator and each transferee operator of any permit transferred pursuant to K.A.R. 82-3-1206 shall ensure that all items specified in subsections (c) and (d) are transferred to the control of the transferee operator.

(f) If an operator makes any change to any plan described in K.A.R. 82-3-1203(c), the operator shall provide an updated copy of the plan to the conservation division within 30 days of making the change. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274; effective Dec. 21, 2012.)

82-3-1223. Fees. (a) Each operator shall submit a fee of \$18,890 for each storage facility and \$305 for each storage well annually on or before January 31. The operator shall pay the fee for each cavern storage well, whether plugged or unplugged, and for each unplugged reservoir storage well.

(b) Each permit applicant shall submit a fee of \$1,500, in addition to any applicable plan fees specified in paragraph (c)(2), to the conservation division with any permit application submitted according to K.A.R. 82-3-1203.

(c) Each operator shall submit a fee in the amount of \$1,500 to the conservation division for

each of the following at the time of submission of the application or plan:

- (1) An application to amend a storage facility permit according to K.A.R. 82-3-1205;
- (2) each drilling and completion plan filed according to K.A.R. 82-3-1209;
- (3) each workover plan filed according to K.A.R. 82-3-1211;
- (4) each plugging-monitoring status plan according to K.A.R. 82-3-1218;
- (5) each well plugging plan according to K.A.R. 82-3-1219;
- (6) each application for temporary abandonment status for the storage facility or any storage well according to K.A.R. 82-3-1220; and
- (7) an application to decommission and abandon the storage facility according to K.A.R. 82-3-1221.

(d) Each operator shall submit a fee in the amount of \$1,500 to the conservation division for each of the following, in a single payment on or before the last day of the month in which the activity occurs, with a description of the activity listed on a form provided by the conservation division:

- (1) Performance of any long-term monitoring and testing activity according to K.A.R. 82-3-1214 or K.A.R. 82-3-1215;
- (2) performance of the annual review of the safety and emergency response plan according to K.A.R. 82-3-1216; and
- (3) performance of the annual storage facility inspection according to K.A.R. 82-3-1217.

(e) All fees shall be nonrefundable and shall be made payable to the “Kansas corporation commission — compressed air energy storage fund,” pursuant to K.S.A. 66-1279 and amendments thereto. (Authorized by and implementing K.S.A. 2011 Supp. 66-1274 and 66-1279; effective Dec. 21, 2012.)

82-3-1300. Definitions; horizontal wells.

The terms and definitions in K.A.R. 82-3-101, with some of those definitions modified as follows, shall apply to these regulations for horizontal wells, in addition to the new terms and definitions specified:

- (a) “Bottom-hole location” means the terminus of each horizontal wellbore.
- (b) “Completion interval” means the following:
 - (1) For open-hole horizontal wellbores, the area between the point that the wellbore contacts the producing formation and the bottom hole, including any isolation packers; and

- (2) for cased horizontal wellbores, the area between the perforation nearest the vertical portion of the horizontal well and the perforation nearest the bottom-hole location.

(c) “Directional survey” means a report showing the location of the horizontal wellbore from the surface location to the bottom hole.

(d) “Horizontal well” means a well that is drilled from a surface location and includes one or more horizontal wellbores.

(e) “Horizontal wellbore” means any portion of a horizontal well that extends laterally within the productive or injection formation.

(f) “Measured total depth” means the total length of the drilled wellbore.

(g) “Surface location” means the point at which the vertical portion of a horizontal well penetrates the ground at the surface.

(h) “True vertical depth” means the distance from the deepest point in the wellbore measured vertically to a point with the same elevation as that of the surface location. (Authorized by and implementing K.S.A. 2012 Supp. 55-152; effective Aug. 16, 2013.)

82-3-1301. Horizontal wells. The regulations applicable to wells, as defined in K.A.R. 82-3-101, shall apply to horizontal wells, except as specifically provided in K.A.R. 82-3-1300 through K.A.R. 82-3-1307. (Authorized by and implementing K.S.A. 2012 Supp. 55-152; effective Aug. 16, 2013.)

82-3-1302. Notice of intention to drill; setback.

(a) Before commencing the drilling of any horizontal well, each operator shall submit to the conservation division and obtain approval of a written notice of the intention to drill according to K.A.R. 82-3-103 on a form supplied by the commission. The notice shall include information specific to the horizontal well, including the estimated true vertical depth, the estimated bottom-hole location, the estimated completion interval, a brief description of the leased acreage, and a statement regarding whether multiple leases are unitized. Each submitted form shall be accompanied by a detailed plat map that includes the surface location, estimated completion interval, estimated bottom-hole location, and lease or unit boundaries.

(b) The setback requirements in K.A.R. 82-3-108, K.A.R. 82-3-207, and K.A.R. 82-3-312 shall be applicable to the entire completion interval of

each horizontal wellbore. (Authorized by and implementing K.S.A. 2012 Supp. 55-152; effective Aug. 16, 2013.)

82-3-1303. Oil and gas allowables. (a) The oil allowables specified in K.A.R. 82-3-203 and the standard daily allowable for gas wells specified in K.A.R. 82-3-312 shall not apply to horizontal wells.

(b) Each horizontal well classified as an “oil well” in K.A.R. 82-3-101 shall be assigned a production allowable of 200 barrels of oil per day for each 660 feet of the completion interval. Each remainder of less than 660 feet shall result in a correspondingly proportionate addition to the allowable.

(c) Each horizontal well classified as a “gas well” in K.A.R. 82-3-101 shall be assigned a production allowable of 3,000,000 cubic feet per day. (Authorized by and implementing K.S.A. 2012 Supp. 55-152; effective Aug. 16, 2013.)

82-3-1304. Gas well test exemption. The gas well testing requirements in K.A.R. 82-3-303 and K.A.R. 82-3-304 shall not apply to any horizontal well. (Authorized by and implementing K.S.A. 2012 Supp. 55-152; effective Aug. 16, 2013.)

82-3-1305. Venting and flaring. (a) The venting and flaring requirements in K.A.R. 82-3-208 and K.A.R. 82-3-314 shall not apply to any horizontal well.

(b) The following venting and flaring requirements shall apply to each horizontal well:

(1) No operator shall vent gas from any horizontal well.

(2) Each operator flaring gas from a horizontal well shall meet the following requirements:

(A) The operator shall ensure that the site is inspected and approved by the appropriate district office before the commencement of flaring.

(B) The operator shall file an affidavit on a form supplied by the commission within five days after commencement of flaring.

(C) The operator may flare gas for a maximum of 30 producing days following the initial horizontal completion or recompletion.

(i) A “producing day” shall mean any day in which fluid is produced at the well.

(ii) When counting the producing days for flaring purposes, the producing days may be consecutive or intermittent, or both.

(D) The operator may submit a written request to flare for an additional 30 producing days. The request shall be granted by the director if the

operator demonstrates that additional flaring is necessary to prevent waste and will not violate correlative rights. Only one additional flaring period of 30 producing days may be authorized by the director.

(E) No operator shall flare gas for more than 60 producing days without commission approval of an application for an exception according to K.A.R. 82-3-100.

(F) The operator shall continuously meter, measure, or monitor the flared gas and shall retain the chart or record for at least two years. The operator shall provide the conservation division with a copy of the chart or record within five business days of receipt of any request. (Authorized by and implementing K.S.A. 2012 Supp. 55-152; effective Aug. 16, 2013.)

82-3-1306. High-volume pumps. The restrictions on and requirements for the use of high-volume pumps in K.A.R. 82-3-131 shall not apply to any horizontal well. (Authorized by and implementing K.S.A. 2012 Supp. 55-152; effective Aug. 16, 2013.)

82-3-1307. Well completion report. Each operator of a horizontal well shall comply with the affidavit requirements in K.A.R. 82-3-106 and K.A.R. 82-3-130 by submitting to the conservation division and obtaining approval of a well completion report on a form provided by the commission, which shall include the true vertical depth and information specific to the horizontal well. Each submitted form shall be accompanied by a copy of the directional survey and a detailed, as-drilled plat map that includes the lease or unit boundaries, surface location, completion interval, and bottom-hole location. (Authorized by and implementing K.S.A. 2012 Supp. 55-152; effective Aug. 16, 2013.)

82-3-1400. Hydraulic fracturing treatment; definitions. The terms and definitions in K.A.R. 82-3-101 shall apply to K.A.R. 82-3-1400 through 82-3-1402, in addition to the following terms and definitions:

(a) “Base fluid” means the primary fluid, as measured by volume, used in a hydraulic fracturing treatment.

(b) “Chemical” means any element, chemical compound, chemical substance, or combination thereof that has a specific identity.

(c) “Chemical abstracts service registry number” and “CAS number” mean the unique iden-

tification number assigned to a chemical by the chemical abstracts service.

(d) "Chemical constituent" means any chemical or chemical concentration intentionally added to a base fluid.

(e) "Chemical disclosure registry" means the publicly available web site database managed by the ground water protection council and the interstate oil and gas compact commission and known as "fracfocus," or any other database authorized by order of the commission.

(f) "Health professional" means a physician, physician assistant, nurse practitioner, registered nurse, emergency medical technician, or similar individual who is licensed in that individual's state of practice.

(g) "Hydraulic fracturing fluid" means the base fluid, each proppant, and all chemical constituents used in a hydraulic fracturing treatment.

(h) "Hydraulic fracturing treatment" means all stages in a well completion utilizing hydraulic fracturing fluid under pressure to create fractures in a targeted geological formation.

(i) "Manufacturer" means an entity that produces finished goods from raw materials.

(j) "Proppant" means each material used in a hydraulic fracturing treatment for the purpose of propping open fractures.

(k) "Service company" means an entity that performs a hydraulic fracturing treatment.

(l) "Supplier" means an entity that provides chemical constituents for hydraulic fracturing fluid.

(m) "Trade secret" has the meaning specified in K.S.A. 60-3320, and amendments thereto. (Authorized by and implementing K.S.A. 2012 Supp. 55-152; effective Dec. 2, 2013.)

82-3-1401. Hydraulic fracturing treatment; chemical disclosure. (a) Applicability. This regulation shall apply to each hydraulic fracturing treatment that uses more than 350,000 gallons of base fluid.

(b) Operator disclosures. Unless the operator submits all information to the chemical disclosure registry under subsection (f), the operator shall submit to the commission a list of each hydraulic fracturing treatment as part of the completion report required by K.A.R. 82-3-130. The list shall include the following information, as a percentage by mass of the total amount of hydraulic fracturing fluid:

(1) The base fluid used, including its total volume;

(2) each proppant; and

(3) each chemical constituent at its maximum concentration in the hydraulic fracturing fluid and its CAS number.

(c) Disclosures not required. No operator shall be required to disclose any chemical constituent that meets any of the following conditions:

(1) Is the incidental result of a chemical reaction or chemical process;

(2) is a component of a naturally occurring material and becomes part of the hydraulic fracturing fluid during the hydraulic fracturing treatment; or

(3) is a trade secret.

(d) Trade secrets. Each operator reporting that a chemical constituent is a trade secret shall indicate to the commission that disclosure of the chemical constituent is being withheld pursuant to a trade secret claimed by the operator, manufacturer, supplier, or service company. The operator shall provide the name of the chemical family or a similar descriptor and the name, authorized representative, mailing address, and phone number of the party claiming the trade secret.

(e) Inaccurate or incomplete information. No operator shall be responsible for inaccurate or incomplete information provided by a manufacturer, supplier, or service company.

(f) Alternate disclosure mechanism. In lieu of complying with subsection (b), the operator may submit the information required by subsection (b) to the chemical disclosure registry. The operator shall submit verification of prior submission to the chemical disclosure registry as part of the completion report required by K.A.R. 82-3-130. Each submission to the chemical disclosure registry shall also include the following information:

(1) The operator's name;

(2) the date on which the hydraulic fracturing treatment began;

(3) the county in which the treated well is located;

(4) the American petroleum institute number for the well;

(5) the well name and number;

(6) the global positioning system (GPS) location of the wellhead; and

(7) the true vertical depth of the well. (Authorized by and implementing K.S.A. 2012 Supp. 55-152; effective Dec. 2, 2013.)

82-3-1402. Hydraulic fracturing treatment; disclosure of trade secrets. (a) Director.

(1) The manufacturer, supplier, service company, or operator shall provide the specific identity of a chemical constituent reported to be a trade secret to the director under the following circumstances:

(A) Within two business days after receipt of a letter from the director stating that the information is necessary to investigate a spill or contamination of fresh and usable water relating to a hydraulic fracturing treatment; or

(B) immediately following notice from the director that an emergency requiring disclosure exists.

(2) The director may authorize disclosure of a trade secret disclosed under paragraph (a)(1) to any of the following persons:

(A) Any commissioner or commission staff member;

(B) the secretary or any staff member of the department of health and environment; or

(C) any relevant public health officer or emergency manager.

(b) Health professionals.

(1) A manufacturer, supplier, service company, or operator shall provide the specific identity of a chemical constituent reported to be a trade secret to any health professional who meets one of the following requirements:

(A) Provides a written statement of need and signs a confidentiality agreement on a form provided by the commission; or

(B) determines that the information is reasonably necessary for emergency treatment, verbally agrees to confidentiality, and provides a written statement of need and signed confidentiality agreement as soon as circumstances permit.

(2) Each statement of need shall state that the health professional has reasonable basis to believe that the information will assist in diagnosis or treatment of a specific individual who could have been exposed to the chemical constituents.

(3) Each confidentiality agreement shall state that the health professional will not disclose or use the information for any reason other than those reasons asserted in the statement of need.

(c) Continued confidentiality. A trade secret disclosed pursuant to this regulation shall not be further disclosed except as authorized by this regulation, K.S.A. 66-1220a and amendments thereto, or K.A.R. 82-1-221a. (Authorized by and implementing K.S.A. 2012 Supp. 55-152; effective Dec. 2, 2013.)

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) “Air mile” means nautical mile.

(c) “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.

(d) “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.

(e) “Chameleon carrier” means a motor carrier continuing its motor carrier operation under a new USDOT or motor carrier identification (MCID) number for the purpose of avoiding a fine, penalty, federal out-of-service order, or commission order that was issued against the previously used USDOT or MCID number.

(f) “Commission” means Kansas corporation commission.

(g) “Conviction” means any of the following, 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.

(h) “Director” means director of the transportation division of the commission.

(i) “Distance” means distance measured in air miles.

(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.

(j) “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.

(k) “Entire direct case” shall include, for the purpose of this article of the commission’s regulations, all testimony, exhibits, and other documentation offered in support of the proposed rates.

(l) “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.

(m) “FHWA” means federal highway administration.

(n) “FMCSA” means federal motor carrier safety administration.

(o) “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.

(p) “Groundwater well drilling rig” means any vehicle, machine, tractor, trailer, semi-trailer, or specialized mobile equipment propelled or drawn by mechanical power and used on highways to transport groundwater well field operating equipment, including any groundwater well drilling and pump service rig equipped to access groundwater.

(q) “Hazardous materials regulations” and “HMR” mean the federal hazardous material regulations as adopted in K.A.R. 82-4-20.

(r) “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.

(s) “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.

(t) “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.

(u) “Medical waiver” means “medical variance” as defined in 49 C.F.R. 390.5, which is adopted by reference in K.A.R. 82-4-3f.

(v) “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.

(w) “Notice” means advance notification to shipper subscribers through an organization’s docket service.

(x) “Organization” means a legal entity that administers an agreement approved under K.A.R. 82-4-69.

(y) “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 “North American standard out-of-service criteria,” including the appendix, published by the commercial vehicle safety alliance, revised on April 1, 2016, and hereby adopted by reference.

(z) “Ownership” means an equity holding in a business entity of at least five percent.

(aa) “Permit” means the document evidencing authority of a motor carrier to operate motor vehicles as a private carrier.

(bb) “PHMSA” means pipeline and hazardous materials safety administration of the United States department of transportation.

(cc) “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.

(dd) “Tariff publication” means the rates, charges, classification, ratings, or policies published by, for, or on behalf of common motor carriers of household goods, property, or passengers.

(ee) “Transportation” means the movement of household goods, property, or passengers, or any combination of these, and the loading, unloading, or storage incidental to this movement.

(ff) “USDOT” means the United States department of transportation. (Authorized by and implementing K.S.A. 66-1,112, K.S.A. 66-1,112g, K.S.A. 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; amended Sept. 20, 2013; amended May 6, 2016; amended July 26, 2019.)

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 Kansas and inspect and examine the motor carrier's records, books, and equipment located on the premises;

(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; and

(d) declare or place, or both, any commercial motor vehicle, driver, or motor carrier "out-of-service" for any "out-of-service" conditions as defined in K.A.R. 82-4-1. Authorized personnel shall declare and mark as out-of-service any commercial motor vehicle, driver, or motor carrier that by reason of its mechanical condition or loading would likely cause an accident or a breakdown

or is in violation of any commission economic or safety regulations or "out-of-service" criteria as defined in K.A.R. 82-4-1. An "out-of-service vehicle" sticker shall be used to mark each vehicle and any intermodal equipment as out-of-service. (Authorized by K.S.A. 66-1,108a and 66-1,108c; implementing K.S.A. 66-1,108b; effective Nov. 14, 2011; amended May 6, 2016; amended July 26, 2019.)

82-4-3a. Hours of service. (a)(1) With the following exceptions, 49 C.F.R. Part 395, as in effect on October 1, 2019 and as amended by 85 fed. reg. 33451-33452 (2020), excluding appendix A to subpart B, is hereby adopted by reference:

(A) The following revisions shall be made to 49 C.F.R. 395.1:

(i) 49 C.F.R. 395.1(a)(2) shall be deleted.

(ii) In paragraph (b)(1), the phrase "Except as provided in paragraph (h)(3) of this section," shall be deleted.

(iii) In paragraph (g)(1)(ii)(C), the phrase "— or, for calculation of the 20-hour period in § 395.1(h)(1)(ii) for drivers in Alaska, all on-duty time—" shall be deleted.

(iv) In paragraph (g)(2), the phrase "393.76 of this subchapter" shall be deleted and replaced with "49 C.F.R. 393.76 as adopted by K.A.R. 82-4-3i."

(v) In paragraph (g)(3), the phrase "393.76 of this subchapter" shall be deleted and replaced with "49 C.F.R. 393.76 as adopted by K.A.R. 82-4-3i."

(vi) 49 C.F.R. 395.1(h) shall be deleted.

(vii) 49 C.F.R. 395.1(i) shall be deleted.

(viii) In paragraph (k), the phrase "each State" shall be deleted and replaced with "the state of Kansas." The following shall be added after subparagraph (3): "(4) 'Planting and harvesting periods' means the time periods for planting, growing, and harvesting that occur between January 1 and December 31."

(ix) In paragraph (q), the phrase "49 CFR 397.5" shall be deleted and replaced with "49 C.F.R. 397.5 as adopted by K.A.R. 82-4-3k."

(x) In paragraph (s), the phrase "49 CFR 390.5" shall be deleted and replaced with "49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f."

(xi) In paragraph (x), the phrase "49 CFR 390.38(b)" shall be deleted and replaced with "49 C.F.R. 390.38(b) as adopted by K.A.R. 82-4-3f."

(B) The following revisions shall be made to 49 C.F.R. 395.2:

(i) In the definition of “farm supplies for agricultural purposes,” the phrase “each State” shall be deleted and replaced with “the state of Kansas.” The phrase “the State” shall be deleted and replaced with “the commission.”

(ii) In paragraph (4)(i) of the definition of “on duty time,” the phrase “§ 397.5 of this subchapter” shall be deleted and replaced with “49 C.F.R. 397.5 as adopted by K.A.R. 82-4-3k.”

(iii) In paragraph (7) of the definition of “on duty time,” the phrase “part 382 of this subchapter” shall be deleted and replaced with “49 C.F.R. Part 382 as adopted by K.A.R. 82-4-3c.”

(iv) The definition of “signal employee” shall be deleted and replaced with the following: “Signal employee’ means an individual who is engaged in installing, repairing or maintaining signal systems.”

(v) 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.”

(vi) In the definition of “transportation of construction material and equipment,” the following text shall be deleted: “, except that a State, upon notice to the Administrator, may establish a different air mile radius limitation for purposes of this definition if such limitation is between 50 and 75 air miles and applies only to movements that take place entirely within the State. This paragraph does not apply to the transportation of material 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.”

(C) The following changes shall be made to 49 C.F.R. 395.8:

(i) In paragraph (a)(1), the phrase “§ 390.5 of this subchapter” shall be deleted and replaced with “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(ii) All references to “December 18, 2017” shall be replaced with “January 3, 2018.”

(D) The following revisions shall be made to 49 C.F.R. 395.11:

(i) In paragraph (a), “December 18, 2017” shall be replaced by “January 3, 2018.”

(ii) Paragraphs (h)(1), (h)(2), and (h)(3) shall be deleted and replaced with the following: “A carrier utilizing an FMCSA authorized supporting document self-compliance system will be deemed to comply with K.A.R. 82-4-3a.”

(E) The following revisions shall be made to 49 C.F.R. 395.13:

(i) In paragraph (a), the phrase “every special agent of the Federal Motor Carrier Safety Administration (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 is certified in the inspection of motor carriers based on the motor carrier safety assistance program standards.”

(ii) 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 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 ensure 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, each as adopted by K.A.R. 82-4-3a; and

“(iii) the motor carrier understands that false certification can result in appropriate enforcement action.”

(iii) 49 C.F.R. 395.13(d)(4) shall be deleted and replaced with the following: “49 C.F.R. 395.13 does not alter the hazardous materials requirements prescribed in 49 C.F.R. 397.5 as adopted by K.A.R. 82-4-3k pertaining to attendance and surveillance of commercial motor vehicles.”

(F) The following revisions shall be made to 49 C.F.R. 395.15:

(i) In paragraph (a), “December 18, 2017” shall be replaced with “January 3, 2018.”

(ii) The last sentence in 49 C.F.R. 395.15(b)(3) shall be deleted.

(iii) In paragraphs (j)(1) and (j)(2), the term “FMCSA” shall be deleted and replaced by “commission.”

(G) In 49 C.F.R. 395.20(b), the phrase “December 18, 2017” shall be replaced with “January 3, 2018.”

(H) In 49 C.F.R. 395.22(j), the phrase “§ 390.29 of this subchapter” shall be replaced with “49 CFR 390.29 as adopted by K.A.R. 82-4-3f.”

(I) In 49 C.F.R. 395.26(a), the phrase “in accordance with the requirements contained in appendix A to subpart B of this part” shall be deleted.

(J) In 49 C.F.R. 395.28(c), “§ 390.3(f) of this subchapter” shall be replaced with “49 CFR 390.3 as adopted by K.A.R. 82-4-3f.”

(K) In 49 C.F.R. 395.34(d)(2), (d)(3), (d)(4), and (d)(5), the phrases “FMCSA Division Administrator for the State of the motor carrier’s principal place of business” and “FMCSA” shall be replaced by “the Commission.”

(L) 49 C.F.R. 395.38 shall be deleted.

(2) As used in this regulation, each reference to a portion of 49 C.F.R. Part 395 shall mean that portion as adopted by reference in this regulation.

(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 that is operating in intrastate commerce and is not either carrying 16 or more passengers, including the driver, or transporting materials required to be placarded shall be subject to this regulation. (Authorized by and implementing K.S.A. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 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; amended Sept. 20, 2013; amended, T-82-4-14-15, April 14, 2015; amended July 31, 2015; amended, T-82-1-3-18, Jan. 3, 2018; amended April 27, 2018; amended, T-82-9-17-20, Sept. 17, 2020; amended Jan. 15, 2021.)

82-4-3b. Procedures for transportation workplace drug and alcohol testing programs. (a)(1) With the exceptions specified in this subsection, 49 C.F.R. Part 40, as in effect on October 1, 2015, is hereby adopted by reference.

(2) The following revisions shall be made to 49 C.F.R. 40.3:

(A) In the definition of “Employee,” the term “U.S.” shall be inserted before the phrase “Department of Health and Human Services.”

(B) In the definition of “HHS,” the phrase “U.S.” shall be added before the phrase “Department of Health and Human Services” in both instances.

(C) 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 officer in the state who is certified in the inspection of motor carriers based on the motor carrier safety assistance program standards.”

(3) 49 C.F.R. 40.5 and 49 C.F.R. 40.7 shall be deleted.

(4) In 49 C.F.R. 40.21, paragraphs (b), (c), and (d) shall be deleted. In paragraph (e), the text “and DOT agency drug testing regulations” and “by the DOT agency just as you are for other violations of this part and DOT agency rules” shall be deleted.

(5) 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.”

(6) 49 C.F.R. 40.29 shall be deleted.

(7) 49 C.F.R. 40.37 shall be deleted.

(8) Subparts D through N shall be deleted.

(9) Subpart O shall be deleted. Each motor carrier shall use a DOT-certified substance abuse professional.

(10) Subparts P through R shall be deleted.

(11) In 49 C.F.R. Part 40, Appendix A through Appendix H shall be deleted.

(b) As used in this regulation, each reference to a portion of 49 C.F.R. Part 40 shall mean that portion as adopted by reference in this regulation.

(c) 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. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 66-1,129; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Sept. 20, 2013; amended July 26, 2019.)

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, 2015, 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)(1), the phrase “part 383 of this subchapter” shall be deleted and replaced with “the Kansas uniform commercial drivers' license act, found at K.S.A. 8-2,125 et seq.”

(C) In paragraph (a)(2), the word “or” shall be deleted.

(D) In paragraph (c), the phrase “§ 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)(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 and amendments thereto.”

(F) In paragraph (d)(3), the phrase “a State” shall be deleted and replaced by “the state of Kansas.” The phrase “part 383 of this subchapter” shall be deleted and replaced by “the Kansas uniform commercial drivers' license act.” The text “These individuals may be:” shall be deleted.

(G) Paragraphs (d)(3)(i) and (d)(3)(ii) shall be deleted.

(H) In paragraph (d)(4), the phrase “49 CFR 390.5” shall be deleted and replaced by “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(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 “§§ 386.2 and 390.5 of this subchapter, and § 40.3 of this title” shall be deleted and replaced by “49 C.F.R. 386.2, as adopted by K.A.R. 82-4-3o, 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. 82-4-20” 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 “controlled substances,” the phrase “§ 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.”

(E) In the definition of “DOT agency,” 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.”

(F)(i) In paragraph (1) of the definition of “refuse to submit,” the phrase “§ 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.”

(ii) In paragraphs (2) and (3) of the definition of “refuse to submit,” the phrase “§ 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.”

(iii) In paragraph (4) of the definition of “refuse to submit,” the phrase “§§ 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.”

(iv) In paragraph (5) of the definition of “refuse to submit,” the phrase “§ 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.”

(v) In paragraph (7) of the definition of “refuse to submit,” the phrase “§ 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.”

(G)(i) In paragraph (2) of the definition of “safety-sensitive function,” the phrase “§§ 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) In paragraph (4) of the definition of “safety-sensitive function,” the phrase “§ 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) 49 C.F.R. 382.117 shall be deleted.

(6) In 49 C.F.R. 382.119(b), the phrase “49 CFR 40.21” shall be deleted and replaced by “49 C.F.R. 40.21 as adopted by K.A.R. 82-4-3b.”

(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. 382.213:

(A) In paragraph (a), the phrase “21 CFR 1308.11 Schedule I” shall be deleted and replaced by “21 C.F.R. 1308.11 Schedule I.”

(B) In paragraph (b), the phrase “21 CFR part 1308” shall be deleted and replaced by “21 C.F.R. Part 1308, dated April 1, 2016, and hereby adopted by reference.”

(9) The following revisions shall be made to 49 C.F.R. 382.301:

(A) In paragraph (c)(1)(iii), 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), 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.”

(10) In 49 C.F.R. 382.303(h)(3), the phrase “§ 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.”

(11) In 49 C.F.R. 382.309 and 382.311, 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) 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 “, including those required by part 40, subpart G, of this title” shall be deleted.

(C) In paragraph (c)(5)(iv), the phrase “§ 40.213(g) of this title” shall be deleted and replaced by “49 C.F.R. 40.213(g) as adopted by K.A.R. 82-4-3b.”

(D) In paragraph (c)(6)(iii), the phrase “§ 40.111(a) of this title” shall be deleted and re-

placed by “49 C.F.R. 40.111(a), as adopted by K.A.R. 82-4-3b.”

(E) In paragraph (d), the phrase “§ 390.29 of this subchapter” shall be deleted and replaced by “49 C.F.R. 390.29, as adopted by K.A.R. 82-4-3f.”

(F) Paragraph (e) shall be deleted.

(13) In 49 C.F.R. 382.403(b), the phrase “49 CFR part 40” shall be deleted and replaced by “49 C.F.R. Part 40 as adopted by K.A.R. 82-4-3b.” The phrase “§ 40.26 and appendix H to part 40” shall be deleted and replaced by “49 C.F.R. 40.26 as adopted by K.A.R. 82-4-3b.”

(14) The following revisions shall be made to 49 C.F.R. 382.405:

(A) In paragraph (g), the phrase “§ 40.323(a)(2) of this title” shall be deleted and replaced by “49 C.F.R. 40.323(a)(2) as adopted by K.A.R. 82-4-3b.”

(B) In paragraph (h), the phrase “§ 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.”

(15) 49 C.F.R. 382.407 and 382.409 shall be deleted.

(16) In 49 C.F.R. 382.413, the phrase “§ 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.”

(17) In 49 C.F.R. 382.501(c), 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.”

(18) In 49 C.F.R. 382.503, the phrase “part 40, subpart O, of this title” shall be deleted and replaced by “Subpart O of 49 C.F.R. Part 40 as adopted by K.A.R. 82-4-3b.”

(19) 49 C.F.R. 382.507 shall be deleted.

(20) In 49 C.F.R. 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.”

(21) In 49 C.F.R. 382.605, the phrase “49 CFR part 40, Subpart O” shall be deleted and replaced by “Subpart O of 49 C.F.R. Part 40 as adopted by K.A.R. 82-4-3b.”

(b) As used in this regulation, each reference to a portion of 49 C.F.R. Part 382 shall mean that portion as adopted by reference in this regulation.

(c) 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. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 66-1,129; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Sept. 20, 2013; amended July 26, 2019.)

82-4-3d. Safety fitness procedures.

(a) With the following exceptions, 49 C.F.R. Part 385, as in effect on October 1, 2015, is hereby adopted by reference:

(1) 49 C.F.R. 385.1(a) and (b) shall be deleted.

(2) The following revisions shall be made to 49 C.F.R. 385.3:

(A) In the definition of “Applicable safety regulations or requirements,” the phrase “as adopted by K.A.R. 82-4-3a through 82-4-3o,” shall be inserted after the phrase “49 CFR chapter III, subchapter B—Federal Motor Carrier Safety Regulations.” The phrase “as adopted by K.A.R. 82-4-20” shall be inserted after the phrase “49 C.F.R. chapter I, subchapter C—Hazardous Materials Regulations.”

(B) In the definition of “CMV,” the phrase “§ 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.”

(C) In the definition of “commercial motor vehicle,” the phrase “§ 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.”

(D) In the definition of “HMRs,” the phrase “as adopted by K.A.R. 82-4-20” shall be inserted after the phrase “49 C.F.R. parts 171-180.”

(E) In the definition of “motor carrier operations in commerce,” the phrase “or intrastate” shall be added after the word “interstate” in paragraphs (1) and (2).

(F) The definition of “Safety ratings,” including paragraphs (1), (2), (3), and (4), shall be deleted.

(3) 49 C.F.R. 385.4 shall be deleted.

(4) The following revisions shall be made to 49 C.F.R. 385.5:

(A) The first paragraph 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 to reduce the risk associated with:”

(B) In paragraph (a), the phrase “part 383 of this chapter” shall be deleted and replaced with “the Kansas uniform commercial drivers’ license act, found at K.S.A. 8-2,125 et seq.”

(C) In paragraph (b), the phrase “part 387 of this chapter” shall be deleted and replaced with “49 C.F.R. Part 387 as adopted by K.A.R. 82-4-3n.”

(D) In paragraph (c), the phrase “part 391 of this chapter” shall be deleted and replaced with “49 C.F.R. Part 391 as adopted by K.A.R. 82-4-3g.”

(E) In paragraph (d), the phrase “part 392 of this chapter” shall be deleted and replaced with “49 C.F.R. Part 392 as adopted by K.A.R. 82-4-3h.”

(F) In paragraph (e), the phrase “part 393 of this chapter” shall be deleted and replaced with “49 C.F.R. Part 393 as adopted by K.A.R. 82-4-3i.”

(G) In paragraph (f), the phrase “part 390 of this chapter” shall be deleted and replaced with “49 C.F.R. Part 390 as adopted by K.A.R. 82-4-3f.”

(H) In paragraph (g), the phrase “part 395 of this chapter” shall be deleted and replaced with “49 C.F.R. Part 395 as adopted by K.A.R. 82-4-3a.”

(I) In paragraph (h), the phrase “part 396 of this chapter” shall be deleted and replaced with “49 C.F.R. Part 396 as adopted by K.A.R. 82-4-3j.”

(J) In paragraph (i), the phrase “part 397 of this chapter” shall be deleted and replaced with “49 C.F.R. Part 397 as adopted by K.A.R. 82-4-3k.”

(K) In paragraph (j), the phrase “parts 170 through 177 of this title” shall be deleted and replaced with “49 C.F.R. Parts 170 through 177 as adopted by K.A.R. 82-4-20.”

(5) 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:”.

(6) 49 C.F.R. 385.9 through 49 C.F.R. 385.19 shall be deleted.

(7) 49 C.F.R. 385.101 through 49 C.F.R. 385.119 shall be deleted.

(8) 49 C.F.R. 385.301 through 385.337 shall be deleted.

(9) 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 385.423, and in 49 C.F.R. Parts 171, 172, 173, 177, 178 and 180, as adopted by K.A.R. 82-4-20.”

(10) 49 C.F.R. 385.501 through 385.1019, including appendices A and B, shall be deleted.

(b) As used in this regulation, each reference to a portion of 49 C.F.R. Part 385 shall mean that portion as adopted by reference in this regulation.

(c) 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. 66-1,112, K.S.A. 66-1,112g, K.S.A. 66-1,129; implementing K.S.A. 66-1,112, K.S.A. 66-1,112g, K.S.A. 66-1,129, and K.S.A. 66-1,142a; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Oct. 22, 2010; amended Sept. 20, 2013; amended July 26, 2019.)

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, 2015 and as amended by 81 fed. reg. 47720 (2016) and the portions of 82 fed. reg. 5318 (2017) pertaining to subpart E, is hereby adopted by reference:

(1) The following revisions shall be made to 49 C.F.R. 390.3:

(A) The following revisions shall be made to paragraph (a):

(i) The phrase “subchapter B of this chapter” shall be deleted and replaced with “K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20.”

(ii) The phrase “or intrastate” shall be added after the word “interstate.”

(B) Paragraph (b) shall be deleted and replaced with the following: “The Kansas uniform commercial drivers’ license act, found at K.S.A. 8-2,125 et seq., is applicable to every person who operates a commercial motor vehicle in interstate or intrastate commerce and to all employers of such persons.”

(C) The following revisions shall be made to paragraph (c):

(i) The phrase “Part 387, Minimum Levels of Financial Responsibility for Motor Carriers” shall be deleted and replaced with “49 C.F.R. Part 387 as adopted by K.A.R. 82-4-3n.”

(ii) The phrase “§ 387.3 or § 387.27” shall be deleted and replaced with “49 C.F.R. 387.3 or 387.27 as adopted by K.A.R. 82-4-3n.”

(D) In paragraph (d), the phrase “subchapter B of this chapter” shall be deleted and replaced with “K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20.”

(E) 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.”

(F) 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.”

(G) In paragraph (e)(3), both instances of the phrase “this subchapter” shall be deleted and replaced with “K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20.”

(H) In paragraph (f), the phrase “this subchapter” shall be deleted and replaced with “K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20.”

(I) In paragraph (g), the phrase “of Subchapter B of this chapter” shall be deleted.

(J) 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.”

(K) Paragraph (g)(2) shall be deleted.

(L) Paragraph (g)(3) shall be deleted and replaced with “49 C.F.R. Part 387, as adopted by K.A.R. 82-4-3n, to the extent provided in 49 C.F.R. 387.3 as adopted by K.A.R. 82-4-3n.”

(M) Paragraph (g)(4) shall be deleted.

(N) The following revisions shall be made to paragraph (h):

(i) The phrase “of subchapter B of this chapter” shall be deleted.

(ii) Paragraph (1) shall be deleted and replaced with “Subpart F of 49 C.F.R. Part 385 as adopted by K.A.R. 82-4-3d.”

(iii) Paragraph (2) shall be deleted and replaced with “49 C.F.R. Part 386, Subpart F as adopted by K.A.R. 82-4-3o.”

(iv) Paragraph (4) shall be deleted and replaced

with “49 C.F.R. Part 393 as adopted by K.A.R. 82-4-3i.”

(v) Paragraph (5) shall be deleted and replaced with “49 C.F.R. Part 396 as adopted by K.A.R. 82-4-3j.”

(2) The following revisions shall be made to 49 C.F.R. 390.5:

(A) In the first paragraph, the phrase “this subchapter” shall be deleted and replaced with “K.A.R. 82-4-3a through K.A.R. 82-4-3o, and K.A.R. 82-4-20.”

(B) The following definitions shall be deleted:

(i) Conviction;

(ii) exempt motor carrier;

(iii) other terms;

(iv) secretary;

(v) state; and

(vi) United States.

(C) In the definition of “commercial motor vehicle,” the phrase “or intrastate” shall be inserted following the term “interstate.”

(D) In the definition of “driving a commercial motor vehicle while under the influence of alcohol,” the phrase “Table 1 to §383.51 or §392.5(a)(2) of this subchapter,” shall be deleted and replaced with “K.S.A. 8-2,125 et seq. or 49 C.F.R. 392.5(a)(2) as adopted by K.A.R. 82-4-3h.”

(E) 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 49 C.F.R. Subtitle B, Chapter III, Subchapter B, Appendix F, as adopted by K.A.R. 82-4-3f.” The phrase “§ 391.62” shall be deleted and replaced with “49 C.F.R. 391.62 as adopted by K.A.R. 82-4-3g.”

(F) In the definition of “farm vehicle driver,” the phrase “§177.823 of this subtitle” shall be deleted and replaced with “49 C.F.R. 177.823 as adopted by K.A.R. 82-4-20.”

(G) In the definition of “for-hire motor carrier,” the term “for-hire” shall have the same meaning as that for the term “public.”

(H) In the definition of “Hazardous material,” the phrase “United States” shall be inserted immediately before the phrase “Secretary of Transportation.”

(I) The following changes shall be made in the definition of “hazardous substance”:

(i) Both instances of the phrase “§ 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 “§ 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.”

(J) The definition of “medical examiner” shall be deleted and replaced by the following: “‘Medical examiner’ means an individual certified by FMCSA and listed on the national registry of certified medical examiners in accordance with 49 C.F.R. Part 390, Subpart D.”

(K) In the definition of “medical variance,” the phrase “part 381, subpart C, of this chapter or §391.64 of this chapter” shall be deleted and replaced with “K.A.R. 82-4-6d or 49 C.F.R. 391.64 as adopted by K.A.R. 82-4-3g.” The phrase “§ 391.49” shall be deleted and replaced with “49 C.F.R. 391.49 as adopted by K.A.R. 82-4-3g.”

(L) The definition of “out of service order” shall be deleted.

(M) 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.

(N) 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 officer in the state who is certified in the inspection of motor carriers based on the motor carrier safety assistance program standards.”

(O) In the definition of “use a hand-held mobile telephone,” the phrase “as adopted by K.A.R. 82-4-3i” shall be inserted after the phrase “49 C.F.R. 393.93.”

(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 revision shall be made to 49 C.F.R. 390.15:

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.

(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 intra-state only carriage of hazardous materials or intra-state 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 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.

(8) The following revisions shall be made to 49 C.F.R. 390.21:

(A) In paragraph (a), each instance of “subject to subchapter B of this chapter” shall be deleted.

(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)(2), the phrase “subchapter B of this chapter” shall be deleted and replaced with “49 C.F.R. Subtitle B, Chapter III, Subchapter B as adopted by K.A.R. 82-4-3a through K.A.R. 82-4-3o.”

(9) The following changes shall be made to 49 C.F.R. 390.23:

(A) In paragraphs (a), (a)(1)(i)(B), and (a)(2)(i)(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), the phrase “§§ 395.3(a) and (c) and 395.5(a) of this chapter” shall be deleted and replaced by “49 C.F.R. 395.3(a) and (c)

and 49 C.F.R. 395.5(a), all as adopted by K.A.R. 82-4-3a.”

(10) 49 C.F.R. 390.27 shall be deleted.

(11) The following revisions shall be made to 49 C.F.R. 390.29(b):

(A) The phrase “of the Federal Motor Carrier Safety Administration” shall be deleted.

(B) The word “Federal” appearing in the last sentence shall be deleted.

(12) 49 C.F.R. 390.37 shall be deleted.

(13) With the following exceptions, 49 C.F.R. 390.38 is hereby adopted by reference:

(A) In paragraph (a)(1), the phrase “49 CFR part 365 or” shall be deleted.

(B) In paragraph (a)(2), the phrase “49 CFR part 391” shall be deleted and replaced with “49 C.F.R. part 391 as adopted by K.A.R. 82-4-3g.”

(C) In paragraph (a)(3), the phrase “49 CFR part 392” shall be deleted and replaced with “49 C.F.R. part 392 as adopted by K.A.R. 82-4-3h.”

(D) In paragraph (a)(4), the phrase “49 CFR parts 393 and 396” shall be deleted and replaced with “49 C.F.R. part 393 as adopted by K.A.R. 82-4-3i and 49 C.F.R. part 396 as adopted by K.A.R. 82-4-3j.”

(E) In paragraph (a)(5), the phrase “49 CFR part 395” shall be deleted and replaced with “49 C.F.R. part 395 as adopted by K.A.R. 82-4-3a.”

(14) The following revisions shall be made to 49 C.F.R. 390.39:

(A) In paragraph (a)(1), the phrase “49 CFR Part 383 or controlled substances and alcohol use and testing in 49 CFR Part 382” shall be deleted and replaced with “the Kansas uniform commercial drivers’ license act, found at K.S.A. 8-2,125 et seq. or controlled substances and alcohol testing in 49 C.F.R. Part 382 as adopted by K.A.R. 82-4-3c.”

(B) In paragraph (a)(2), the phrase “49 CFR Part 391, Subpart E, Physical Qualifications and Examinations” shall be deleted and replaced with “49 C.F.R. Part 391, Subpart E as adopted by K.A.R. 82-4-3g.”

(C) In paragraph (a)(3), the phrase “49 CFR Part 395, Hours of Service of Drivers” shall be deleted and replaced with “49 C.F.R. Part 395 as adopted by K.A.R. 82-4-3a.”

(D) In paragraph (a)(4), the phrase “49 CFR Part 396, Inspection, Repair, and Maintenance” shall be deleted and replaced with “49 C.F.R. Part 396 as adopted by K.A.R. 82-4-3j.”

(E) Paragraph (b) shall be deleted.

(F) Paragraph (c) shall be deleted.

(15) The following revisions shall be made to 49 C.F.R. 390.40:

(A) In paragraph (c), the phrase “§ 396.3(a)(1)” shall be deleted and replaced with “49 C.F.R. 396.3(a)(1) as adopted by K.A.R. 82-4-3j.”

(B) In paragraph (e), the phrase “§ 396.11 of this chapter” shall be deleted and replaced with “49 C.F.R. 396.11 as adopted by K.A.R. 82-4-3j.”

(C) In paragraph (f), the phrase “§ 396.3(b)(3) of this chapter” shall be deleted and replaced with “49 C.F.R. 396.3(b)(3) as adopted by K.A.R. 82-4-3j.”

(D) In paragraph (g), the phrase “§ 396.17 of this chapter” shall be deleted and replaced with “49 C.F.R. 396.17 as adopted by K.A.R. 82-4-3j.”

(E) In paragraph (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(b)(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 chapter” 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 chapter” 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 “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 “K.A.R. 82-4-3a through K.A.R. 82-4-3o and K.A.R. 82-4-20 by filing a written complaint with the commission by: fax—785-271-3124; email: transportation@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.

(19) 49 C.F.R. Part 390, Subpart D shall be deleted.

(b) Section 8 of 49 C.F.R., Chapter III, Subchapter B, Appendix F, as in effect on October 1, 2015, is hereby adopted by reference.

(c) As used in this regulation, each reference to a portion of 49 C.F.R. Part 390 shall mean that portion as adopted by reference in this regulation.

(d) 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. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 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; amended Sept. 20, 2013; amended June 12, 2015; amended July 26, 2019.)

82-4-3g. Qualifications of drivers. (a) With the following exceptions, 49 C.F.R. Part 391, as in effect on October 1, 2015 and as amended by 81 fed. reg. 47720 (2016), is hereby adopted by reference:

(1) The following revisions shall be made to 49 C.F.R. 391.2:

(A) In paragraph (c), the phrase “§ 390.5 of this chapter” shall be deleted and replaced with “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(B) In paragraph (e), the phrase “49 CFR 390.38(b)” shall be deleted and replaced with “49 C.F.R. 390.38(b) as adopted by K.A.R. 82-4-3f.”

(C) The phrase “49 CFR 390.5” shall be deleted and replaced with “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(2) The following revision shall be made to 49 C.F.R. 391.11: 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 “§§ 392.9(a) and 383.111(a)(16) 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. 383.111(a)(16), as referenced by K.S.A. 8-2,133.”

(4) The following revisions shall be made to 49 C.F.R. 391.15:

(A) In paragraphs (c)(1)(i) and (c)(2)(iii), each instance of “§ 395.2 of this subchapter” and “§ 395.2 of this part” shall be deleted and replaced by “49 C.F.R. 395.2, as adopted by K.A.R. 82-4-3a.”

(B) In paragraph (c)(2)(i)(C), the phrase “§ 391.15(c)(2)(i)(A) or (B), or § 392.5(a)(2)” shall be deleted and replaced by “49 C.F.R. 391.15(c)(2)(i)(A) or (B) as adopted by K.A.R. 82-4-3g or 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 (a)(2)(A)” shall be added after the phrase “21 C.F.R. 1308.11 Schedule I.”

(D) In paragraphs (e)(1), (e)(2)(i), and (e)(2)(ii), the phrase “§ 392.80(a)” shall be deleted and replaced with “49 C.F.R. 392.80(a) as adopted by K.A.R. 82-4-3h.”

(E) In paragraphs (f)(1), (f)(2)(i), and (f)(2)(ii), the phrase “§ 392.82(a)” shall be deleted and replaced with “49 C.F.R. 392.82(a) as adopted by K.A.R. 82-4-3h.”

(5) The following revisions shall be made to 49 C.F.R. 391.21:

(A) In paragraph (b)(10)(iv)(B), the term “DOT” shall be deleted and replaced by “commission,” and the phrase “as adopted by K.A.R. 82-4-3b” shall be inserted after the phrase “49 C.F.R. Part 40.”

(B) In paragraph (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 “§ 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 “§ 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 “§ 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 “§ 382.605 of this chapter” 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 O” 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 (e)(3), the phrase “§ 382.605” shall be deleted and replaced with “49 C.F.R. 382.605, as adopted by K.A.R. 82-4-3c.” The phrase “part 40, subpart O” shall be deleted and replaced by “49 C.F.R. 40.281 through 40.313, as adopted by K.A.R. 82-4-3b.”

(K) In paragraph (f), the term “§ 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.”

(L) 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 “§ 386.12” shall be deleted and replaced with “K.A.R. 82-4-3g(a)(7)(B).”

(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.”

(M) In paragraph (m)(2), the phrase “part 383 of this chapter” shall be deleted and replaced with “the Kansas uniform commercial drivers’ license act, found at K.S.A. 8-2,125 et seq.”

(N) In paragraph (m)(2)(i)(A), the phrase “in accordance with §§ 383.71(b)(1) and 383.71(g) of this chapter” shall be deleted.

(O) In paragraph (m)(2)(i)(C), the phrase “in accordance with § 383.73(b)(5) of this chapter” shall be deleted.

(7) The following revision shall be made to 49 C.F.R. 391.25: In paragraph (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, or any Federal Motor Carrier Safety Regulations or Hazardous Materials Regulations, as adopted by article 4 of the commission’s regulations, occurring in interstate commerce.”

(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) The following revision shall be made to 49 C.F.R. 391.31: In 49 C.F.R. 391.31(c)(1), the phrase “§ 392.7 of this subchapter” shall be deleted and replaced with “49 C.F.R. 392.7 as adopted by K.A.R. 82-4-3h.”

(10) The following revision shall be made to 49 C.F.R. 391.33: In paragraph (a)(1), the phrase “§ 383.5 of this subchapter” shall be deleted and replaced by “K.S.A. 8-234b and amendments thereto.”

(11) The following revisions shall be made to 49 C.F.R. 391.41:

(A) The following revisions shall be made to paragraph (a)(2)(i)(A):

(i) The phrase “part 383 of this chapter” shall be deleted and replaced with “the Kansas uniform commercial drivers’ license act, found at K.S.A. 8-2,125 et seq.”

(ii) The phrase “in accordance with 49 CFR 383.71(h)” shall be deleted.

(B) In paragraph (a)(2)(ii), the phrase “in accordance with § 383.71(h)” shall be deleted.

(C) In paragraph (a)(2)(i)(B), the phrase “49 CFR part 383” shall be deleted and replaced with “the Kansas uniform commercial drivers’ license act, found at K.S.A. 8-2,125 et seq.”

(D) In paragraph (a)(2)(ii), the phrase “part 383 of this chapter” shall be deleted and replaced with “the Kansas uniform commercial drivers’ license act, found at K.S.A. 8-2,125 et seq.”

(E) 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.

(F) In paragraph (b)(12)(i), the phrase “as adopted by K.A.R. 82-4-3h” shall be added after the phrase “21 CFR 1308.11 Schedule I.”

(12) The following changes shall be made to 49 C.F.R. 391.43:

(A) The following revision shall be made to paragraph (a): The phrase “subpart D of part 390 of this chapter” shall be deleted and replaced with “subpart D of 49 C.F.R. Subtitle B, Chapter III, Subchapter B, Part 390.”

(B) 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.”

(C) The editorial note found after paragraph (i) shall be deleted.

(13) 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 Carrier, Driver and Vehicle Safety Standards (MC-PS)” 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. 82-1-235 and K.S.A. 77-601 et seq.”

(E) In paragraph (f), the first two occurrences of the phrase “Director, Office of Carrier, Driv-

er and Vehicle Safety Standards (MC-PS)” shall be deleted and replaced by the phrase “director of the commission’s transportation division.” The clause “or until the Director, Office of Carrier, Driver and Vehicle Safety Standards (MC-PS) orders otherwise” shall be deleted and replaced with “or orders otherwise.”

(14) 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 Commission, 1500 S.W. Arrowhead Road, Topeka, KS 66604.”

(C) In paragraph (b)(3), “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 following revisions shall be made to paragraph (d):

(F) 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.”

(G) 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.”

(H) In paragraph (j)(1), the first two sentences shall be deleted.

(I) 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 “subchapter B of the Federal Motor Carrier Safety Regulations (FMCSRs)”

shall be deleted and replaced by the phrase “as adopted by K.A.R. 82-4-3g.”

(iii) The term “FMCSRs” shall be deleted and replaced by “commission’s regulations regarding motor carrier safety.”

(15) The following revisions shall be made to 49 C.F.R. 391.51:

(A) In paragraph (b)(7)(ii), the phrase “defined at § 384.105 of this chapter” shall be deleted.

(B) The following revisions shall be made to paragraph (b)(8):

(i) The phrase “Field Administrator, Division Administrator, or State Director” shall be deleted and replaced by “the director of the transportation division of the commission.”

(ii) The phrase “or under K.A.R. 82-4-6d” shall be added at the end of the paragraph.

(C) Paragraph (d)(5) shall be deleted and replaced with the following: “Any medical waiver issued by the commission, including a Skill Performance Evaluation Certificate issued in accordance with 49 C.F.R. 391.49 as adopted by K.A.R. 82-4-3g, or the Medical Exemption letter issued by a Federal medical program in accordance with 49 C.F.R. Part 381.”

(16) In 49 C.F.R. 391.55, the text “as in effect on October 1, 2015, which are hereby adopted by reference” shall be inserted at the end of paragraph (b)(1).

(17) The following revision shall be made to 49 C.F.R. 391.61: The phrase “§ 390.5 of this subchapter” shall be deleted and replaced with “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(18) 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 contained in this subchapter” shall be deleted and replaced by “commission’s motor carrier regulations found in Article 4.”

(19) The following revision shall be made to 49 C.F.R. 391.63: In paragraph (a), the phrase “§ 390.5 of this subchapter” shall be deleted and replaced with “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(20) 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.”

(21) 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 “§ 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.”

(22) The following revision shall be made to 49 C.F.R. 391.67: The phrase “§ 390.5 of this subchapter” shall be deleted and replaced with “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(23) The following revision shall be made to 49 C.F.R. 391.69: The phrase “§ 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.”

(b) As used in this regulation, each reference to a portion of 49 C.F.R. Part 391 shall mean that portion as adopted by reference in this regulation.

(c) 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. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 66-1,129; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Nov. 14, 2011; amended Sept. 20, 2013; amended June 12, 2015; amended July 26, 2019.)

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, 2015 and as amended by 81 fed. reg. 47721 (2016), is hereby adopted by reference:

(1) In 49 C.F.R. 392.1 (b), the phrase “49 CFR 390.38(b)” shall be deleted and replaced with “49 C.F.R. 390.38(b) as adopted by K.A.R. 82-4-3f.”

(2) In 49 C.F.R. 392.2, the words “jurisdiction in which it is being operated” shall be deleted and replaced by “state of Kansas.”

(3) In paragraph (c) of 49 C.F.R. 392.4, the phrase “§ 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.”

(4) 49 C.F.R. 392.5 shall be revised as follows:

(A) In paragraph (a)(1), the phrase “§ 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 and dated August 10, 2005” 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 and dated August 10, 2005.”

(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 Kansas Judicial Review Act, found at K.S.A. 77-601 et seq.”

(5) In 49 C.F.R. 392.8, the phrase “§ 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.”

(6) In 49 C.F.R. 392.9(a)(1), the phrase “§§ 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.”

(7) The following revisions shall be made to 49 C.F.R. 392.9a:

(A) In paragraph (b), the last sentence shall be deleted.

(B) In paragraph (c), the phrase “5 U.S.C. 554 not later than 10 days after issuance of such order” shall be deleted and replaced with “K.A.R. 82-1-235 and the provisions of the Kansas Judicial Review Act, found at K.S.A. 77-601 et seq.”

(8) In 49 C.F.R. 392.9b, the phrase “49 U.S.C. 521” in paragraph (b) shall be deleted and replaced by “Kansas law.”

(9) 49 C.F.R. 392.10 shall be revised as follows:

(A) In paragraph (a)(5), the phrase “§ 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.”

(B) 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 and 107.107, both as adopted by K.A.R. 82-4-20.”

(C) In paragraph (b)(1), the phrase “§ 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.”

(10) The phrase “§ 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.”

(11) In 49 C.F.R. 392.33(a), the phrase “subpart B of part 393 of this title” shall be deleted and replaced by “49 C.F.R. Part 393, Subpart B, as adopted by K.A.R. 82-4-3i.”

(12) In 49 C.F.R. 392.51 (b), the phrase “as adopted by K.A.R. 82-4-20” shall be inserted after the phrase “Parts 171, 172, 173, and 178.”

(13) 49 C.F.R. 392.62 shall be revised as follows:

(A) In paragraph (a), the phrase “§ 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 “§ 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.”

(14) In 49 C.F.R. 392.80(c), the phrase “as adopted by K.A.R. 82-4-3f” shall be inserted after the phrase “49 C.F.R. 390.5.”

(b) As used in this regulation, each reference to a portion of 49 C.F.R. Part 392 shall mean that portion as adopted by reference in this regulation.

(c) 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. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 66-1,129; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Sept. 20, 2013; amended May 6, 2016; amended July 26, 2019.)

82-4-3i. Parts and accessories necessary for safe operation. (a)(1) With the following exceptions, 49 C.F.R. Part 393, as in effect on October 1, 2015 and as amended by 81 fed. reg. 47721 (2016), is hereby adopted by reference:

(A) In 49 C.F.R. 393.1(e), the phrase “49 CFR 390.38(b)” shall be deleted and replaced with “49 C.F.R. 390.38(b) as adopted by K.A.R. 82-4-3f.”

(B) The following revisions shall be made to 49 C.F.R. 393.5:

(i) The following provision shall be added after the definition of “curb weight”: “DOT C-2, DOT C-3, and DOT C-4. These terms shall be established by figure 12-1, found in 49 C.F.R. 571.108.”

(ii) In the definition of “heater,” the phrase “§177.834(l)(2) of this title” shall be deleted and replaced with “49 C.F.R. 177.834(l)(2) as adopted by K.A.R. 82-4-20.”

(iii) 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) and amendments thereto.” 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 those structures shall be distinguishable on the structures and in its records from the series of serial numbers used for manufactured homes.”

(iv) 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.”

(v) The definition for “reflective material” shall be deleted and replaced by the following: “Reflective material means a material conforming to federal specification L-S-300c, ‘sheeting and tape, reflective: nonexposed lens,’ as in effect on March 20, 1979 and as adopted by reference, meeting the performance standard in either table 1 or table 1A of SAE standard J594f, ‘reflex reflectors,’ as revised in January 1977 and as adopted by reference.”

(C) 49 C.F.R. 393.7 shall be deleted.

(D) The following revision shall be made to 49 C.F.R. 393.11: The last sentence of paragraph (a) (1) shall be deleted and replaced with the following: “All commercial motor vehicles must, at a minimum, meet the requirements of Subpart B of 49 C.F.R. Part 393 in effect at the time of manufacture. For vehicles manufactured prior to the earliest effective date of Subpart B of 49 C.F.R. Part 393, all commercial motor vehicles must, at a minimum, meet the requirements of Subpart B of 49 C.F.R. Part 393 as of the earliest effective date of Subpart B of 49 C.F.R. Part 393.”

(E) The following revision shall be made to 49 C.F.R. 393.13: In paragraph (a), the phrase “§ 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.

(F) The following revisions shall be made to 49 C.F.R. 393.24:

(i) In paragraph (b), the parenthetical sentence shall be deleted.

(ii) Paragraph (d) shall be deleted.

(G) In 49 C.F.R. 393.25(c) and (e), the last sentence shall be deleted and replaced with the following: “The aforementioned documents are hereby adopted by reference.”

(H) The following revisions shall be made to 49 C.F.R. 393.26:

(i) In paragraph (c), the parenthetical sentence shall be deleted and replaced with the following: “The aforementioned documents are hereby adopted by reference.”

(ii) In paragraph (d)(4), the phrase “§ 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.”

(I) In 49 C.F.R. 393.28, the clause “which is hereby adopted by reference,” shall be inserted after the phrase “October 1981,” and the last sentence shall be deleted.

(J) The parenthetical statement in 49 C.F.R. 393.42(b)(2) shall be deleted.

(K) The following revision shall be made to 49 C.F.R. 393.48: In paragraph (c)(1), the phrase “§ 390.5” shall be deleted and replaced with “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(L) The note following 49 C.F.R. 393.51(b) shall be deleted.

(M) In 49 C.F.R. 393.62(d)(1), the parenthetical sentence at the end of the paragraph shall be deleted and replaced with “Pages 1-37 of this document are hereby incorporated by reference.”

(N) 49 C.F.R. 393.67(c)(3) shall be deleted.

(O) The following revisions shall be made to 49 C.F.R. 393.71:

(i) In paragraph (h)(8), the phrase “Society of Automotive Engineers Standard No. J684c, ‘Trailer Couplings and Hitches—Automotive Type,’ July 1970” shall be deleted and replaced with “society of automotive engineers standard no. J684c, ‘trailer couplings and hitches—automotive type,’ dated July 1970, which is hereby adopted by reference.”

(ii) In paragraph (h)(9), the phrase “requirements of the Federal Motor Carrier Safety Ad-

ministration” shall be deleted and replaced by “Federal and Kansas requirements.”

(iii) In paragraph (m)(8), the phrase “requirements of the Federal Motor Carrier Safety Administration” shall be deleted and replaced by “Federal and Kansas requirements.”

(P) The following revision shall be made to 49 C.F.R. 393.75: In paragraphs (h)(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.”

(Q) 49 C.F.R. 393.77(b)(15) shall be deleted.

(R) In 49 C.F.R. 393.77(c), the phrase “§ 177.834(1) of this title” shall be deleted and replaced by “49 C.F.R. 177.834(l) as adopted by K.A.R. 82-4-20.”

(S) The following revision shall be made to 49 C.F.R. 393.86(a)(1): The third sentence shall be deleted.

(T) 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.”

(U) The following revisions shall be made to 49 C.F.R. 393.95:

(i) In paragraph (a)(1)(i), the phrase “§177.823 of this title” shall be deleted and replaced with “49 C.F.R. 177.823 as adopted by K.A.R. 82-4-20.”

(ii) In paragraph (a)(5), “Appendix A, Appendix B, Appendix H, Appendix I, Appendix J, Appendix L, Appendix O, and Appendix P, all dated July 1, 2015, which are hereby adopted by reference” shall be added after the phrase “under 40 CFR Part 82, Subpart G.”

(iii) In paragraph (f)(2), the phrase “§ 392.22” shall be deleted and replaced by “49 C.F.R. 392.22 as adopted by K.A.R. 82-4-3h.”

(iv) In paragraph (j), the period at the end of the second sentence shall be deleted and replaced with the clause “which is hereby adopted by reference.” The parenthetical sentence following the second sentence shall be deleted.

(V) The following revisions shall be made to 49 C.F.R. 393.104(e) and its corresponding table:

(i) In paragraph (e)(1), the phrase “Standard Specification for Strapping, Flat Steel and Seals, American Society for Testing and Materials (ASTM) D3953-97, February 1998” shall be deleted and replaced with “‘standard specification for strapping, flat steel and seals,’ American society for testing and materials (ASTM) D 3953-97, February 1998.” This specification is hereby adopted by reference.

(ii) In paragraph (e)(2), the phrase “National Association of Chain Manufacturers’ Welded Steel Chain Specifications, dated September 28, 2005” shall be deleted and replaced with “pages 3-13 of the national association of chain manufacturers’ ‘welded steel chain specifications,’ dated September 28, 2005.” These pages are hereby adopted by reference.

(iii) In paragraph (e)(3), the phrase “Web Sling and Tiedown Association’s Recommended Standard Specification for Synthetic Web Tiedowns, WSTDA-T1, 1998” shall be deleted and replaced with “pages 4-15 of the web sling & tie down association’s ‘recommended standard specification for web tie downs,’ WSTDA-T-1, revised 2015.” These pages are hereby adopted by reference.

(iv) In paragraph (e)(5)(i), the phrase “PETRS-2, Polyester Fiber Rope, three-Strand and eight-Strand Constructions, January 1993” shall be deleted and replaced with “CI 1304-96, ‘polyester (PET) fiber rope: 3-strand and 8-strand constructions,’ October 1998, which is hereby adopted by reference.”

(v) In paragraph (e)(5)(ii), the phrase “PPRS-2, Polypropylene Fiber Rope, three-Strand and eight-Strand Constructions, August 1992” shall be deleted and replaced with “CI 1301-07, ‘polypropylene fiber rope: 3-strand laid and 8-strand plaited constructions,’ May 2007, which is hereby adopted by reference.”

(vi) In paragraph (e)(5)(iii), the phrase “CRS-1, Polyester/Polypropylene Composite Rope Specifications, three-Strand and eight-Strand Standard Construction, May 1979” shall be deleted and replaced with “CI 1302A-96, ‘polyester/polyolefin dual fiber rope: 3-strand construction,’ April 1999, which is hereby adopted by reference.”

(vii) In paragraph (e)(5)(iv), the phrase “NRS-1, Nylon Rope Specifications, three-Strand and eight-Strand Standard Construction, May 1979” shall be deleted and replaced with “CI 1303-06, ‘nylon (polyamide) fiber rope: 3-strand laid and 8-strand plaited constructions,’ October 2006, which is hereby adopted by reference.”

(viii) In paragraph (e)(5)(v), the phrase “C-1, Double Braided Nylon Rope Specification DBN, January 1984” shall be deleted and replaced with “CI 1310-09, ‘nylon (polyamide) fiber rope: high performance double braid construction,’ May 2009, which is hereby adopted by reference.”

(2) As used in this regulation, each reference to a portion of 49 C.F.R. Part 393 shall mean that portion as adopted by reference in this regulation.

(b) As used in this regulation, each reference to any of the following federal motor vehicle safety standards (FMVSS) shall mean that standard in 49 C.F.R. Part 571, as in effect on October 1, 2015, which standards are hereby adopted by reference:

- (1) FMVSS 103, 49 C.F.R. 571.103;
- (2) FMVSS 104, 49 C.F.R. 571.104, sections S4.1 and 4.2.2 only;
- (3) FMVSS 105, 49 C.F.R. 571.105, sections S5.3 and 5.5 only;
- (4) FMVSS 106, 49 C.F.R. 571.106;
- (5) FMVSS 108, 49 C.F.R. 571.108;
- (6) FMVSS 111, 49 C.F.R. 571.111;
- (7) FMVSS 119, 49 C.F.R. 571.119, section S5.1(b) only;
- (8) FMVSS 121, 49 C.F.R. 571.121;
- (9) FMVSS 125, 49 C.F.R. 571.125;
- (10) FMVSS 205, 49 C.F.R. 571.205, section S6 only;
- (11) FMVSS 223, 49 C.F.R. 571.223; and
- (12) FMVSS 224, 49 C.F.R. 571.224, sections S5.1.1, 5.1.2, and 5.1.3 only.

(c) 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. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 66-1,129; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Nov. 14, 2011; amended Sept. 20, 2013; amended May 6, 2016; amended July 26, 2019.)

82-4-3j. Inspection, repair, and maintenance. (a) With the following exceptions, 49 C.F.R. Part 396, as in effect on October 1, 2015 and as amended by 81 fed. reg. 47722 (2016), is hereby adopted by reference:

(1) In 49 C.F.R. 396.1 (c), the phrase “49 CFR 390.5” shall be deleted and replaced with “49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.” In paragraph (d), the phrase “49 CFR 390.38(b)” shall be deleted and replaced with “49 C.F.R. 390.38(b) as adopted by K.A.R. 82-4-3f.”

(2) 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.”

(3) 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 is 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 Kansas highway patrol.”

(C) In paragraph (c)(1), the term “‘Out of Service Vehicle’ sticker” shall mean “a form approved by the Kansas highway patrol.”

(D) In paragraph (d)(3)(ii), the phrase “issuing agency” shall be deleted and replaced by “the state’s lead Motor Carrier Safety Assistance Program agency.”

(4) In paragraph (h) of 49 C.F.R. 396.17, the phrase “penalty provisions of 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.”

(5) The following revision shall be made to 49 C.F.R. 396.19: In paragraph (a)(1), the phrase “part 393” shall be deleted and replaced with “49 C.F.R. Part 393 as adopted by K.A.R. 82-4-3i.”

(6) In paragraphs (b)(2) and (3) of 49 C.F.R. 396.21, the word “Federal” shall be deleted.

(7) The following revisions shall be made to 49 C.F.R. 396.23:

(A) The following revision shall be made to paragraph (a): The phrase “as adopted in K.A.R. 82-4-3m” shall be added after “Appendix G.”

(B) The following revision shall be made to paragraph (b)(1): The phrase “by the Administrator” shall be deleted.

(b) As used in this regulation, each reference to a portion of 49 C.F.R. Part 396 shall mean that portion as adopted by reference in this regulation.

(c) 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. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 66-1,129; effective, T-82-12-29-04,

Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Sept. 20, 2013; amended May 6, 2016; amended July 26, 2019.)

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, 2015, is hereby adopted by reference:

(1) In 49 C.F.R. 397.1(a), the phrase “§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.”

(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. 82-4-3a and K.A.R. 82-4-3f through K.A.R. 82-4-3k.” The phrase “§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.”

(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 “§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.”

(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 “§177.817 of this title” shall be deleted and replaced by “49 C.F.R. 177.817 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” and “FMCSA” shall be deleted.

(B) In the definition of “Motor carrier,” the defi-

nitition portion shall be deleted and replaced with the following: “‘Motor carrier’ shall have the same definition as specified in 49 CFR 390.5 as adopted by K.A.R. 82-4-3f.”

(C) In the definition of “Motor vehicle,” the definition portion shall be deleted and replaced with the following: “‘Motor vehicle’ shall have the same definition as specified in 49 CFR 390.5 as adopted by K.A.R. 82-4-3f.”

(D) In the definition of “Indian tribe,” the text “dated October 25, 1994, which is hereby adopted by reference” shall be added after “25 U.S.C. 450b.”

(E) In the definition of “NRHM,” the phrase “as adopted by K.A.R. 82-4-20” shall be added after “49 CFR 172.504.”

(F) 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) 49 C.F.R. 397.69 shall be deleted.

(11) 49 C.F.R. 397.71 shall be deleted.

(12) 49 C.F.R. 397.73 shall be deleted.

(13) 49 C.F.R. 397.75 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.”

(C) In paragraph (b)(2), the phrase “as adopted by K.A.R. 82-4-20” shall be added after “49 CFR 173.403.”

(D) In the first sentence of paragraph (d), the phrase “as adopted by K.A.R. 82-4-20” shall be added after “49 CFR 173.403.”

(E) In paragraph (e)(1)(i), the phrase “as adopted by K.A.R. 82-4-20” shall be added after “49 CFR parts 172, 173, and 177.”

(F) In paragraph (e)(2), the phrase “§ 391.51 of this subchapter” shall be deleted and replaced with “49 C.F.R. 391.51 as adopted by K.A.R. 82-4-3g.”

(G) In paragraph (f), the phrase “as adopted by K.A.R. 82-4-20” shall be added after “49 CFR 173.22(c).”

(H) 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(1), 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.”

(I) 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) Except for paragraph (c), 49 C.F.R. 397.103 shall be deleted.

(17) Subpart E of 49 C.F.R. Part 397 shall be deleted.

(b) As used in this regulation, each reference to a portion of 49 C.F.R. Part 397 shall mean that portion as adopted by reference in this regulation.

(c) 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. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 66-1,129; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Sept. 20, 2013; amended May 6, 2016; amended July 26, 2019.)

82-4-31. Transportation of migrant workers. (a) With the following exceptions, 49 C.F.R. Part 398, as in effect on October 1, 2015, 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 December 16, 2014, 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 August 31, 2006, 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 “§ 398.3(b) of the Federal Motor Carrier Safety Regulations of the Federal Motor Carrier Safety Administration” shall be deleted and replaced with “49 C.F.R. 398.3(b) as adopted by K.A.R. 82-4-3l.”

(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 § 393.44 of this subchap-

ter” 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 is 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 “§ 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 “Forms MCS 63” shall be deleted and replaced by “the forms 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) As used in this regulation, each reference to a portion of 49 C.F.R. Part 398 shall mean that portion as adopted by reference in this regulation.

(c) 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. 66-1,112, K.S.A. 66-1,112g, K.S.A. 66-1,129, and K.S.A. 66-1,142a; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Sept. 20, 2013; amended July 26, 2019.)

82-4-3m. Employee safety and health standards. (a)(1) With the following exceptions, 49 C.F.R. Part 399, as in effect on October 1, 2015, is hereby adopted by reference:

(A) 49 C.F.R. 399.201 shall be deleted.

(B) In 49 C.F.R. 399.205, the definition of “person” shall be deleted.

(C) In 49 C.F.R. 399.209, paragraph (b) shall be deleted.

(2) Appendix G to 49 C.F.R. Chapter III, Subchapter B, as in effect on October 1, 2015, is hereby adopted by reference, except as follows: 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. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 66-1,129; effective, T-82-12-29-04, Dec. 29, 2004; effective April 29, 2005; amended Oct. 2, 2009; amended Sept. 20, 2013; amended July 26, 2019.)

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, 2015, is hereby adopted by reference:

(1) The following revisions shall be made to 49 C.F.R. 387.3:

(A) In paragraph (a), the phrase “for-hire” shall be deleted and replaced by “public.”

(B) In paragraph (c)(1), the phrase “as adopted by K.A.R. 82-4-20” shall be inserted after the phrase “49 CFR 173.403.”

(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.

(C) The definition of “State” shall be deleted and replaced by “state of Kansas.”

(3) The following revisions shall be made to 49 C.F.R. 387.7:

(A) 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 “under §387.309” shall be deleted.

(ii) The phrase “part 385 of this chapter” shall be deleted and replaced by “49 C.F.R. 385 as adopted by K.A.R. 82-4-3d.”

(C) In paragraph (g), the term “United States” shall be deleted and replaced by “state of Kansas.”

(4) The following revisions shall be made to 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 paragraphs (b) and (d), 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 business is written” shall be deleted and replaced by “the state of Kansas.”

(6) The following revision shall be made to 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 and 49 C.F.R. 387.27(a), 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) The following revisions shall be made to paragraph (e)(2):

(i) The phrase “for-hire” shall be deleted and replaced with “public.”

(ii) The phrase “FMCSA” shall be deleted and replaced with “commission.”

(iii) The phrase “subpart C of this part” shall be deleted and replaced with “K.A.R. 82-4-3n.”

(B) In paragraph (f), the phrase “within the United States” shall be deleted and replaced by “in the state of Kansas.”

(C) In paragraph (g), the phrase “the United States” shall be deleted and replaced by “the state of Kansas.”

(11) The following revision shall be made to 49 C.F.R. 387.33: The term “for hire” shall be deleted and replaced by “public” in the schedule of limits.

(12) In paragraphs (b), (c), and (d) of 49 C.F.R. 387.35, the words “in any State in which the motor carrier operates” shall be deleted and replaced by “in the state of Kansas.”

(13) The following revision shall be made to 49 C.F.R. 387.39: The phrase “prescribed by the FMCSA and approved by the OMB” shall be deleted and replaced with “approved by the commission.”

(14) 49 C.F.R. 387.41 shall be deleted.

(15) The following revisions shall be made to 49 C.F.R. 387.301:

(A) The following revision shall be made to paragraph (a)(1): The phrase “FMCSA” shall be deleted and replaced with “commission.”

(B) In paragraph (b), the phrase “FMCSA” shall be deleted and replaced by “commission.” The last sentence in paragraph (b) shall be deleted.

(C) In paragraph (c), the phrase “FMCSA in accordance with the requirements of section 13906 of title 49 of the U.S. Code,” shall be deleted and replaced by “commission.”

(16) The following revision shall be made to 49 C.F.R. 387.303: Paragraph (b)(4) shall be deleted.

(17) 49 C.F.R. 387.307 through 49 C.F.R. 387.323 shall be deleted.

(18) In 49 C.F.R. 387.401(c), the term “motor vehicle” shall be deleted and replaced with “motor vehicle as defined in 49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”

(19) The following revisions shall be made to 49 C.F.R. 387.403:

(A) In paragraph (a), the term “FMCSA” shall be deleted and replaced with “the commission.”

(B) In paragraph (b), the term “FMCSA” shall be deleted and replaced with “commission.”

(20) The following revisions shall be made to 49 C.F.R. 387.407: The first instance of the term “FMCSA” shall be deleted and replaced with “commission.” The phrase “FMCSA (or the Department of Transportation, where applicable)” shall be deleted and replaced with “commission.”

(21) 49 C.F.R. 387.409 through 49 C.F.R. 387.419 shall be deleted.

(b) As used in this regulation, each reference to a portion of 49 C.F.R. Part 387 shall mean that portion as adopted by reference in this regulation.

(c) 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. 66-1,112, K.S.A. 66-1,112g, K.S.A. 66-1,128, and K.S.A. 66-1,129; effective Oct. 22, 2010; amended Sept. 20, 2013; amended May 6, 2016; July 26, 2019.)

82-4-30. Imminent hazard. (a) With the following exceptions, 49 C.F.R. Part 386, Subpart F, as in effect on October 1, 2015, 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) Paragraph (b)(1) shall be deleted and replaced by the following text: “Whenever it is determined that a violation of the Kansas motor carrier statutes or administrative regulations, as amended, or a combination of such violations, poses an imminent hazard to safety, the commission may order.”

(C) In paragraph (b)(1)(i), the phrase “as pro-

vided by 49 U.S.C. 521(b)(5)” shall be deleted and replaced by “in Kansas.”

(D) In paragraph (b)(1)(ii), the phrase “as provided by 49 U.S.C. 521(b)(5) and 49 U.S.C. 31151(a)(3)(I)” shall be deleted and replaced by “in Kansas.”

(E) In paragraph (b)(4), the second sentence of the paragraph shall be deleted and replaced by the following sentence: “Administrative hearings shall be held in accordance with the Kansas Administrative Procedure Act and the commission’s administrative regulations.”

(3) In 49 C.F.R. 386.72 (b)(6), the phrase “in subpart G of this part” shall be deleted and replaced by “by Kansas law.”

(b) As used in this regulation, each reference to a portion of 49 C.F.R. Part 386, Subpart F shall mean that portion as adopted by reference in this regulation.

(c) 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. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 66-1,129; effective Oct. 22, 2010; amended Sept. 20, 2013; amended May 6, 2016; amended July 26, 2019.)

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 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. Each change 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 examiner, that are satisfactory to the director; and

(C) letters of recommendation from at least two licensed medical examiners, written on their personalized or institutional letterhead, including their national provider identifier assigned by the national plan and provider enumeration system, and meeting the following requirements:

(i) The reports and letters of recommendation shall indicate the opinions of the licensed medical examiners 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 diabetes shall be provided by an endocrinologist, diabetologist, or primary care physician who has treated the driver applicant;

(iv) 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

(v) 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 con-

templated, 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 for a waiver for limb impairment or amputation 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;

(B) a licensed endocrinologist, diabetologist, or primary care physician who attests that the glycosylated hemoglobin (HbA1C) is less than or equal to 8.0 mmol/mol; and

(C) 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. 2011 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; amended Sept. 20, 2013.)

82-4-8a. (Authorized by and implementing K.S.A. 2012 Supp. 66-1,129, as amended by L. 2013, ch. 14, sec. 3; effective May 1, 1981; amended May 1, 1984; amended April 30, 1990; amended May 10, 1993; amended July 14, 2000; amended Nov. 14, 2011; amended Sept. 20, 2013; revoked May 6, 2016.)

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) Copies of all applications for special permits pursuant to 49 C.F.R. Part 107, Subpart B, registrations of cargo tank and cargo tank motor vehicle manufacturers, assemblers, repairers, inspectors, testers, and design-certifying engineers pursuant to 49 C.F.R. Part 107, Subpart F, and registrations of persons who offer transportation or transport hazardous materials pursuant to 49

C.F.R. Part 107, Subpart G shall be made available to the commission for proof of compliance with federal hazardous materials regulations.

(c) The following federal regulations, as in effect on October 1, 2015, are hereby adopted by reference:

(1) 49 C.F.R. Part 171, except 171.1(a) and 171.6;
(2) 49 C.F.R. Part 172, except 172.701, 172.804 and 172.822;

(3) 49 C.F.R. Part 173, except 173.10 and 173.27;

(4) 49 C.F.R. Part 177;

(5) 49 C.F.R. Part 178; and

(6) 49 C.F.R. Part 180.

(d) When used in any provision adopted from 49 C.F.R. Parts 171, 172, 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 “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.”

(3) The terms “Department of Transportation,” “DOT,” and “department” shall be replaced with “commission as defined in K.A.R. 82-4-1.”

(4) The term “the United States” shall be replaced with “the state of Kansas.”

(e) 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.

(f) 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. 66-1,112, K.S.A. 66-1,112g, K.S.A. 66-1,129, and K.S.A. 66-1,129b; implementing K.S.A. 66-1,112, K.S.A. 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; amended Sept.

20, 2013; amended May 6, 2016; amended July 26, 2019.)

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. (Authorized by K.S.A. 66-1,112, K.S.A. 66-1,112g; implementing K.S.A. 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; amended July 26, 2019.)

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.

(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 online, at the national online registration (NOR) database administered by the motor carrier information exchange, 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) If a motor carrier is unable to provide the uniform standard insurance form required in subsection (a), 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) within the 30-day period.

(c) 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.

(d) 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. 66-1,112, K.S.A. 66-1,112g; implementing K.S.A. 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; amended July 26, 2019.)

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) Forms BMC 91 and BMC 91X shall be required for interstate regulated motor carriers in accordance with K.A.R. 82-4-3n.

(d) The uniform notice of cancellation of motor carrier insurance policies shall be form K. (Authorized by K.S.A. 66-1,112, K.S.A. 66-1,112g; implementing K.S.A. 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; amended July 26, 2019.)

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 origi-

nal 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 MCSA-1 that the applicant intends to transport; and

(4) 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. 66-1,112 and 66-1,117; implementing K.S.A. 66-1,114, 66-1,114b, and 66-1,117; 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; amended Sept. 20, 2013; amended July 26, 2019.)

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 ex-

emption 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

tive 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.)

82-4-29. Applications for private carrier permits. Each application for a private carrier permit shall be submitted on forms furnished by the commission and shall contain the following: (a) The name, street address, and mailing address of the applicant, and the title under which the applicant proposes to operate;

(b) a list of motor vehicles to be used by the applicant by make, year, and vehicle identification number;

(c) the commodities that the applicant intends to transport;

(d) the nature of the enterprise or enterprises for which commodities are to be transported; and

(e) evidence of compliance with K.A.R. 82-4-26(b). (Authorized by K.S.A. 66-1,112g, K.S.A. 2012 Supp. 66-1,117; implementing K.S.A. 66-1,112g, K.S.A. 2012 Supp. 66-1,115, K.S.A. 2012 Supp. 66-1,117; effective Jan. 1, 1971; amended May 1, 1981; amended May 10, 1993; amended Jan. 31, 2003; amended Sept. 20, 2013.)

82-4-30a. Applications for interstate registration. (a)(1) For the purposes of this regulation, “base state” shall have one of the following meanings:

(A) The meaning assigned to “base-state” in 49 U.S.C. 14504a(a)(2), as adopted in paragraph (a)(2) of this regulation; or

(B) if an entity does not have a principal place of business, office, or operating facility in any participating state, the participating state chosen by the entity that is nearest to the location of the entity’s principal place of business or any participating state within the entity’s FMCSA region.

(2) 49 U.S.C. 14504a(a)(2), as in effect on July 6, 2012, 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 October 1, 2015 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 as defined in paragraph (a)(1). (Authorized by K.S.A. 66-1,112; implementing K.S.A. 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; amended July 26, 2019.)

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.)

82-4-39. Surrender of identification cards. (a) If operations are abandoned under any certificate, permit, or license or upon cancellation or revocation of any certificate, permit, or license by the commission, all identification cards, authority cards, and registration receipts issued under the certificate, permit, or license shall be forwarded to the commission upon the carrier's receipt of the notice of commission consent to abandon or cancel or the notice of revocation.

(b) If by order of the commission or otherwise, operations are suspended under any certificate, permit, or license, the carrier shall remove all

identification cards issued under the certificate, permit, or license, from all vehicles upon the carrier's receipt of the notice of commission consent to abandon or cancel or the notice of revocation. (Authorized by K.S.A. 2012 Supp. 66-1,112 and K.S.A. 66-1,112g; implementing K.S.A. 2012 Supp. 66-1,112, K.S.A. 66-1,112g, and K.S.A. 2012 Supp. 66-1,119; effective Jan. 1, 1971; amended May 1, 1981; amended May 10, 1993; amended Oct. 3, 1994; amended Sept. 20, 2013.)

82-4-40. (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; revoked July 26, 2019.)

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) 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 subsection (a). (Authorized by K.S.A. 66-1,112, K.S.A. 66-1,112g, K.S.A. 66-1,140; implementing K.S.A. 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; amended July 26, 2019.)

82-4-44. (Authorized by K.S.A. 66-1,112 and 66-1,119; effective Jan. 1, 1971; revoked July 26, 2019.)

82-4-46. (Authorized by K.S.A. 2001 Supp. 66-1,112; implementing K.S.A. 2001 Supp. 66-123 and K.S.A. 2001 Supp. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1986; amended Jan. 4, 1999; amended Jan. 31, 2003; revoked July 26, 2019.)

82-4-48. Bills of lading 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 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 made 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, 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. 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; amended July 26, 2019.)

82-4-48a. (Authorized by and implementing K.S.A. 2012 Supp. 66-1,112, K.S.A. 66-1,112; effective Jan. 4, 1999; amended Oct. 22, 2010; amended Sept. 20, 2013; revoked July 26, 2019.)

82-4-50. Passenger carriers. (a) With the following exceptions, 49 C.F.R. Part 374, as in effect on October 1, 2015, is hereby adopted by reference:

(1) Each occurrence of the phrase “49 U.S.C. subtitle IV, part B” shall be deleted and replaced by “commission rules and regulations.”

(2) In 49 C.F.R. 374.307, each occurrence of the word “Secretary” shall be deleted and replaced by “commission rules and regulations.”

(3) In 49 C.F.R. 374.307(g), the phrase “notwithstanding 49 CFR 370.9,” shall be deleted.

(4) 49 C.F.R. 374.315 shall be deleted.

(5) In 49 C.F.R. 374.401(a), the phrase “49 U.S.C. 13501” shall be deleted and replaced by “commission rules and regulations.”

(6) In 49 C.F.R. 374.501, the phrase “authorized under 49 U.S.C. 13506 [49 U.S.C. 10932(c)]” shall be deleted.

(7) In 49 C.F.R. 374.503, the phrase “or intrastate” shall be added after the word “interstate.”

(8) In 49 C.F.R. 374.505, paragraphs (c) and (d) shall be deleted.

(b) As used in this regulation, each reference to a portion of 49 C.F.R. Part 374 shall mean that portion as adopted by reference in this regulation. (Authorized by and implementing K.S.A. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; amended July 26, 2019.)

82-4-51. (Authorized by and implementing K.S.A. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; revoked July 26, 2019.)

82-4-53. Common motor carrier rates and charges. (a) Common motor carriers of household goods 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.

(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 household goods and passenger rates and charges. (Authorized by K.S.A. 66-1,112; implementing K.S.A. 66-117, K.S.A. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; amended Jan. 4, 1999; amended Oct. 22, 2010; amended July 26, 2019.)

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. Household goods and passenger carrier tariffs. (a) Each tariff shall be type-written, 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 the tariff 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) specific references to the classification and to publications containing any exceptions to the classification governing the rates named in the tariff;

(6) the issued and effective dates; and

(7) 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) Each household goods tariff 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 either 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) Each passenger tariff shall show the following information:

(1) Fares, definitely and specifically stated in cents or in dollars and cents; 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. 66-1,112; implementing K.S.A. 66-117, K.S.A. 66-1,112; effective May 1, 1981; amended Jan. 4, 1999; amended Oct. 22, 2010; amended July 26, 2019.)

82-4-57. Powers of attorney and concurrences. (a) A household goods or passenger carrier wanting 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 household goods or passenger carrier wants 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 household goods or passenger carrier wants 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 and implementing K.S.A. 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; amended July 26, 2019.)

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.)

82-4-58d. (Authorized by and implementing K.S.A. 1997 Supp. 66-1,112; effective May 1, 1987; amended Jan. 4, 1999; revoked July 26, 2019.)

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 or a certificate of public service 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 contentions, 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, 66-1,112; implementing K.S.A. 66-106, 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; amended July 26, 2019.)

82-4-65. Protestants. Each protest against the granting of a permit, certificate, extension, 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 when 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 or intervenor shall offer evidence or a statement or shall participate in the hearing. (Authorized by K.S.A. 66-1,112; implementing K.S.A. 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; amended July 26, 2019.)

82-4-66. (Authorized by and implementing K.S.A. 1982 Supp. 66-1,112; effective Jan. 1, 1971; amended May 1, 1981; amended May 1, 1983; revoked July 26, 2019.)

82-4-68. Collective rate-making agreements. (a) Motor carriers of household goods and passengers may enter into an agreement with one or more of these carriers concerning rates, allowances, classifications, divisions, or rules related to them or procedures for joint consideration, initiation, or establishment of them. The agreement and all amendments shall be submitted to the commission for approval by the carriers that are parties to the agreement and shall be approved by the commission upon a finding that the agreement fulfills the requirements of K.S.A. 66-1,112, and amendments thereto, and the regulations of the commission. The agreement shall be administered by an organization designated by the carriers who are parties to the agreement.

(b) The agreement shall contain, at a minimum, provisions for the following:

(1) Election of rate committees and procedures for appointments to fill vacancies;

(2) initiation of rate proposals;

(3) recordkeeping;

(4) tariff participation fees for services;

(5) open meetings;

(6) quorum standards;

(7) proxy voting by members;

(8) role of employees in docketing proposals;

(9) notice of docket proposals and rate committee hearings;

(10) voting on rate proposals by member carriers;

(11) right of independent action;

(12) docketing of independent action;

(13) the names, addresses, and telephone numbers of carriers who are parties to the agreement;

(14) the names and addresses of each of its affiliates and of officers and directors of the carriers who are parties to the agreement;

(15) the carriers' motor carrier identification number assigned by the commission;

(16) the name, address, and telephone number of the organization that will administer the agreement;

(17) final disposition of cases docketed;

(18) prohibitions of the organization from protesting carrier proposals;

(19) amendments to the agreement; and

(20) powers of attorney. (Authorized by and implementing K.S.A. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983; amended Jan. 4, 1999; amended July 26, 2019.)

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.)

82-4-85. Rate applications filed by carriers party to a collective rate-making agreement.

(a) Each carrier that is a party to a collective rate-making agreement and files an application proposing a general increase or decrease in rates shall submit with the application schedules indicating to the commission the nature and extent of the proposed changes to be effected.

(b) Each application shall be based upon data submitted for a test year.

The application and schedules shall be filed with the commission by electronic mail. The size of print used in the application and schedules shall be clearly legible. Negative numbers shall be shown in parentheses. Amounts included in the application shall be cross-referenced between the appropriate summary schedule and supporting schedules, as well as among the various sections. Referencing shall include allocation ratios, when appropriate. All items shall be self-explanatory. Additional information, cross-references, or explanatory footnotes shall be presented on the schedule. The application shall be supported by schedules as specified in this subsection and shall be assembled under topical sections, with each section clearly identified and a page number for each schedule. The form, order, and titles of each section shall be prescribed as follows:

(1) Application, letter of transmittal, and authorization. This section shall contain a copy of the application, a copy of the letter of transmittal, and an appropriate document or documents authorizing the filing of the application, if any.

(2) General information and publicity. This section shall list the means employed by the carriers to acquaint the general public affected by the proposed rate change with the nature and extent of the proposal. These methods may include meetings with public officials, shippers, and citizen groups; newspaper articles; and advertisements. This section shall include general information concerning the application that will be of interest to the public and suitable for publication. That information shall include the following, if applicable:

(A) The percent and dollar amount of the aggregate annual increase or decrease that the application proposes; and

(B) any other pertinent information that the applicant wants to submit.

(3) List of carriers participating in the application. This list shall show the motor carrier identification number and the name and address of each carrier that is a participant in the application.

(4) List of carriers in the study group. The list shall state the carriers used in the study group. A detailed explanation of how the study group of carriers was selected shall also accompany this section.

(5) Study group carriers' operating ratios. This section shall contain the Kansas intrastate operating ratios for the actual test year for the study group carriers.

(6) Study group carriers: test year and pro forma income statements. This section shall present the following:

(A) An operating income statement for each of the study group carriers and a composite statement of all the study group carriers depicting the unadjusted test year operations for the total system; and

(B) A second schedule that expands the actual system composite income statement to a Kansas intrastate operations income statement. This statement shall be adjusted to show pro forma test year operations. Supporting schedules shall set forth a full and complete explanation of the purpose and rationale for the pro forma adjustments. The pro forma adjustments may include adjustments to reflect the elimination or normalization of nonrecurring and unusual items, and adjustments for known or determinable changes in revenue and expenses.

(7) Capital and cost of money. This section shall be prepared for each participating carrier having total Kansas intrastate system revenue of one million dollars or more. This section shall contain the following:

(A) A schedule indicating the amounts of the major components of the capital structures of the carrier that are outstanding at the beginning and at the end of the test year. This schedule shall contain the ratios of each component to the total capital;

(B) A schedule disclosing the cost of each issue of debt and preferred stock outstanding, with due allowance for premiums, discounts, and issuance expense. Data relating to the other components of capital shall be shown, if appropriate; and

(C) if the applicant is a part of a consolidated group or a division of another company, the consolidated capital structure shall be included in this section.

(8) The proposed tariffs. The application shall contain the proposed tariffs requested for approval.

(c) Prefiled testimony shall be required in all transportation rate cases filed by a tariff publishing organization, and all prefiled testimony shall be filed simultaneously with the filing of the application.

(d) Each application found to be incomplete or not in the form prescribed in this regulation shall be rejected by the commission. (Authorized by and implementing K.S.A. 66-1,112; effective, T-83-45, Dec. 8, 1982; effective May 1, 1983; amended Jan. 4, 1999; amended July 26, 2019.)

82-4-86. (Authorized by K.S.A. 1983 Supp. 66-1,112 and K.S.A. 1984 Supp. 66-1313a; implementing K.S.A. 1984 Supp. 66-1313a; effective, T-85-48, Dec. 19, 1984; effective May 1, 1985; revoked July 26, 2019.)

Article 11.—NATURAL GAS PIPELINE SAFETY

82-11-1. Definitions. The following terms, as used in this article and in the identified sections of the federal regulations adopted by reference, shall be defined as specified in this regulation:

(a) “Area of residential development” means a location in which over 25 residential customers are being, or are expected to be, added over the period in which the area is to be developed.

(b) “Barhole” means a small hole made near gas piping to extract air from the ground.

(c) “Combustible gas indicator” means a type of leak detection equipment capable of detecting and measuring gas concentrations in the atmosphere with minimum detection accuracy of 0.5% gas in the air.

(d) “Commission” means state corporation commission of Kansas.

(e) “Confined space” means any subsurface structure, including vaults, tunnels, catch basins and manholes, that is of sufficient size to accommodate a person and in which gas could accumulate.

(f) “Construction project” means the construction of either of the following:

(1) Any jurisdictional pipeline installation, including new, replacement, or relocation projects, in which the total piping installed during the project is in excess of 400 feet for small gas operators or 1,000 feet for all other gas operators; or

(2) any other significant pipeline installation that is subject to these safety standards.

(g) “Department of transportation” means U.S. department of transportation.

(h) “Exposed pipeline” means buried pipeline that has become uncovered due to erosion, excavation, or any other cause.

(i) “Flame ionization” means a type of leak detection equipment that uses a technology that continuously draws ambient air through a hydrogen flame and thereby provides an indication of the presence of hydrocarbons.

(j) “Gas-associated structure” means a device or facility utilized by a gas company, including a valve box, vault, test box, and vented casing pipe,

that is not intended for storing, transmitting, or distributing gas.

(k) “Gas pipeline safety section” means the gas pipeline safety section of the state corporation commission of Kansas.

(l) “Inspector” means an employee of the gas pipeline safety section of the state corporation commission of Kansas.

(m) “Leak detection equipment” means a device, including a flame ionization unit, combustible gas indicator, and other equipment as approved by the gas pipeline safety section, that measures the amount of hydrocarbon gas in an ambient air sample.

(n) “Lower explosive limit” and “LEL” mean the lowest percent of concentration of natural gas in a mixture with air that can be ignited at normal ambient atmospheric temperature and pressure.

(o) “Odorometer” means an instrument capable of determining the percentage of gas in air at which the odor of the gas becomes detectible to an individual with a normal sense of smell.

(p) “Small gas operator” means an operator who engages in the transportation or distribution of gas, or both, in a system having fewer than 5,000 service lines.

(q) “Small substructure” means any subsurface structure, other than a gas-associated structure, that is of sufficient size to accommodate a person and in which gas could accumulate, including telephone and electrical ducts and conduit, and nonassociated valve and meter boxes.

(r) “Sniff test” means a qualitative test performed by an individual with a normal sense of smell. The test is conducted by releasing small amounts of gas in order to determine whether an odorant is detectible.

(s) “Town border station” means a pressure-limiting station that reduces the pressure of the gas stream delivered downstream of the station, normally located within or immediately adjacent to the gas purchase point, at which natural gas ownership passes from one party to another, neither of which is the ultimate consumer.

(t) “Underground leak classification” means the process of sampling the subsurface atmosphere for gas using a combustible gas indicator in a series of available openings or barholes over, or adjacent to, the gas facility. If applicable, the sampling pattern shall include sample points that indicate sustained readings of 0% gas in air in the four cardinal directions.

(u) “Utility division” means the utility division of the state corporation commission of Kansas.

(v) “Yard line” means the buried, customer-owned, individually metered piping between the outlet of the meter and the outside wall of a residential premises. (Authorized by and implementing K.S.A. 2014 Supp. 66-1,150 and 66-1,157a; 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 July 7, 2003; amended Jan. 25, 2008; amended Jan. 9, 2015.)

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, 2013, 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) All instances of the word “administrator” shall be deleted and replaced with “commission.”

(b) 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. In addition, the incorporated materials are available from the respective organizations listed in paragraph (c)(1) of this section.”

(c) The following changes shall be made to 49 C.F.R. 192.7(c):

(1) Following the first full paragraph, “All forwards, tables of contents, and indexes are excluded from adoption” shall be added.

(2) Appendix X.1.4, “appeals of HSB actions,” shall be excluded from the adoption of the plastics pipe institute, inc.’s “policies and procedures for developing hydrostatic design basis (HDB), hydro-

static design stresses (HDS), pressure design basis (PDB), strength design basis (SDB), and minimum required strength (MRS) ratings for thermoplastic piping materials or pipe,” dated May 2008.

(d) 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.”

(e) 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.”

(f) 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.”

(g) 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.”

(h) 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 ser-

viceability. 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.”

(i) The following subsection shall be added to 49 C.F.R. 192.317: “(d) Each existing 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.”

(j) 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.”

(k) 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 (o) 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.”

(l) 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.”

(m) 49 C.F.R. 192.455(b) shall be deleted.

(n) 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.”

(o) 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.”

(p) 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.”

(q) 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 (a) and K.A.R. 82-11-4(n), 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.”

(r) 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(ff) 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.”

(s) 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.”

(t) 49 C.F.R. 192.491(b) shall be deleted.

(u) 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.”

(v) The following shall be added to 49 C.F.R. 192.517(a): “(8) Test date. (9) Description of facilities being tested.”

(w) 49 C.F.R. 192.517(b) shall be deleted and replaced by the following: “(b) 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 as modified by K.A.R. 82-11-4(u), 192.511 and 192.513.”

(x) 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.”

(y) 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.”

(z) 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.”

(aa) 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(dd).

“(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(ee).”

(bb) 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 pipeline 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.”

(cc) 49 C.F.R. 192.625(f) shall be deleted and replaced by the following:

“(f) Each operator shall ensure 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 ensured 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.”

(dd) 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 that 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. Min-

imum 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.

“(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 non-hazardous 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.”

(ee) 49 C.F.R. 192.721 shall be deleted and replaced by the following three paragraphs: “(a) The frequency with which pipeline facilities are patrolled shall be determined by the severity of the conditions which could cause failure or leakage, and the consequent hazards to public safety.

“(b) 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

“(c) Service lines and yard lines shall be patrolled at least once every three calendar years at intervals not exceeding 42 months.”

(ff) 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 de-

tection 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.

“(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.”

(gg) 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:

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.”

(hh) 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 2014 Supp. 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; amended Jan. 9, 2015.)

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 application, 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.)

82-11-11. Fees. (a) Except as specified in subsection (b), the fee for each person covered under K.S.A. 66-1,153 and K.S.A. 66-1,154, and amendments thereto, shall be \$1.00 per meter for each calendar year.

(b) The minimum annual fee shall not be less than \$100.00 for each calendar year. The maximum annual fee shall not exceed \$10,000.00 for each calendar year. (Authorized by and implementing K.S.A. 2013 Supp. 66-1,153 and K.S.A. 66-1,154; effective March 12, 1999; amended Jan. 9, 2015.)

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:

(1) 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 addition 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 whitenline the proposed excavation site.

(t) If the operator requests that the excavator white-line 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 respondent'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 renewable energy standards act (RESA), K.S.A. 66-1256, 66-1257, and 66-1259 and amendments thereto.

(b) "Auxiliary power" has the meaning assigned to "station power" in K.S.A. 66-1,170, and amendments thereto.

(c) "Capacity from generation" means the net capacity of renewable energy 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. 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.

(f) “Capacity from RECs” means the capacity associated with the purchase of renewable energy credits. For each source of RECs, this capacity shall be determined according to the following formulas:

$$\text{Capacity (MWs)} = \frac{\text{RECs}}{\text{Capacity Factor} \times 8760 \text{ hours}}$$

$$\text{Capacity Factor}_i = \frac{12}{n} \sum_{t=1}^n \frac{E_{i,t}}{8760 \times C_{i,t}}$$

where

i = the individual renewable generation facility (source of the RECs)

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 capacity factor shall be calculated for the source of the RECs, if possible. If the utility is unable to calculate the capacity factor for the source of the RECs, the capacity factor shall be the capacity factor of the utility’s own renewable generation from the prior calendar year for the same or similar type of resource as the source of the RECs, 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 the same or similar type of resource as the source of the RECs or if the source is unknown, the overall capacity factor of the utility’s total renewable generation shall be used. In the absence of renewable resource generation, a default capacity factor of 34% shall be used.

(g) “Data year” means the calendar year that occurred before the due date of the utility’s report to the commission specified in K.A.R. 82-16-2.

(h) “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.

(i) “Electric utility” and “utility” mean any “affected utility,” as defined by K.S.A. 66-1257 and amendments thereto.

(j) “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.

(k) “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.

(l) “REC” means “renewable energy credit,” which means a credit representing energy produced by renewable energy resources and issued as part of a program that has been approved by the commission. 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.

(m) “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(d)(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.

(n) “Renewable energy goal” means the goal established by K.S.A. 66-1256, and amendments thereto, for energy and energy portfolios of each utility subject to the provisions of the act. (Authorized by K.S.A. 2016 Supp. 66-106; implementing K.S.A. 2016 Supp. 66-1257 and 66-1259; effective Nov. 19, 2010; amended Feb. 24, 2017.)

82-16-2. Renewable energy goal and report. (a) Any utility may attain the renewable energy goal in K.S.A. 66-1256, and amendments thereto, by maintaining a portfolio of renewable capacity from generation, purchased energy, RECs, or net metering systems.

(b) Each utility planning to seek commission approval for recovery of reasonable costs incurred under RESA and either related to the previous mandatory requirement or due to attaining the renewable energy goal, pursuant to K.S.A. 66-1259 and amendments thereto, shall submit a report to the commission detailing that utility's efforts related to attainment of the renewable energy goal. 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 December 31 of each data year. An annual report shall be due on or before March 31 of each year. Each report shall contain the following information:

(1) A description of each type of renewable energy resource that was purchased or put into service on or before December 31 of the data year, including type, location, owner, operator, date of commencement of operations, nameplate capacity, and for the data year, the monthly capacity factor, monthly availability factor, and monthly and annual amounts of energy generated;

(2) a narrative supporting the rationale for selecting each capacity resource that was purchased or put into service and each purchased power contract that was executed during the data year;

(3) a description of the utility's plans for attaining the renewable energy goal for the current calendar year, including the utility's assessment of the expected impact to revenue requirements;

(4) the Kansas retail one-hour peak demand for each of the three calendar years before the data year and the average for these three 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; and

(7) total retail energy sales, as measured in kilowatt-hours (kWh), in Kansas for the data year. (Authorized by K.S.A. 2016 Supp. 66-106; implementing K.S.A. 2016 Supp. 66-1259; effective Nov. 19, 2010; amended Feb. 24, 2017.)

82-16-3. (Authorized by and implementing K.S.A. 2009 Supp. 66-1261; effective Nov. 19, 2010; revoked Feb. 24, 2017.)

82-16-4. Retail revenue requirement.

The retail revenue requirement attributable to attainment of the renewable energy goal shall be calculated as follows for each utility:

(a) In conjunction with the reports required by K.A.R. 82-16-2, each affected utility shall calculate the retail revenue requirement for each capacity resource used to attain the renewable energy goal. A capacity resource may result from generation resources, purchased energy, RECs, or net metering systems.

(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. (Authorized by K.S.A. 2016 Supp. 66-106; implementing K.S.A. 2016 Supp. 66-1259; effective Nov. 19, 2010; amended Feb. 24, 2017.)

82-16-5. (Authorized by K.S.A. 2009 Supp. 66-1261; implementing K.S.A. 2009 Supp. 66-1257 and 66-1262; effective Nov. 19, 2010; revoked Feb. 24, 2017.)

82-16-6. Renewable energy credit program. (a) Renewable energy credits 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 approved 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 or any attributes associated with renewable energy generation sold or intended for any purpose other than attainment of the renewable energy goal shall not be applied toward attainment of the renewable energy goal.

(c) For the purpose of RESA, unused RECs shall remain valid for up to two years from the end of the calendar year in which the associated electricity was generated and shall be permanently retired when used for attainment of the renewable energy goal prescribed by the act. To the extent that RECs or attributes associated with renewable energy generation are sold or used for any purpose other than attainment of the renewable energy goal, the utilities shall reduce the capacity used for attainment of the renewable energy goal according to the formula specified in this subsection.

Total Renewable Capacity for Voluntary Attainment
= $TRC - C_{OP}$

where

$$C_{OP} = \frac{E_{OP}}{CF \times 8760}$$

TRC = total renewable capacity

C_{OP} = renewable capacity sold or used for any other purpose than attainment of the renewable energy goal

E_{OP} = energy from RECs or renewable energy attributes sold or used for any other purpose than attainment of the renewable energy goal

CF = capacity factor for source of E_{OP}

(d) Each REC created, 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 K.S.A. 2016 Supp. 66-106; implementing K.S.A. 2016 Supp. 66-1259; effective Nov. 19, 2010; amended Feb. 24, 2017.)

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 standard 1741, “inverters, converters, controllers and inter-

connection 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 require-

ments 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 85

Abstracters' Board of Examiners

Articles

85-4. LICENSE FEE.

85-7. EXAMINATION FEES.

Article 4.—LICENSE FEE

85-4-1. License fee. The annual fee for each abstracter's license shall be \$75.00. (Authorized by K.S.A. 74-3901; implementing K.S.A. 2013 Supp. 58-2801; effective, T-86-8, April 1, 1985; effective May 1, 1986; amended Nov. 13, 1989; amended March 13, 2015.)

Article 7.—EXAMINATION FEES

85-7-1. Examination fees. (a) The fee for the examination shall be \$75.00.

(b) If an applicant does not pass the examination the first time, the applicant's fee for a second examination shall be \$50.00. (Authorized by K.S.A. 74-3901; implementing K.S.A. 58-2805; effective, T-86-8, April 1, 1985; effective May 1, 1986; amended Nov. 13, 1989; amended March 13, 2015.)

Agency 86

Kansas Real Estate Commission

Articles

- 86-1. EXAMINATION AND REGISTRATION.
- 86-2. AUTHORITY OF COMMISSION; PROCEDURE.
- 86-3. PERSONS HOLDING LICENSES; DUTIES.

Article 1.—EXAMINATION AND REGISTRATION

86-1-2. (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 2006 Supp. 58-3039, as amended by L. 2007, ch. 88, sec. 1; effective Jan. 1, 1966; amended Jan. 1, 1974; amended, E-74-50, Sept. 13, 1974; amended May 1, 1975; amended, E-81-18, July 16, 1980; amended May 1, 1981; amended, T-86-7-2-07, July 2, 2007; amended Nov. 16, 2007; revoked Nov. 14, 2016.)

86-1-3. Expiration of licenses. The expiration date for each original license issued by the commission shall be the first day of the month of issuance two years after the issuance date. Each license renewed by the commission shall expire two years after the expiration date of the preceding license.

This regulation shall be effective on and after January 1, 2019. (Authorized by K.S.A. 2017 Supp. 74-4202; implementing K.S.A. 2017 Supp. 58-3045; effective Jan. 1, 1966; amended, E-73-30, Sept. 28, 1973; amended Jan. 1, 1974; amended, E-81-18, July 16, 1980; amended May 1, 1981; amended, T-87-32, Nov. 19, 1986; amended May 1, 1987; amended, T-86-10-1-97, Oct. 1, 1997; amended Oct. 24, 1997; amended Jan. 1, 2019.)

86-1-4. (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 1990 Supp. 58-3045; effective Jan. 1, 1986; amended, E-81-18, July 16, 1980; amended May 1, 1981; amended, T-87-32, Nov. 19, 1986; amended May 1, 1987; amended Nov. 18, 1991; revoked Nov. 14, 2016.)

86-1-5. Fees. (a) Each applicant shall pay a fee in an amount equal to the actual cost of the examination and the administration of the examination to the testing service designated by the commission.

(b) Each applicant shall submit the following fees for licensure to the commission:

(1) For submission of an application for an original salesperson's license, a fee of \$15;

(2) for submission of an application for an original broker's license, a fee of \$50;

(3) for an original salesperson's license, a prorated fee based on a two-year amount of \$125;

(4) for an original broker's license, a prorated fee based on a two-year amount of \$175;

(5) for renewal of a salesperson's license, a two-year fee of \$125;

(6) for renewal of a broker's license, a two-year fee of \$175;

(7) for reinstatement of a license that has been deactivated or that has been canceled pursuant to K.S.A. 58-3047(c), and amendments thereto, a fee of \$15;

(8) for each branch office, a fee of \$100; and

(9) for each primary office of a company created or established by a supervising broker, a fee of \$100.

(c)(1) Each applicant shall meet one of the following requirements:

(A) Submit a paper fingerprint card to the commission and pay a fee of \$60 to the commission; or

(B) submit electronic fingerprints to the Kansas bureau of investigation (KBI) or through a KBI-approved vendor and pay the cost for that service.

(2) Each licensee who is submitting fingerprints in connection with an investigation of that licensee shall pay a fee of \$60 for the cost of submission of the licensee's fingerprints to the KBI for the purpose of obtaining a criminal history check conducted by the KBI and the federal bureau of investigation and for the commission's reasonable costs of administering the criminal history check program in connection with any investigation.

(d) Each course provider seeking course approval pursuant to K.S.A. 58-3046a, and amendments thereto, shall pay a fee of \$75 to the commission.

(e) Each licensee seeking approval of a course of instruction pursuant to K.S.A. 58-3046a(k), and amendments thereto, shall pay a fee of \$10 to the

commission. (Authorized by K.S.A. 2017 Supp. 58-3063; implementing K.S.A. 2017 Supp. 58-3039 and 58-3063; effective Jan. 1, 1966; amended, E-73-30, Sept. 28, 1973; amended Jan. 1, 1974; amended, E-74-50, Sept. 13, 1974; amended May 1, 1975; amended, E-81-18, July 16, 1980; amended May 1, 1981; amended May 1, 1982; amended May 1, 1983; amended, T-86-10, May 1, 1985; amended May 1, 1986; amended, T-87-32, Nov. 19, 1986; amended May 1, 1987; amended Sept. 26, 1988; amended July 31, 1991; amended Dec. 20, 1993; amended July 31, 1996; amended, T-86-10-1-97, Oct. 1, 1997; amended Oct. 24, 1997; amended March 13, 1998; amended, T-86-7-2-07, July 2, 2007; amended Nov. 16, 2007; amended Dec. 1, 2015; amended March 17, 2017; amended Dec. 21, 2018.)

86-1-10. Approved courses of instructions; procedure. (a) Definitions. Each of the following terms, as defined in this subsection, shall apply to K.A.R. 86-1-10 through K.A.R. 86-1-12 and K.A.R. 86-1-17:

(1) "Commission" means Kansas real estate commission.

(2) "Coordinator" means an individual who serves as the primary contact for a school and is responsible for complying with the requirements in this regulation.

(3) "Course" means instruction designed to fulfill the education requirements of K.S.A. 58-3046a, and amendments thereto.

(4) "Distance education course" means a course for which the school provides instructional materials by mail or electronic transmission to students who are physically separated from the instructor for all or a portion of the course.

(5) "In-person education course" means a course provided to students who are not physically separated from the instructor.

(6) "Monitoring" means review of approved courses by commission staff to ensure that the attendance, presentation platform, instruction time, outline, and materials provided by schools meet the requirements of the commission.

(7) "School" means an entity eligible under K.S.A. 58-3046a(g), and amendments thereto, to offer courses approved by the commission.

(b) Request for course approval. Each school seeking commission approval of a course shall submit the following information to the commission at least 45 days before the first scheduled class session:

(1) A completed course approval application obtained from the commission;

(2) a copy of all course materials, including textbooks, student workbooks, and examinations with answers;

(3) the total number of sessions, sections, or modules;

(4) the duration of each session, section, or module;

(5) the total number of requested hours for the course;

(6) the course objectives and a detailed course outline; and

(7) the course approval fee prescribed by K.A.R. 86-1-5.

(c) Additional course approval requirements for distance education courses.

(1) In addition to meeting the requirements of subsection (b), each school requesting approval of a distance education course shall submit the following information:

(A) The means to access the distance education course as it will be offered to students;

(B) evidence of sufficient information technology support to enable students to complete the distance education course;

(C) documentation on how the distance education course will require active participation by each student and substantial interaction between the students and the instructor, other students, or a computer program; and

(D) evidence that the system used for testing students will scramble questions and items for any quizzes or examinations to ensure a random presentation.

(2) Each distance education course certified by the association of real estate license law officials shall be presumed to meet the requirements in paragraph (c)(1).

(3) Each school offering a distance education course approved by the commission under K.S.A. 58-3046a(e) or K.S.A. 58-3046a(f), and amendments thereto, shall require each student to answer at least 10 quiz or examination questions per credit hour.

(4) Each school offering a distance education course approved by the commission under K.S.A. 58-3046a(a), K.S.A. 58-3046a(b), K.S.A. 58-3046a(c) or K.S.A. 58-3046a(d), and amendments thereto, shall require each student to answer at least 50 quiz or examination questions.

(5) Each school shall issue a certificate of completion of each distance education course

approved by the commission to meet any requirement of K.S.A. 58-3046a, and amendments thereto, to each student who has answered at least 90 percent of the quiz or examination questions correctly during the distance education course.

(d) Instructors. Each school coordinator shall be responsible for ensuring that the school's instructors have the specialized preparation, training, and experience in the subject matter to be taught to ensure competent instruction.

(e) Changes to an approved course.

(1) Except as provided in paragraph (e)(2), each school shall submit a new application for course approval under subsection (b) if there is any change to the course content, outline, objectives, or presentation platform for an approved course.

(2) A school shall not be required to submit a new application for course approval under subsection (b) if any of the following changes:

- (A) The coordinator;
- (B) the location of the school; or
- (C) the course title.

(3) Each school shall submit notification to the commission of each change described in paragraph (e)(2) at least 15 days before the change is scheduled to occur.

(4) Each school shall submit notification to the commission at least 15 days before the discontinuation of any course or the intent to close the school.

(f) Registration of approved courses; application for renewal.

(1) The registration of courses approved by the commission shall expire on January 31 of each year. Each application to renew the approval of a course shall be submitted on a form provided by the commission.

(2) Each application to renew approval of a course received after the expiration date shall require the submission of a new application for approval pursuant to subsection (b).

This regulation shall be effective on and after July 1, 2020. (Authorized by K.S.A. 2019 Supp. 58-3046a and K.S.A. 2019 Supp. 74-4202; implementing K.S.A. 2019 Supp. 58-3046a; effective, T-83-32, Oct. 25, 1982; effective May 1, 1983; amended May 1, 1984; amended, T-86-31, Sept. 24, 1985; amended May 1, 1986; amended, T-87-32, Nov. 19, 1986; amended May 1, 1987; amended Jan. 29, 1990; amended July 16, 1990; amended Nov. 17, 1995; amended Dec. 14, 2001; amended, T-86-7-2-07, July 2, 2007; amended Nov. 16, 2007; amended July 1, 2020.)

86-1-11. Minimum curricula and standards for course. (a) Each school offering a course approved by the commission under K.S.A. 58-3046a(a), and amendments thereto, shall use a course outline provided by the commission and shall use the title "principles of real estate."

(b) Each school offering a course approved by the commission under K.S.A. 58-3046a(b), and amendments thereto, shall use a course outline provided by the commission and shall use the title "Kansas real estate fundamentals course."

(c) Each school offering a course approved by the commission under K.S.A. 58-3046a(c), and amendments thereto, shall use a course outline provided by the commission and shall use the title "Kansas practice course."

(d) Each school offering a course approved by the commission under K.S.A. 58-3046a(d), and amendments thereto, shall use a course outline provided by the commission and shall use the title "Kansas real estate management course."

(e) Each school offering a course approved by the commission under K.S.A. 58-3046a(e), and amendments thereto, shall use a course outline provided by the commission and shall use the title "Kansas law course."

(f) The 12 hours of additional instruction required by K.S.A. 58-3046a(f), and amendments thereto, shall consist of at least three hours designated as mandatory hours titled "Kansas required core" and not more than nine hours designated as elective hours.

(1) A nonresident of Kansas may receive elective-hour credit by submitting to the commission proof of completion of courses approved by the real estate regulatory agency of the nonresident's state of residence completed during that individual's Kansas license renewal period.

(2) Each approved course shall have a total instruction time of at least three hours.

(3) Any licensee may receive a maximum of three elective hours of credit during any renewal period for real estate appraisal courses approved by the commission.

(4) Any licensee may receive a maximum of three elective hours of credit during any renewal period for attending a commission meeting approved by the commission. The licensee shall sign in at the beginning of the commission meeting and shall be physically present at the commission meeting for at least three consecutive hours of the commission meeting, to receive the three-hour credit.

(5) Any licensee who is an instructor of a course approved by the commission to meet a requirement of K.S.A. 58-3046a, and amendments thereto, may receive credit for the number of hours taught by the instructor. The credit may be received by an instructor only once for each course taught during a renewal period.

The provisions of this subsection shall be effective on and after July 1, 2020. (Authorized by K.S.A. 2019 Supp. 58-3046a and K.S.A. 2019 Supp. 74-4202; implementing K.S.A. 2019 Supp. 58-3046a; effective, T-86-31, Sept. 24, 1985; effective May 1, 1986; amended, T-87-32, Nov. 19, 1986; amended May 1, 1987; amended May 1, 1988; amended Sept. 26, 1988; amended Nov. 18, 1991; amended Dec. 20, 1993; amended Dec. 29, 1995; amended Jan. 1, 1997; amended, T-86-10-1-97, Oct. 1, 1997; amended Oct. 24, 1997; amended Sept. 17, 1999; amended, T-86-7-2-07, July 2, 2007; amended Nov. 16, 2007; amended, T-86-6-26-19, July 1, 2019; amended Jan. 31, 2020.)

86-1-12. Monitoring courses; withdrawal of approval. (a) Each approved course shall be subject to monitoring by the commission, with or without prior notice.

(b) Course approval may be withdrawn by the commission for falsification of attendance records or failure to comply with any provision of K.A.R. 86-1-10, K.A.R. 86-1-11, or K.A.R. 86-1-17.

(c) Withdrawal of course approval during class sessions in process shall not affect credit given to students who are attending the course. Approval of a course may be reinstated by the commission upon satisfactory evidence that deficiencies have been corrected. (Authorized by K.S.A. 2019 Supp. 58-3046a and K.S.A. 2019 Supp. 74-4202; implementing K.S.A. 2019 Supp. 58-3046a; effective, T-86-31, Sept. 24, 1985; effective May 1, 1986; amended Nov. 17, 1995; amended Jan. 31, 2020.)

86-1-13. (Authorized by K.S.A. 2006 Supp. 58-3046a, as amended by L. 2007, ch. 88, sec. 6, and K.S.A. 74-4202(b); implementing K.S.A. 2006 Supp. 58-3046a, as amended by L. 2007, ch. 88, sec. 6; effective, T-86-31, Sept. 24, 1985; effective May 1, 1986; amended May 1, 1988; amended Jan. 29, 1990; amended Sept. 21, 1992; amended Nov. 17, 1995; amended, T-86-7-2-07, July 2, 2007; amended Nov. 16, 2007; revoked Jan. 31, 2020.)

86-1-15. (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 58-3045, as amended by L. 2007, ch. 88, sec. 7 and K.S.A. 2006 Supp.

58-3046a, as amended by L. 2007, ch. 88, sec. 6; effective, T-87-32, Nov. 19, 1986; effective May 1, 1987; amended Nov. 17, 1995; amended, T-86-7-2-07, July 2, 2007; amended Nov. 16, 2007; revoked Dec. 21, 2018.)

86-1-16. (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 1987 Supp. 58-3046a; effective Sept. 26, 1988; revoked Jan. 31, 2020.)

86-1-17. Responsibilities of schools. (a) Course registration. Each school shall request that any applicant or licensee registering for a course verify the applicant's or licensee's registration or license number and use the applicant's or licensee's name exactly as it appears on file with the commission to ensure that the applicant or licensee will receive credit for the course.

(b) Issuance of certificates to students.

(1) Within five calendar days of completion of the course, each school shall issue a certificate of completion in person, electronically, or by mail to each student who successfully completes a course approved by the commission. Each school shall use certificate forms approved by the commission.

(2) The school shall not issue a certificate to any student who was absent for more than 10 percent of the classroom hours scheduled for courses registered, pursuant to K.A.R. 86-1-11, under the title "principles of real estate," "Kansas real estate fundamentals course," "Kansas real estate management course," "Kansas law course," or "Kansas practice course." The school shall not issue a certificate to any student who was absent during any portion of the scheduled classroom hours for any other course approved by the commission pursuant to K.A.R. 86-1-11.

(c) Submission of course completion records to the commission.

(1) Each school shall submit a list of the individuals who completed each course offered by the school, in a format approved by the commission and within five calendar days after the course completion date. If the completion date is less than five calendar days before any expiration date established by K.S.A. 58-3045 and amendments thereto and K.A.R. 86-1-3, the school shall submit the information no later than the expiration date.

(2) Any roster containing incorrect or incomplete information may be returned to the school. No credit hours may be entered into the commission records until the roster is corrected and returned to the commission.

(d) Advertising.

(1) A school shall not advertise a course as meeting the educational requirements of the Kansas real estate brokers' and salespersons' license act before the school receives commission approval.

(2) A school shall not advertise a course using a school name different from what was submitted to the commission on the course approval form.

(3) Neither a school nor a representative of a school shall guarantee that successful completion of a course will result in the student's passing a real estate licensing examination.

(4) The school shall include a statement that the course is approved for a specified number of mandatory hours toward the 12-hour requirement or for a specified number of elective hours toward the 12-hour requirement in any advertising of a course approved pursuant to K.A.R. 86-1-11 and in any course registration form.

(5) A school shall not publish or distribute information that is false, misleading, or inconsistent with Kansas real estate license law.

(e) Maintenance of records.

(1) Each school shall maintain for at least three years a record of each student who has successfully completed a course approved by the commission.

(2) The school shall keep attendance records current and available for inspection by commission representatives upon request. (Authorized by K.S.A. 2019 Supp. 58-3046a and K.S.A. 2019 Supp. 74-4202; implementing K.S.A. 2019 Supp. 58-3046a; effective Nov. 17, 1995; amended, T-86-7-2-07, July 2, 2007; amended Nov. 16, 2007; amended Jan. 31, 2020.)

86-1-18. (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 2006 Supp. 58-3039, as amended by L. 2007, ch. 88, sec. 1; effective Nov. 17, 1995; amended, T-86-7-2-07, July 2, 2007; amended Nov. 16, 2007; revoked Jan. 31, 2020.)

86-1-19. Submission of supporting documentation with application. In addition to submitting the application for original licensure as a real estate broker or salesperson, each applicant shall file the following with the commission:

(a) The applicant's fingerprints and a completed waiver, on a form approved by the commission, and the fee required by K.A.R. 86-1-5(c)(1)(A);

(b) documentation concerning any final court judgment, memorandum, or other dispositive order or any settlement agreement resulting from litigation filed against the applicant or any real es-

tate company owned in whole or in part by the applicant relating to the business of buying, selling, exchanging, or leasing real estate or to any activity listed in the definition of "broker" in K.S.A. 58-3035 and amendments thereto;

(c) a statement that completely and truthfully discloses any pending charges, plea of guilty or nolo contendere, diversion or suspended imposition of sentence, or conviction of a misdemeanor or felony. If requested by the commission, the applicant shall also submit documentation concerning any matters disclosed pursuant to this subsection;

(d) documentation concerning any denial, revocation, suspension, voluntary surrender, or any other disciplinary action taken by the state of Kansas or another jurisdiction against any professional or occupational license or certificate held by the applicant;

(e) a license history certification from any jurisdiction in which the applicant is currently licensed or has ever been licensed; and

(f) a nonresident service of process appointment form for any applicant who is not a resident of Kansas, which shall be submitted on a form approved by the commission. (Authorized by K.S.A. 2017 Supp. 74-4202; implementing K.S.A. 2017 Supp. 58-3039, K.S.A. 2017 Supp. 58-3040, K.S.A. 2017 Supp. 58-3043, and K.S.A. 2017 Supp. 58-3050; effective Nov. 8, 2002; amended, T-86-7-2-07, July 2, 2007; amended Nov. 16, 2007; amended Dec. 21, 2018.)

Article 2.—AUTHORITY OF COMMISSION; PROCEDURE

86-2-8. (Authorized by K.S.A. 1996 Supp. 74-4202(b), as amended by 1997 H.B. 2264, Sec. 46; implementing K.S.A. 58-3061 and K.S.A. 1996 Supp. 74-4202(b), as amended by 1997 H.B. 2264, Sec. 46; effective Sept. 12, 1994; amended, T-86-10-1-97, Oct. 1, 1997; amended Oct. 24, 1997; revoked Nov. 14, 2016.)

Article 3.—PERSONS HOLDING LICENSES; DUTIES

86-3-6a. (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 58-3060, as amended by L. 1986, Ch. 209, Sec. 12; effective, E-81-18, July 16, 1980; effective May 1, 1981; amended, T-87-32, Nov. 19, 1986; amended May 1, 1987; amended May 1, 1988; revoked Jan. 31, 2020.)

86-3-7. Advertising. (a) For the purposes of this regulation and K.S.A. 58-3034 et seq. and amendments thereto, “advertisement” and “advertising” shall mean communication in any form of media between a licensee or other entity acting on behalf of one or more licensees and consumers or the public, for any purpose related to licensed real estate activity. These terms shall include business cards, signs, insignias, letterheads, telephone or electronic mail, radio, television, newspaper and magazine advertisements, internet advertising, web sites, social media or social networking, display or group advertisements in telephone directories, and billboards.

(b) No employed or associated salesperson or associate broker may include in an advertisement a name or team name that meets any of the following conditions:

(1) Uses the term “realty,” “brokerage,” “company,” or any other term that can be construed as a real estate company separate from the supervising broker’s company;

(2) is more than two times larger in font size than the font size of the supervising broker’s trade name or business name; or

(3) is not adjacent to the supervising broker’s trade name or business name in any internet, web site, social media, or social networking advertisement.

(c) The context of an advertisement may be considered by the commission when determining whether the employed or associated salesperson or associate broker committed a violation under subsection (b).

This regulation shall be effective on and after July 1, 2020. (Authorized by K.S.A. 2019 Supp. 74-4202; implementing K.S.A. 2019 Supp. 58-3086; effective Jan. 1, 1966; amended Jan. 1, 1974; amended, E-76-18, April 29, 1975; modified, L. 1976, ch. 332, May 1, 1976; amended, E-81-18, July 16, 1980; amended May 1, 1981; amended Dec. 20, 1993; amended July 1, 2020.)

86-3-15. Reporting of information. (a) Each licensee shall report any of the following circumstances to the commission, in writing and within 10 days of the date of occurrence:

(1) Any settlement from litigation filed against the licensee or any real estate company owned in whole or in part by the licensee relating to the business of buying, selling, exchanging, or leasing real estate or to any activity listed in the definition of “broker” in K.S.A. 58-3035 and amendments

thereto. The licensee shall provide a copy of the settlement agreement;

(2) any final court judgment, memorandum, or other dispositive order against the licensee or any real estate company owned in whole or in part by the licensee;

(3) any charge of, arrest or indictment for, plea of guilty or nolo contendere to, or conviction of any of the following:

(A) Any misdemeanor; or

(B) any felony;

(4) any change in the licensee’s name;

(5) any change in the licensee’s residence address;

(6) any change in the licensee’s electronic-mail address on file with the commission;

(7) any denial by another jurisdiction of an application made by the licensee for a broker or salesperson license;

(8) any suspension or revocation of, or any other disciplinary action taken by another jurisdiction against a broker or salesperson license held by the licensee; or

(9) any denial, suspension, revocation, voluntary surrender, or any other disciplinary action taken by the state of Kansas or another jurisdiction against any professional or occupational license or certificate held by the licensee.

(b) Each supervising broker for a partnership, association, or corporation whose members or officers are licensed pursuant to K.S.A. 58-3042, and amendments thereto, shall be responsible for reporting the information required by this regulation as it relates to the partnership, association, or corporation.

(c) Each supervising broker and branch broker shall report to the commission any information pursuant to paragraph (a)(3) that is applicable to any associated or employed salesperson or associate broker. This report shall be submitted in writing within 10 days of the date that knowledge of the information comes to the attention of the broker.

(d) Each licensee shall report to the licensee’s supervising broker or branch broker any information pursuant to paragraph (a)(3) within 10 days of the date of occurrence. (Authorized by K.S.A. 2017 Supp. 74-4202; implementing K.S.A. 2017 Supp. 58-3042, 58-3043, 58-3050, 58-3062, and 74-4202; effective Jan. 1, 1974; amended, E-81-18, July 16, 1980; amended May 1, 1981; amended May 1, 1984; amended, T-87-32, Nov. 19, 1986; amended May 1, 1987; amended Nov. 8, 2002;

amended, T-86-7-2-07, July 2, 2007; amended Nov. 16, 2007; amended Dec. 21, 2018.)

86-3-19. Disclosure of interest in property purchased, sold, or leased. (a) Each licensee shall disclose in the real estate contract or lease any interest that the licensee or the licensee's immediate family member has or will have in the following, as applicable:

(1) The real estate being sold or leased by the seller or lessor; and

(2) the real estate being purchased or leased by the buyer or lessee.

(b) For purposes of this regulation, "interest" shall have the meaning specified in K.S.A. 58-3035, and amendments thereto and "immediate family member" shall mean spouse, parent, child, or sibling. (Authorized by K.S.A. 2015 Supp. 74-4202; implementing K.S.A. 2015 Supp. 58-3035 and 58-3062; effective May 1, 1982; amended, T-86-6-25-08, July 1, 2008; amended Oct. 24, 2008; amended Nov. 14, 2016.)

86-3-20. (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 58-3049, as amended by 1985 SB 107; effective, T-86-31, Sept. 24, 1985; effective May 1, 1986; revoked Jan. 31, 2020.)

86-3-26. Real estate brokerage relationships brochure. (a) The commission's document titled "real estate brokerage relationships," as approved by the commission on October 10, 2017, is hereby adopted by reference.

(b) As required by K.S.A. 58-30,110 and amendments thereto, each licensee shall give any prospective buyer or seller a brochure titled "real estate brokerage relationships." Any brokerage firm may either use the commission document adopted by reference in subsection (a) or design a brochure that contains at least the same information contained in that document. Each brochure shall also provide the name of the licensee providing the brochure, the name of the supervising or branch broker of the licensee if applicable, and the name of the brokerage firm as registered with the commission. (Authorized by K.S.A. 58-30,110 and K.S.A. 2017 Supp. 74-4202; implementing K.S.A. 58-30,110; effective, T-86-10-1-97, Oct. 1, 1997; effective Oct. 24, 1997; amended March 16, 2018.)

86-3-26a. Designated agents; disclosure of brokerage relationships. (a) If a supervising broker or branch broker designates in a written

agency agreement one or more designated agents to represent the interests of a buyer, seller, tenant, or landlord client, any other salespersons or associate brokers that are employed by or associated with the supervising broker or branch broker who are not specifically designated in the written agency agreement to represent the interests of the client shall not be deemed to have a brokerage relationship with the client.

(b) If a designated agent has been appointed to represent a buyer, seller, tenant, or landlord in a transaction, the brokerage relationship disclosure in the contract or lot reservation agreement shall specify that a designated agent was appointed to represent the interests of the client.

(c) Each licensee involved in a transaction as a statutory agent or a transaction broker shall ensure the completeness and accuracy of the disclosure required by K.S.A. 58-30,110(c), and amendments thereto. (Authorized by K.S.A. 2015 Supp. 74-4202; implementing K.S.A. 58-30,109 and 58-30,110; effective Nov. 16, 2007; amended Nov. 14, 2016.)

86-3-27. Transaction broker addendum. The commission's form titled "transaction broker addendum," as approved by the commission on October 10, 2017, is hereby adopted by reference. Each licensee shall ensure that this form is completed to obtain the informed consent of a seller client and a buyer client pursuant to K.S.A. 58-30,109, and amendments thereto. (Authorized by K.S.A. 58-30,109 and K.S.A. 2017 Supp. 74-4202; implementing K.S.A. 58-30,109; effective, T-86-10-1-97, Oct. 1, 1997; effective Oct. 24, 1997; amended March 16, 2018.)

86-3-28. Buyer's or tenant's consent. The commission's form titled "buyer's or tenant's consent to direct negotiation," as approved by the commission on April 18, 2017, is hereby adopted by reference. Each seller's agent, landlord's agent, or transaction broker shall ensure that this form is completed and signed by the buyer or the tenant before engaging in direct negotiations with that buyer or tenant. (Authorized by K.S.A. 2017 Supp. 74-4202; implementing K.S.A. 2017 Supp. 58-30,103; effective, T-86-10-1-97, Oct. 1, 1997; effective Oct. 24, 1997; amended March 16, 2018.)

86-3-30. (Authorized by K.S.A. 74-4202(b), as amended by L. 2008, ch. 155, sec. 9; implementing L. 2008, ch. 155, sec. 6; effective, T-86-

6-25-08, July 1, 2008; effective Oct. 24, 2008; revoked Nov. 14, 2016.)

86-3-31. Broker supervision. (a) Failure of a supervising broker or branch broker to properly supervise the activities of an associated or employed salesperson or associate broker shall include the following:

(1) Allowing a person not licensed by the commission to engage in activities requiring a license on behalf of the broker or brokerage firm, unless the person is exempt from licensure pursuant to K.S.A. 58-3037, and amendments thereto;

(2) allowing an associated or employed salesperson or associate broker to engage in dual agency or activities requiring an active real estate license while that salesperson's or associate broker's license is expired, inactive, pending transfer, suspended, or revoked;

(3) failure to take action to ensure that an associated or employed salesperson or associate broker complies with any restrictions or conditions placed upon that salesperson's or associate broker's license;

(4) directing or instructing an associated or employed salesperson or associate broker to take any action in violation of the real estate brokers' and salespersons' license act, the brokerage relationships in real estate transactions act, or any commission regulations;

(5) failing to take action to prevent an associated or employed salesperson or associate broker from taking any action in violation of the real estate brokers' and salespersons' license act, the brokerage relationships in real estate transactions act, or any commission regulations, if the supervising broker or branch broker has actual knowledge of the impending violation;

(6) failing to timely take action to correct or mitigate a violation of the real estate brokers' and salespersons' license act, the brokerage relationships in real estate transactions act, or any commission regulations by an associated or employed salesperson or associate broker, if the supervising broker or branch broker has actual knowledge of the violation;

(7) failing to ensure that all contracts and forms used by an associated or employed salesperson or associate broker are reviewed for accuracy and compliance with applicable statutes, regulations, and office policies;

(8) failing to ensure that all advertising by associated or employed salespersons or associate

brokers complies with applicable statutes, regulations, and office policies; and

(9) failing to ensure that all associated or employed salespersons and associate brokers are able to maintain reasonable and timely communication with the supervising broker, branch broker, or a competent designee.

(b) Any of the following may be considered mitigating factors regarding an alleged violation of subsection (a):

(1) The supervising broker or branch broker has implemented policies and procedures to prevent an associated or employed salesperson or associate broker from violating a restriction or condition placed upon the license or from committing a violation of the real estate brokers' and salespersons' license act, the brokerage relationships in real estate transactions act, or any commission regulations, as demonstrated by both of the following:

(A) The supervising broker or branch broker has written policies and procedures in place to provide guidance in real estate practice law to the associated or employed salesperson or associate broker.

(B) The supervising broker or branch broker demonstrates that the associated or employed salesperson or associate broker received training on the written policies and procedures specified in paragraph (b)(1)(A).

(2) The supervising broker or branch broker provides access to either of the following:

(A) Ongoing training or education sessions for associated or employed salespersons or associate brokers; or

(B) experienced personnel to review the accuracy of documents and discuss real estate practice law with associated or employed salespersons or associate brokers.

(3) The supervising broker has systems in place to ensure proper management and control of documents and records relating to licensing requirements and transactions.

(c) Any of the following may be considered aggravating factors with respect to an alleged violation of subsection (a):

(1) The commission has previously disciplined the supervising broker or branch broker for failure to properly supervise associated or employed salespersons or associate brokers.

(2) The supervising broker or branch broker did not have policies and procedures in place as described in paragraph (b)(1)(A) at the time of the violation.

(3) The supervising broker or branch broker is unable to demonstrate that the associated or employed salesperson or associate broker who committed the violation received adequate training on applicable statutory, regulatory, and office policy requirements.

(d) Nothing in this regulation shall prohibit a broker from delegating supervisory duties to

competent personnel or affiliated licensees. The supervising broker or branch broker shall be responsible for ensuring compliance with commission statutes and regulations by all personnel and affiliated licensees under the supervising broker's or branch broker's supervision. (Authorized by K.S.A. 2015 Supp. 74-4202; implementing K.S.A. 2015 Supp. 58-3062; effective Nov. 14, 2016.)

Agency 88

State Board of Regents

Articles

- 88-3. GUIDELINES FOR THE DETERMINATION OF RESIDENCY FOR FEE PURPOSES.
- 88-10. TAX-SHELTERED ANNUITY PROGRAM.
- 88-11. TAX-SHELTERED ANNUITY PROGRAMS FOR PERSONS COVERED BY K.S.A. 74-4925b.
- 88-24. GENERAL EDUCATION DEVELOPMENT (GED) TEST.
- 88-25. AO-K TO WORK PROGRAM.
- 88-26. COMMUNITY COLLEGES, TECHNICAL COLLEGES AND WASHBURN INSTITUTE OF TECHNOLOGY.
- 88-28. PRIVATE AND OUT-OF-STATE POSTSECONDARY EDUCATION INSTITUTIONS.
- 88-29. QUALIFIED ADMISSION.
- 88-29a. STATE UNIVERSITY ADMISSIONS.
- 88-29b. UNIVERSITY OF KANSAS ADMISSIONS.
- 88-29c. STATE UNIVERSITY ADMISSIONS BEGINNING WITH REVIEW OF APPLICATIONS FOR 2021 SUMMER SESSION.
- 88-29d. UNIVERSITY OF KANSAS ADMISSIONS BEGINNING WITH REVIEW OF APPLICATIONS FOR 2021 SUMMER SESSION.
- 88-30. STUDENT HEALTH INSURANCE PROGRAM.

Article 3.—GUIDELINES FOR THE DETERMINATION OF RESIDENCY FOR FEE PURPOSES

88-3-8a. Military personnel and veterans. (a) “Armed forces” and “veteran” shall have the meanings specified in K.S.A. 2017 Supp. 48-3601, and amendments thereto.

(b) The resident fee privilege shall be accorded to any person who meets the following conditions:

(1) Is enrolled at any state educational institution, as defined by K.S.A. 76-711 and amendments thereto; and

(2) meets one of the following conditions:

(A)(i) Is currently serving in the armed forces; or
(ii) is a veteran of the armed forces who files with the postsecondary educational institution at which the veteran is enrolled a letter of intent to establish residence in Kansas, lives in Kansas while attending the postsecondary educational institution at which the veteran is enrolled, and is eligible for benefits under the federal post-9/11 veterans educational assistance act or any other federal law authorizing educational benefits for veterans;

(B) is the spouse or dependent child of a person who qualifies for resident tuition rates and fees pursuant to paragraph (b)(2)(A)(i) or who, if qual-

ifying through a veteran pursuant to paragraph (b)(2)(A)(ii), files with the postsecondary educational institution at which the spouse or dependent child is enrolled a letter of intent to establish residence in Kansas, lives in Kansas while attending the postsecondary educational institution at which the spouse or dependent child is enrolled, and is eligible for benefits under the federal post-9/11 veterans educational assistance act or any other federal law authorizing educational benefits for veterans; or

(C) is a person who is living in Kansas at the time of enrollment and is one of the following:

(i) A veteran who was permanently stationed in Kansas during service in the armed forces or had established residency in Kansas before service in the armed forces; or

(ii) the spouse or dependent of a veteran who was permanently stationed in Kansas during service in the armed forces or had established residency in Kansas before service in the armed forces.

(c) This regulation shall not be construed to prevent a person covered by this regulation from acquiring or retaining a bona fide residence in Kansas.

(d) Each person seeking the resident fee privilege pursuant to this regulation shall be respon-

sible for providing the appropriate office at the state educational institution at which the person seeks admission or is enrolling with the information and written documentation necessary to verify that the person meets the applicable requirements of K.S.A. 2017 Supp. 48-3601 and K.S.A. 76-729, and amendments thereto, and this regulation. This documentation shall include one of the following:

(1) If claiming current status in the armed forces, written documentation verifying that status. For each reserve officers' training corps (ROTC) cadet and midshipman, this documentation shall include a copy of the person's current contract for enlistment or reenlistment in the armed forces;

(2) if claiming veteran status pursuant to paragraph (b)(2)(A)(ii), the following:

(A) Written documentation verifying that the veteran qualifies for benefits under the federal post-9/11 veterans educational assistance act or any other federal law authorizing educational benefits for veterans;

(B) written documentation verifying that the veteran lives or will live in Kansas while attending the state educational institution; and

(C) a letter signed by the veteran attesting an intent to become a resident of Kansas;

(3) if claiming spouse or dependent child status based upon the relationship to a current member of the armed forces, the following:

(A) Written documentation verifying the required relationship to the current member of the armed forces; and

(B) written documentation verifying that the member of the armed forces is currently serving;

(4) if claiming spouse or dependent child status based upon a relationship with a veteran pursuant to paragraph (b)(2)(B), the following:

(A) Written documentation verifying the required relationship to the veteran;

(B) written documentation verifying that the spouse or dependent child qualifies for benefits under the federal post-9/11 veterans educational assistance act or any other federal law authorizing educational benefits for veterans;

(C) written documentation verifying that the spouse or dependent child of the veteran lives or will live in Kansas while that person is a student attending the state educational institution; and

(D) a written letter signed by the spouse or dependent child of the veteran, attesting that the spouse or dependent child intends to become a resident of Kansas; or

(5) if claiming status as a veteran pursuant to paragraph (b)(2)(C)(i) who is not otherwise eligible for benefits under the federal post-9/11 veterans educational assistance act or any other federal law authorizing educational benefits for veterans, or the spouse or dependent of the veteran pursuant to paragraph (b)(2)(C)(ii), written documentation verifying both of the following:

(A) The veteran was previously assigned to a permanent station in Kansas while on active duty, or the veteran established Kansas residency before the veteran's service in the armed forces.

(B) The veteran, spouse, or dependent of the veteran who is seeking residency status is living in Kansas at the time of enrollment. (Authorized by K.S.A. 76-730; implementing K.S.A. 2017 Supp. 48-3601, K.S.A. 2017 Supp. 76-729, and K.S.A. 76-730; effective July 27, 2007; amended Jan. 18, 2013; amended, T-88-8-10-15, Aug. 10, 2015; amended Dec. 18, 2015; amended May 26, 2017; amended June 7, 2018.)

88-3-12. (Authorized by K.S.A. 76-730; implementing K.S.A. 2006 Supp. 76-729, as amended by 2007 HB 2425, §1 and 2007 HB 2185, §10; effective Nov. 14, 1988; amended Nov. 18, 1991; amended July 27, 2007; revoked, T-88-8-10-15, Aug. 10, 2015; revoked Dec. 18, 2015.)

Article 10.—TAX-SHELTERED ANNUITY PROGRAM

88-10-1, 88-10-2, and 88-10-3. (Authorized by K.S.A. 1984 Supp. 74-4925; implementing K.S.A. 1984 Supp. 74-4925; effective, E-74-12, Dec. 28, 1973; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; revoked Oct. 23, 2020.)

88-10-4. (Authorized by and implementing K.S.A. 1991 Supp. 74-4925; effective, E-74-12, Dec. 28, 1973; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; amended June 7, 1993; revoked Oct. 23, 2020.)

88-10-5. (Authorized by K.S.A. 1984 Supp. 74-4925; implementing K.S.A. 1984 Supp. 74-4925; effective, E-74-12, Dec. 28, 1973; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; revoked Oct. 23, 2020.)

88-10-6. (Authorized by K.S.A. 1986 Supp. 74-4925; implementing K.S.A. 1986 Supp. 74-4925; effective, E-74-12, Dec. 28, 1973; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984;

amended May 1, 1985; amended May 1, 1988; revoked Oct. 23, 2020.)

88-10-7 and 88-10-8. (Authorized by K.S.A. 1984 Supp. 74-4925; implementing K.S.A. 1984 Supp. 74-4925; effective, E-74-12, Dec. 28, 1973; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; revoked Oct. 23, 2020.)

88-10-10. (Authorized by K.S.A. 1984 Supp. 74-4925; implementing K.S.A. 1984 Supp. 74-4925; effective, E-74-12, Dec. 28, 1973; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; revoked Oct. 23, 2020.)

88-10-12. (Authorized by K.S.A. 1984 Supp. 74-4925; implementing K.S.A. 1984 Supp. 74-4925; effective, E-74-12, Dec. 28, 1973; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; revoked Oct. 23, 2020.)

Article 11.—TAX-SHELTERED ANNUITY PROGRAMS FOR PERSONS COVERED BY K.S.A.74-4925b

88-11-1, 88-11-2, 88-11-3, and 88-11-4. (Authorized by K.S.A. 74-4925b; implementing K.S.A. 74-4925b; effective, E-74-34, July 2, 1974; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; revoked Oct. 23, 2020.)

88-11-5. (Authorized by and implementing K.S.A. 74-4925b; effective, E-74-34, July 2, 1974; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; amended June 7, 1993; revoked Oct. 23, 2020.)

88-11-6. (Authorized by K.S.A. 74-4925b; implementing K.S.A. 74-4925b; effective, E-74-34, July 2, 1974; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; revoked Oct. 23, 2020.)

88-11-7. (Authorized by K.S.A. 74-4925b; implementing K.S.A. 74-4925b; effective, E-74-34, July 2, 1974; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; amended May 1, 1988; revoked Oct. 23, 2020.)

88-11-8 and 88-11-9. (Authorized by K.S.A. 74-4925b; implementing K.S.A. 74-4925b; effective, E-74-34, July 2, 1974; effective May 1,

1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; revoked Oct. 23, 2020.)

88-11-11 and 88-11-12. (Authorized by K.S.A. 74-4925b; implementing K.S.A. 74-4925b; effective, E-74-34, July 2, 1974; effective May 1, 1975; amended, T-85-31, Nov. 14, 1984; amended May 1, 1985; revoked Oct. 23, 2020.)

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.)

88-24-2. Test score requirements. Each applicant who meets the test score requirements shall be issued a Kansas state high school diploma. The test score requirements shall be a minimum standard score of 145 on each test in the battery

and a cumulative standard score of at least 580 on all four of the tests in the battery.

The test score requirements specified in this regulation shall apply to any test taken on or after January 1, 2014. (Authorized by and implementing K.S.A. 2016 Supp. 72-4530; effective Oct. 18, 2002; amended July 27, 2007; amended April 10, 2015; amended May 26, 2017.)

Article 25.—AO-K TO WORK PROGRAM

88-25-1. Program title. The AO-K to work program, which is also called the Kansas pathway to career, shall provide a way to earn a Kansas high school equivalency credential to each qualified student. (Authorized by and implementing K.S.A. 2019 Supp. 74-32,267; effective June 19, 2020.)

88-25-2. AO-K career pathways; industry-recognized credentials. The AO-K career pathways and industry-recognized credentials shall be the approved pathways and the five categories of credentials listed in the Kansas board of regents' document titled "AO-K career pathways: approved credentials and pathways list," dated August 30, 2019, which is hereby adopted by reference. (Authorized by and implementing K.S.A. 2019 Supp. 74-32,267; effective June 19, 2020.)

88-25-3. Career readiness certificate. The career readiness certificates shall be the following:

- (a) The Kansas WorkReady! earned after July 1, 2008, at the silver, gold, or platinum level; and
- (b) the ACT® WorkKeys® national career readiness certificate® earned after April 1, 2019, at the silver, gold, or platinum level. (Authorized by and implementing K.S.A. 2019 Supp. 74-32,267; effective June 19, 2020.)

88-25-4. High school equivalency requirements. In addition to the requirements specified in K.S.A. 2019 Supp. 74-32,267(c)(1) (A)-(C) and amendments thereto, each applicant shall be required to demonstrate high school equivalency in math, English language arts, and civics to earn a high school equivalency credential as specified in this regulation.

(a) High school equivalency in math shall be demonstrated by any of the following:

- (1) Scoring a 145 or above on the general educational development (GED) math test;
- (2) scoring an 18 or above on the ACT® math test;

(3) scoring a 596 or above on the TABE® 11&12 math test;

(4) scoring a 250 or above on the Accuplacer quantitative reasoning, algebra, and statistics test;

(5) passing college algebra with a grade of C or above from an accredited postsecondary institution;

(6) passing Kansas regents shared number (KRSN) Mat1040, contemporary and essential math, with a C or above from an accredited postsecondary institution; or

(7) scoring a 5 (level score) or above on the ACT® WorkKeys® applied math test.

(b) High school equivalency in English language arts shall be demonstrated by any of the following:

(1) Scoring a 145 or above on the GED English language arts test;

(2) scoring an 18 or above on the ACT® reading test;

(3) scoring a 576 or above on the TABE® 11&12 reading test;

(4) scoring a 255 or above on the Accuplacer reading test;

(5) passing KRSN Eng1010, English composition 101, with a grade of C or above from an accredited postsecondary institution; or

(6) scoring a 5 (level score) or above on the ACT® WorkKeys® workplace documents test.

(c) High school equivalency in civics shall be demonstrated by scoring at least 70 percent on the Kansas pathway to career civics assessment. (Authorized by and implementing K.S.A. 2019 Supp. 74-32,267; effective June 19, 2020.)

88-25-5. Fee. The fee for each application for the issuance or duplication of a Kansas high school equivalency credential shall be \$25. (Authorized by and implementing K.S.A. 2019 Supp. 74-32,267; effective June 19, 2020.)

Article 26.—COMMUNITY COLLEGES, TECHNICAL COLLEGES AND WASHBURN INSTITUTE OF TECHNOLOGY

88-26-1. Definitions. (a) "Board staff" and "staff" mean the designees of the president and chief executive officer of the state board.

(b) "Community college" has the meaning specified in K.S.A. 74-3201b, and amendments thereto.

(c) "Course of study" and "program" mean a curriculum, the completion of which qualifies a

student to receive a degree or a career technical certificate or to engage in a particular field of employment.

(d) “Distance education course” means any course in which faculty and students are physically separated in place or time and in which two-thirds or more of the instruction is provided by means other than face-to-face instruction.

(e) “Distance education program” means any program in which 50 percent or more of the program is delivered by means of distance education courses.

(f) “Institution” means a community college, a technical college, or the Washburn institute of technology.

(g) “Non-accredited private secondary school” means a school that meets all of the following conditions:

(1) The school regularly offers education at the secondary level.

(2) Attendance at the school satisfies the requirements of the compulsory school attendance laws of Kansas.

(3) The school is not accredited by the state board of education.

(h) “Out-of-state or foreign student” means a student who is not a resident of the state of Kansas.

(i) “President and chief executive officer of the state board” means the chief executive officer as described in K.S.A. 74-3203a, and amendments thereto.

(j) “Satisfactory progress” means the progress required by an institution’s reasonable satisfactory academic progress policy.

(k) “State aid” means any funds appropriated by the Kansas legislature to the state board for allocation or distribution to institutions.

(l) “State board” means Kansas board of regents.

(m) “Technical college” means any technical college designated pursuant to K.S.A. 72-4472, 72-4473, 72-4474, 72-4475, 72-4477, or 72-4477a, and amendments thereto.

(n) “Washburn institute of technology” means the area vocational school that is affiliated with Washburn university pursuant to K.S.A. 72-4479, and amendments thereto. (Authorized by K.S.A. 72-7514, K.S.A. 74-32,140, and K.S.A. 2014 Supp. 74-32,141; implementing K.S.A. 2014 Supp. 71-201, K.S.A. 71-406, 71-407, K.S.A. 2014 Supp. 71-1803, 72-4480, K.S.A. 74-32,140, and K.S.A. 2014 Supp. 74-32,141; effective Oct. 29, 2004; amended April 10, 2015.)

88-26-2. Accreditation. (a) Accreditation by the higher learning commission of the north central association of colleges and schools shall be presumptive evidence that the criteria specified in subsection (b) are met.

(b) To be approved by the board for purposes of qualifying to receive state aid, each institution shall be required to meet the following minimum standards:

(1) The curriculum reasonably and adequately ensures achievement of the stated objectives for which the curriculum is offered. The institution shall have policies and procedures in place to evaluate and ensure the quality of its educational programs.

(2) The faculty members hold the credentials appropriate to the academic program offered as follows:

(A) Each faculty member shall possess an academic degree that is relevant to what the individual is teaching and that is at least one level above the level at which the individual is teaching. Alternatively, for each faculty member employed based on equivalent experience, the institution shall establish criteria for minimum equivalent experience that will be used in the appointment process.

(B) Each instructor, including instructors in dual-credit, contractual, and collaborative programs, shall be appropriately credentialed.

(3) The institution makes available to its students support services appropriate for its mission, including advising, academic records, financial aid, and placement, each of which shall meet the following conditions:

(A) The services are readily available and evaluated periodically to determine their overall effectiveness.

(B) The extent of the services provided by the institution and any associated cost to the student are stated in the catalog and other appropriate publications.

(4) The facilities and environs are safe and support learning appropriate for the curriculum.

(5) The institution owns or has secured access to the learning resources and services necessary to support the learning expected of its students, including laboratories, libraries, performance spaces, and clinical practice sites.

(6) The financial resources of the institution are sufficient to reasonably and adequately support its current operations, meet its stated objectives, and continue to do so in the foreseeable future.

(7) The institution engages in systematic and integrated planning. Processes allow the institution to enhance its strengths and minimize its weaknesses in the face of a changing environment.

(8) The institution's governance and administrative structures promote effective leadership and support collaborative processes that enable the institution to fulfill its mission. The governance structure is consistent with the institution's stated objectives and provides for the following:

(A) The governing board is knowledgeable about the institution, provides oversight for the institution's financial and academic policies and practices, and meets its legal and fiduciary responsibilities.

(B) The institution enables the involvement of its administration, faculty, staff, and students in setting academic requirements, policy, and processes through effective structures for contribution and collaborative effort.

(9) The institution operates with integrity in its financial, academic, personnel, and auxiliary functions. The institution demonstrates integrity in the relationship with its internal and external constituents.

(A) The academic freedom of both students and faculty is upheld to the extent permitted by law and governing board policy.

(B) Due process is recognized in the institutional operations.

(C) The institution's practices are consistent with its published procedures.

(D) The institution accurately portrays its practices, services, and programs.

(E) The institution meets all applicable federal and state requirements.

(c) The loss of accreditation by an institution, or for Washburn institute of technology, its affiliated university, shall be presumptive evidence of failure to adhere to the minimum standards set by the board. Each institution that loses its accreditation shall be subject to the loss of state aid unless the institution demonstrates that it meets the minimum standards specified in subsection (b). (Authorized by K.S.A. 72-7514, K.S.A. 74-32,140, and K.S.A. 2014 Supp. 74-32,141; implementing K.S.A. 2014 Supp. 71-601, 71-620, K.S.A. 71-801, K.S.A. 2014 Supp. 71-1803, 72-4480, K.S.A. 74-32,140, and K.S.A. 2014 Supp. 74-32,141; effective Oct. 29, 2004; amended April 10, 2015.)

88-26-3. Admissions. To be academically eligible for admission to any community college or technical college or to the Washburn institute

of technology, each applicant shall be required to meet one of the following criteria:

(a) Be a graduate of an accredited high school, a graduate of a non-accredited private secondary school, or a recipient of a state-issued or state-recognized high school equivalency credential;

(b)(1) Be enrolled in either an accredited high school or a non-accredited private secondary school, at either of the following:

(A) The tenth-grade, eleventh-grade, or twelfth-grade level; or

(B) the ninth-grade level if the applicant is classified by a school district as gifted, as defined in K.A.R. 91-40-1; and

(2)(A) Have an ACT or SAT score at or above the national average, or have a cumulative high school GPA of 3.0 or above; or

(B) have been determined by the community college or technical college or the Washburn institute of technology, after evaluating the applicant's educational credentials, to be able to benefit from the courses in which the applicant wishes to enroll; or

(c)(1) Be 18 years of age or older; and

(2) have been determined by the community college or technical college or the Washburn institute of technology, after evaluating the applicant's educational credentials, to be able to benefit from the courses in which the applicant wishes to enroll. (Authorized by K.S.A. 72-7514, 74-32,140, and K.S.A. 2014 Supp. 74-32,141; implementing K.S.A. 71-801, 72-4469, K.S.A. 2014 Supp. 72-4470a, K.S.A. 74-32,140, and K.S.A. 2014 Supp. 74-32,141; effective Oct. 29, 2004; amended April 10, 2015.)

88-26-4. Credit. (a) Transfer credit. Each institution shall accept credits from all courses that are substantially equivalent to those offered at the institution, including courses that have been determined by the state board through the alignment process or the transfer and articulation process to be substantially equivalent. Any institution accepting transfer credit may evaluate the applicability of the credit towards meeting program requirements. Any institution may award credit for other documented learning experiences.

(b) Advanced standing. Any institution may award credit for advanced standing based on the policies adopted by that institution's governing board.

(c) Credit for lecture, laboratory, and other classes. Each institution shall record one semester

hour of credit for any student attending a lecture class, if the student has made satisfactory progress in the class and the class consists of at least 750 minutes of class instruction, plus time allocated for a final exam. Each institution shall record one semester hour of credit for any student attending a laboratory class, if the student has made satisfactory progress in the class and the class consists of at least 1,125 minutes. Each institution shall record one semester hour of credit for any student who completes at least 2,700 minutes in on-the-job training, internships, or clinical experiences in health occupations. The number of semester hours of credit recorded for each distance education course shall be assigned by the institution that provided the course, based on the amount of time needed to achieve the course competencies in a face-to-face format. (Authorized by K.S.A. 72-7514, 74-32,140, and K.S.A. 2014 Supp. 74-32,141; implementing K.S.A. 2014 Supp. 71-601, K.S.A. 71-801, 74-32,140, and K.S.A. 2014 Supp. 74-32,141; effective Oct. 29, 2004; amended April 10, 2015.)

88-26-5. Graduation or completion requirements. (a) Any community college may award the associate in arts degree, the associate in science degree, or the associate in general studies degree to each student who has satisfactorily completed 60 or more credit hours in a curriculum that parallels that of a Kansas public university for freshmen and sophomores.

(b) Any community college or technical college may award the associate in applied science degree to each student who has satisfactorily completed a program in a career technical curriculum consisting of at least 60 credit hours but not more than 68 credit hours, in which at least 15 credit hours in general education and at least 30 credit hours in the area of specialized preparation are required. The 68-credit-hour maximum shall not apply to any programs having external accreditation or industry requirements that exceed the 68-credit-hour limit.

(c) Any institution may grant a career technical certificate to each student who has satisfactorily completed any technical program that is less than 60 credit hours in length but is more than 15 credit hours.

(d) Any institution may award a certificate of completion to each student who has satisfactorily completed a course of study not exceeding 15 credit hours. (Authorized by K.S.A. 72-7514,

74-32,140, and K.S.A. 2014 Supp. 74-32,141; implementing K.S.A. 71-801, 74-32,140, and K.S.A. 2014 Supp. 74-32,141; effective Oct. 29, 2004; amended April 10, 2015.)

88-26-6. Approval of programs. (a)(1) Except as specified in paragraph (a)(2), each program to be offered by an institution shall be required to be approved by the state board before the program is actually offered by the institution. The institution shall submit an application for approval of the program to the state board.

(2) If an associate in applied science degree program has been approved by the state board in accordance with paragraph (a)(1), the institution may subsequently offer within the program a separate certificate of completion or a separate career technical certificate based on credits earned within that program.

(b) The application for approval shall provide information that establishes each of the following:

(1) There is a documented state, regional, or local need for the proposed program.

(2) The institution has the physical and human resources to deliver the program.

(3) The delivery of the program is financially feasible for the state and the institution.

(4) The program does not unnecessarily duplicate any existing programs of the other institutions within the state.

(c) Upon receipt of an application, the application shall be reviewed by board staff, and a determination shall be made whether the requirements specified in subsection (b) have been met.

(d) If the board staff determines that the requirements specified in subsection (b) have been met, the program shall be recommended by the board staff for approval by the state board. The institution shall be notified by the board staff, in writing, of the recommendation.

(e) If the board staff determines that the information provided does not meet all of the requirements specified in subsection (b), the institution shall be notified by the board staff, in writing, of the determination, which shall include in the notice the reason or reasons for the determination. The institution shall also be notified by the board staff of the right to request a review of the determination. (Authorized by K.S.A. 72-7514, K.S.A. 74-32,140, and K.S.A. 2014 Supp. 74-32,141; implementing K.S.A. 71-801; effective Oct. 29, 2004; amended April 10, 2015.)

88-26-7. Residence determination for state aid purposes. (a) Each institution shall determine residency, for state aid purposes, pursuant to statutes or regulations that apply to determination of residency by the institutions, including, for community colleges, K.S.A. 71-406 and K.S.A. 71-407 and amendments thereto. The factors that may be considered in determining residency for state aid purposes shall include, when applicable or appropriate, a Kansas driver's license, evidence of payment of Kansas real estate taxes, payment of Kansas income taxes, reliance on Kansas sources for support, acceptance of permanent employment in Kansas, ownership of a home in Kansas, registration to vote in Kansas, and commitment to an educational program that indicates an intent to maintain a permanent presence in Kansas upon graduation.

(b) The governing board of each institution shall consider L. 2015, ch. 76, sec. 3, and amendments thereto, when setting tuition rates based on residency. (Authorized by K.S.A. 71-406, 72-7514, 74-32,140, and K.S.A. 2014 Supp. 74-32,141; implementing K.S.A. 71-406, 71-407, K.S.A. 2014 Supp. 71-620, 71-1803, and 72-4480; effective Oct. 29, 2004; amended April 10, 2015; amended, T-88-8-10-15, Aug. 10, 2015; amended Dec. 18, 2015.)

88-26-8. Determination of student residency. (a) For purposes of state aid, the president of each institution shall designate a person, referred to in this regulation as the "admissions officer," to determine the residency of each student enrolled in the institution.

(b) The enrollment forms of each institution shall include questions that enable the admissions officer to identify the residency of each student for state aid purposes. (Authorized by K.S.A. 71-406, 72-7514, 74-32,140, and K.S.A. 2014 Supp. 74-32,141; implementing K.S.A. 71-406, 71-407, K.S.A. 2014 Supp. 71-620, 71-1803, 72-4480; effective Oct. 29, 2004; amended April 10, 2015.)

88-26-9, 88-26-10, and 88-26-11. (Authorized by and implementing K.S.A. 71-201, K.S.A. 2003 Supp. 71-301a, K.S.A. 2003 Supp. 71-403, K.S.A. 72-7514, and K.S.A. 74-32,140; effective Oct. 29, 2004; revoked April 10, 2015.)

88-26-12. (Authorized by and implementing K.S.A. 71-201, K.S.A. 2003 Supp. 71-306, K.S.A. 72-7514, and K.S.A. 74-32,140; effective Oct. 29, 2004; revoked April 10, 2015.)

88-26-13. (Authorized by and implementing K.S.A. 71-201, K.S.A. 2003 Supp. 71-301a, K.S.A. 2003 Supp. 71-403, K.S.A. 72-7514, and K.S.A. 74-32,140; effective Oct. 29, 2004; revoked April 10, 2015.)

88-26-14. (Authorized by and implementing K.S.A. 71-201, K.S.A. 71-301a, as amended by 2003 HB 2343, § 10, and K.S.A. 71-403, as amended by 2003 HB 2343, § 17; effective Oct. 29, 2004; revoked April 10, 2015.)

88-26-15, 88-26-16. (Authorized by and implementing K.S.A. 71-201, K.S.A. 2003 Supp. 71-301a, K.S.A. 2003 Supp. 71-403, K.S.A. 72-7514, and K.S.A. 74-32,140; effective Oct. 29, 2004; revoked April 10, 2015.)

Article 28.—PRIVATE AND OUT-OF-STATE POSTSECONDARY EDUCATION INSTITUTIONS

88-28-1. Definitions. Each of the following terms, wherever used in this article of the board's regulations, shall have the meaning 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” and “closure” mean 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 documents” means written documentation provided by an institution to a student in which the institution agrees to provide instruction to the student for a fee. The enrollment documents shall meet the requirements of K.A.R. 88-28-7.

(i) “Enrollment period” means the period of time specified in enrollment documents 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. 2016 Supp. 74-32,165, effective Oct. 20, 2006; amended March 18, 2011; amended May 26, 2017.)

88-28-2. Minimum requirements. (a) Except as provided in subsection (c), in order to qualify for a certificate of approval, each applicant institution shall be required to meet the criteria listed in K.S.A. 74-32,169 and amendments thereto. An owner of each applicant institution or the owner’s designee shall submit evidence that the institution meets the following minimum requirements:

(1) The physical space shall meet the following requirements:

(A) Be free from hazards and be properly maintained;

(B) provide learning environments appropriate for each curriculum in size, seating, lighting, equipment, and resources;

(C) be either owned by the institution or accessed through a long-term lease or other means of access that indicates institutional stability; and

(D) if the physical space includes student housing owned, maintained, or approved by the institution, meet all local standards for public health and safety.

(2) The owner or the owner’s designee has received all required inspections and written reports from the local fire department and other agencies responsible for ensuring public health and safety for the current year and the previous year, which shall be maintained on-site, with one copy sent to the state board annually.

(3) The administrative personnel of the institution shall meet the following requirements:

(A) Be adequate in number to support the programs offered; and

(B) be adequately prepared for operating an institution through training, experience, credentialing, or any combination of these.

(4) The executive and academic leadership of the institution shall have qualifications that reasonably ensure that the purpose and policies of the institution are effectively maintained. The administrative responsibilities and concomitant authority of the executive and academic leadership shall be clearly specified in the institution’s files.

(5) All academic, enrollment, and financial records of the students shall be securely maintained and protected from theft, fire, and other possible loss. These records shall be kept in an accessible format for 50 years from each student’s last date of attendance.

(6) All records describing the personnel related to and the development of the following operations shall be maintained for at least three years:

(A) The administration;

(B) the curricula;

(C) student guidance;

(D) instructional supplies and equipment;

(E) the library;

(F) the institution’s physical plant;

(G) the staff; and

(H) student activities.

(7) The owner of the institution or the owner’s designee shall submit to the state board the most recent financial statements for the institution operating in Kansas and for any parent or holding companies related to that institution. The financial statements provided to the state board shall meet at least one of the following requirements for the most recent fiscal or calendar

year or for the two most recent fiscal or calendar years combined:

(A) Demonstrate a minimum ratio of current assets to current liabilities of at least 1:1. This asset ratio shall be calculated by adding the cash and cash equivalents to the current accounts receivable and dividing the sum by the total current liabilities;

(B) exhibit a positive net worth in which the total assets exceed the total liabilities; or

(C) demonstrate a profit earned.

(8) If the institution receives any loans on behalf of a student from a private lender, the institution shall meet all of the following provisions and requirements:

(A) The loan funds may be applied to tuition, fees, or living expenses, or any combination, for a student.

(B) The institution shall not accept all loan funds up front. The funds received shall arrive in multiple disbursements, with the first arriving after the first day of classes and the second arriving at least halfway through the enrollment period. The disbursements shall be at least 90 days apart.

(C) All refunds shall be made to the bank rather than to the borrower.

(D) Upon receipt of loan funds for items to be provided by the institution to the student, the institution shall provide these items to the student, with the exception of test vouchers.

(E) The institution shall not receive any loan funds for a student before the student first attends any course or accepts any on-line materials.

(F) If providing a test voucher for a student, the institution shall not receive any loan funds for the test voucher more than 30 days before the student is scheduled to take the test.

(9) Each institution shall have a tuition refund policy and a student enrollment cancellation policy, called the "refund policy" in these regulations, that meets the following requirements:

(A) Is published in the institution's catalog;

(B) complies with K.S.A. 74-32,169 and amendments thereto;

(C) establishes that each student will be reimbursed for any items for which the student was charged but did not receive, including textbooks and software;

(D) has no more stringent requirements than the following:

(i) All advance monies, other than an initial, nonrefundable registration fee, paid by the student before attending class shall be refunded if

the student requests a refund, in writing, within three days after signing an enrollment agreement and making an initial payment;

(ii) for institutions collecting a nonrefundable initial application or registration fee, the student shall be required to sign a written statement acknowledging that the initial application or registration fee is nonrefundable. This statement may be a part of the enrollment documents, as described in K.A.R. 88-28-7;

(iii) each student who has completed 25 percent or less of a course and withdraws shall be eligible for a pro rata refund. The completion percentage shall be based on the total number of calendar days in the course and the total number of calendar days completed. After a student has attended at least 25 percent of the course, tuition and fees shall not be refundable;

(iv) all monies due to a student shall be refunded within 60 days from the last day of attendance or within 60 days from the receipt of payment if the date of receipt of payment is after the student's last date of attendance; and

(v) for institutions with programs consisting of fewer than 100 clock-hours, refunds may be calculated on an hourly, pro rata basis.

(10) All correspondence from the institution regarding the enrollment cancellation of a student, and any refund owed to the student, shall reference the refund policy of the institution.

(11) The required catalog of the institution's operation and services published electronically or in print, or both, shall include the following items:

(A) A table of contents;

(B) a date of publication;

(C) a list of any approvals, including contact information for the state board, and accreditations, including contact information, affiliations, and memberships that the institution has obtained;

(D) any requirements that students must meet to be admitted;

(E) an academic calendar or a reference to a published calendar used by the institution;

(F) the name and nature of each occupation for which training is given;

(G) the curricula offered, including the number of clock-hours or credit hours for each course in each curriculum;

(H) a description of the physical space and the educational equipment available;

(I) the tuition and fees charged;

(J) a description of the system used to measure student progress;

(K) the graduation requirements or completion requirements, or both;

(L) the institutional mission;

(M) identification of the owner of the institution;

(N) a list of the instructors teaching in Kansas, including their degrees held and the institutions from which their degrees were received;

(O) the institutional rules;

(P) the institution's policies for tuition refund and student enrollment cancellation, as described in paragraph (a)(9);

(Q) the extent to which career services are available; and

(R) the institution's policies for transfers of clock-hours or credit hours and for advanced-standing examinations.

(12) The enrollment documents shall meet the requirements of K.A.R. 88-28-7.

(13) All advertising and promotional materials shall meet the following requirements:

(A) Include the correct name of the institution that is approved by the state board;

(B) be truthful and not misleading by actual statement or omission;

(C) not be located in the employment or "help wanted" classified ads;

(D) not quote salaries for an occupation in the institution's advertising or promotional literature without including the documented median starting wage of a majority of the institution's graduates who graduated within the most recent calendar year;

(E) make no offers of institutional scholarships or partial institutional scholarships, unless the scholarships are bona fide reductions in tuition and are issued under specific, published criteria;

(F) use the word "accredited" only if the accrediting agency is one recognized by the United States department of education;

(G) not make any overt or implied claim of guaranteed employment during training or upon completion of training, in any manner; and

(H) not use letters of endorsement, recommendation, or commendation in the institution's advertising and promotional materials, unless the letters meet the following requirements:

(i) The institution received the prior, written consent of the authors;

(ii) the institution did not provide remuneration in any manner for the endorsements; and

(iii) the institution keeps all letters of endorsement, recommendation, or commendation on file, subject to inspection, for at least three years after

the last use of the contents in advertising or promotional materials.

(14) Each curriculum shall meet the following requirements:

(A) Be directly related to the institution's published mission;

(B) evidence a well-organized sequence of appropriate subjects leading to occupational or professional competence;

(C) reasonably and adequately ensure achievement of the stated objectives for which the curriculum is offered;

(D) if the curriculum prepares students for licensure, be consistent with the educational requirements for licensure; and

(E) if courses are delivered by distance education, meet the same standards as those for courses conducted on-site.

(15) The published policies for measuring student progress shall be followed.

(16) All instructional materials shall meet the following requirements:

(A) Reflect current occupational knowledge and practice applicable to the field of study and meet national standards if the standards exist;

(B) be sufficiently comprehensive to meet the learning objectives stated in the institution's published catalog;

(C) include suitable teaching devices and supplemental instructional aids appropriate to the subject matter; and

(D) be applicable to the curricula and the students.

(17) All instructional equipment shall meet the following requirements:

(A) Be current and maintained in good repair; and

(B) be used by students according to written policies for safe usage.

(18) Each faculty member shall be qualified to teach in the field or fields to which the member is assigned. Faculty responsibilities may be defined in terms of the number of hours taught, course development and research required, level of instruction, and administrative, committee, and counseling assignments.

(19) Each faculty member's minimum academic credential shall be at least one degree-level above the degree being taught, unless other credentials are typically used in lieu of the academic degree in a particular field of study. In those cases, qualifications may be measured by technical certifications, relevant professional experience, professional cer-

tifications, creative activity, training, or licensure, or any combination of these. The institution shall provide documentation that all faculty appointments meet these standards.

(20) The instructors in all programs shall maintain continuous professional experience through one or more of the following activities:

(A) Maintain membership in and participate in educational, business, technical, or professional organizations;

(B) continue their education in their professional fields; or

(C) have concurrent, related work experience.

(21) In-service training that is consistent with the institution's mission shall be provided for the improvement of both the instructors and the curricula.

(22) All students shall be given the appropriate educational credentials upon completion of the program that indicate satisfactory completion.

(23) Each certificate, diploma, or degree shall include the following information, at a minimum:

(A) The name of the graduate;

(B) the name of the program completed;

(C) the name of the institution issuing the credential; and

(D) the date on which the graduate completed the program.

(b) In addition to meeting the requirements of subsection (a), an owner of the applicant institution for which degree-granting authority is sought, or the owner's designee, shall also submit evidence that the institution meets the following minimum requirements:

(1) Each degree program for which degree-granting authority is sought shall meet the criteria specified in the definition of that degree in K.A.R. 88-28-1.

(2) The library holdings maintained in a physical library or on-line, or in a combination of a physical library and on-line, shall be appropriate to each degree awarded. All of the following requirements shall be met:

(A) A professionally trained librarian shall maintain the holdings.

(B) An annual budget shall be established to maintain and improve the holdings, including the appropriate classification and inventory of the holdings.

(C) Physical holdings, on-line holdings, or a combination of these holdings shall be made available at times when students are not in class, including weekend and evening hours.

(D) The library holdings shall be up-to-date and shall include full-text titles appropriate to the degrees offered.

(E) The faculty shall be given an opportunity to participate in the acquisition of library holdings, whether physical or on-line.

(F) If the institution uses interlibrary agreements, the agreements shall be well documented, and access to other libraries' collections shall be practical for students.

(3) Each institution's governing structure shall clearly delineate the responsibility for all legal aspects of operations, the formulation of policy, the selection of the chief executive officer, and the method of succession. If the institution is governed by a board or group of officers, the following aspects of the board or group shall be clearly defined:

(A) The membership;

(B) the manner of appointment;

(C) the terms of office; and

(D) all matters related to the duties, responsibilities, and procedures of that body.

(4) The financial statements for the institution shall be audited by a CPA.

(c) If an institution has accreditation issued by a regional or national accrediting agency recognized by the United States department of education, that accreditation may be accepted by the state board as presumptive evidence that the institution meets the minimum requirements specified in this regulation. However, each degree program for which degree-granting authority is sought shall meet the criteria specified in the definition of that degree in K.A.R. 88-28-1. (Authorized by K.S.A. 2016 Supp. 74-32,165; implementing K.S.A. 2016 Supp. 74-32,165, 74-32,168 and 74-32,169; effective Oct. 20, 2006; amended May 26, 2017.)

88-28-3. Certificates of approval. (a) A certificate of approval may be issued with degree-granting authority or without degree-granting authority.

(b) An owner of each institution for which a certificate of approval to operate in Kansas is sought, or the owner's designee, shall submit an application on a form provided by the state board. An owner of each institution for which degree-granting authority is sought, or the owner's designee, shall indicate on the application that degree-granting authority is requested and shall specify the degree programs proposed to be offered by the institution.

(c) An owner of each institution or the owner's designee shall submit the following information with the application:

(1) An outline or syllabus of each course offered in Kansas;

(2) a description of the institution's facilities, equipment, and instructional materials;

(3) a certification by an owner of the applicant institution or the owner's designee that the building that is to house the institution meets the requirements of all local, state, and federal regulations;

(4) a resume of each administrator and instructor that includes the individual's education, previous work experience, professional activities, and, if applicable, licensure;

(5) evidence of the institution's professional development and in-service activities;

(6) a copy of the proposed catalog or, if existing, a copy of each of the institution's most recent catalogs, bulletins, and brochures, with any supplements, or functional equivalents;

(7) a copy of the enrollment documents, or functional equivalent;

(8) a copy of the credential to be given to each student upon completion of a program;

(9) a description of how the student and administrative records are maintained as required by K.A.R. 88-28-2;

(10) a copy of any advertising used;

(11) a financial statement showing income and expenditures for the most recent, complete fiscal year. These documents shall be prepared and acknowledged by a certified public accountant and, in the case of an institution requesting degree-granting authority, shall be audited by a certified public accountant;

(12) for an institution in its first calendar year of operation, a business plan with the initial application, which shall include the following:

(A) An income statement that provides projected revenue and expenses for the first year of operation; and

(B) written documentation evidencing the amounts and sources of capital currently available to the institution for payment of start-up costs and any potential losses; and

(13) a copy of any certificate of accreditation issued to the institution by a regional or national accrediting agency recognized by the United States department of education.

(d) If an institution is found to be eligible for a certificate of approval, an owner of the applicant institution or the owner's designee shall be notified of the conditional approval of the institution.

Following notification, an owner of the applicant institution or the owner's designee shall furnish a surety bond or other equivalent security acceptable to the state board in the amount of \$20,000, as required by K.S.A. 74-32,175 and amendments thereto. A certificate of approval shall not be issued until the surety bond or other security is filed with and accepted by the state board.

(e) On the state board's own motion or upon a written complaint filed by any person doing business with the institution, an investigation of the institution may be conducted by the state board. Based upon the results of the investigation, the institution may be ordered by the state board to take corrective action, or proceedings may be initiated by the state board to revoke or condition the institution's certificate of approval. The approval to grant degrees may be revoked in whole or for specific degree programs if an institution is not in compliance with the minimum standards specified in K.S.A. 74-32,169, and amendments thereto, and K.A.R. 88-28-2.

(f) An owner or the owner's designee of each institution with degree-granting authority that seeks to begin a new degree program shall file for an amendment to its certificate of approval on a form provided by the state board. Each new degree program shall meet the criteria specified in the definition of that degree in K.A.R. 88-28-1. The owner of the institution or the owner's designee shall submit the following items with the application to amend its certificate of approval:

(1) An outline of the curriculum to be offered for the new degree;

(2) the qualifications of the faculty to be involved in the program of study;

(3) the relationship of the new degree program to the mission of the institution; and

(4) any other information requested by the board. (Authorized by K.S.A. 2016 Supp. 74-32,165; implementing K.S.A. 2016 Supp. 74-32,167, 74-32,168, 74-32,172, and 74-32,175; effective Oct. 20, 2006; amended May 26, 2017.)

88-28-4. On-site visits. Each applicant institution shall submit to on-site visits to the institution by state board designees and shall cooperate with these designees by providing immediate access to records and premises, as requested. (Authorized by K.S.A. 2016 Supp. 74-32,165; implementing K.S.A. 2016 Supp. 74-32,165, 74-32,169; effective Oct. 20, 2006; amended May 26, 2017.)

88-28-5. Registration of representatives.

(a) Each institution shall designate one individual who shall serve as the representative of that institution and who shall complete and submit a representative's application on the form provided by the state board. A separate application shall be submitted for each institution that the individual seeks to represent, unless the institutions that the individual seeks to represent all have common ownership. The applicant and either an owner of the institution that the applicant seeks to represent or the owner's designee shall sign the application and shall attest that if the registration is issued, the applicant will be employed by the institution.

(b) If the state board, upon review and consideration of an application, determines that the application is denied, the applicant shall be notified by the state board of the denial and each reason for the denial. The notice shall also advise the applicant of the right to request a hearing under K.S.A. 74-32,172 and amendments thereto.

(c) A certificate of registration for each institution with separate ownership shall be issued by the state board to the individual upon approval of the application. The certificate shall state the name of the registrant, the name of the institution that the registrant may represent, the date of issuance, and the date of expiration. The representative shall make available proof of the representative's registration to each prospective student or enrollee, if asked, before engaging in any personal solicitation.

(d) On the state board's own motion or upon a written complaint filed by any person doing business with the representative, an investigation of the representative may be conducted by the state board. Based upon the results of the investigation, the representative or the institution may be ordered by the state board to take corrective action, or proceedings may be initiated by the state board to revoke the representative's certificate of registration pursuant to K.S.A. 74-32,172 and amendments thereto. (Authorized by K.S.A. 2016 Supp. 74-32,165; implementing K.S.A. 2016 Supp. 74-32,174; effective Oct. 20, 2006; amended May 26, 2017.)

88-28-6. Fees. Fees for certificates of approval, registration of representatives, and certain transcripts shall be paid to the state board in accordance with this regulation.

(a) For institutions chartered, incorporated, or otherwise organized under the laws of Kansas and

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 \$1,000
 - (B) Degree-granting institution \$2,000
- (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 \$500 and not more than \$10,000
 - (B) Degree-granting institution 2% of gross tuition, but not less than \$1,200 and not more than \$10,000
- (4) New program submission fees, for each new program:
 - (A) Non-degree program \$100
 - (B) Associate degree program \$250
 - (C) Baccalaureate degree program \$500
 - (D) Master's degree program \$750
 - (E) Professional and doctoral degree programs \$1,500
- (5) Branch campus site fees, for each branch campus site:
 - (A) Initial non-degree-granting institution \$1,000
 - (B) Initial degree-granting institution \$2,000
- (6) Renewal branch campus site fees, for each branch campus site:
 - (A) Non-degree-granting institution 2% of gross tuition, but not less than \$500 and not more than \$1,000
 - (B) Degree-granting institution 2% of gross tuition, but not less than \$1,000 and not more than \$1,500
- (7) Representative fees:
 - Initial registration \$200
- (8) Late submission of renewal of application fee \$500
- (9) Student transcript copy fee \$10
- (10) Returned check fee \$50

(b) For institutions that are not chartered, incorporated, or otherwise organized under the laws of Kansas or that have their principal place of business outside the state of Kansas, the following fees shall apply:

- (1) Initial application fees:
- (A) Non-degree-granting institution \$3,000
 - (B) Degree-granting institution \$4,000
- (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 \$1,800 and not more than \$10,000
 - (B) Degree-granting institution 3% of gross tuition received or derived from Kansas students, but not less than \$2,400 and not more than \$10,000
- (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) Branch campus site fees, for each branch campus site:
- (A) Initial non-degree-granting institution \$3,000
 - (B) Initial degree-granting institution \$4,000
- (6) 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 \$1,800 and not more than \$10,000
 - (B) Degree-granting institution 3% of gross tuition received or derived from Kansas students, but not less than \$2,400 and not more than \$10,000
- (7) Representative fees:
- Initial registration \$350
 - (8) Late submission of renewal of application fee \$500
 - (9) Student transcript copy fee \$10
 - (10) Returned check fee \$50
- (Authorized by and implementing K.S.A. 74-32,181; effective Oct. 20, 2006; amended April 16, 2010; amended, T-88-7-20-11, July 20, 2011;

amended Oct. 21, 2011; amended April 10, 2015; amended May 26, 2017; amended Dec. 15, 2017; amended Dec. 27, 2019.)

88-28-7. Enrollment documents. (a) (1)

Before any institution may accept payment from a student, an official of the institution shall provide that student with enrollment documents that explicitly outline the obligations of the institution and the student and the enrollment period for which the enrollment documents apply. When the official of the institution provides any student with the institution's enrollment documents, the official shall also physically or electronically provide the student with a copy of the institution's catalog and any other supporting documents that detail the services to be provided by the institution.

(2) The enrollment documents shall be written so that they can be understood by the prospective student or, if the prospective student is a minor, that prospective student's parent or legal guardian, regardless of the educational background of the individual.

(b) The enrollment documents shall contain the following elements:

(1) A title that identifies the enrollment documents as a contract or legal agreement, if applicable;

(2) the name and address of the institution;

(3) the title of the program or each course in which the student is enrolling, as identified in the course catalog;

(4) the number of clock-hours or credit hours and the number of weeks or months required for completion of the program or each course in which the student is enrolling;

(5) identification of the type of certificate, diploma, or degree to be received by the student upon successful completion of the program or each course;

(6) the total amount of tuition required for the program or each course in which the student is currently enrolling. If the total number of clock-hours or credit hours required for completion of the program will span more than one enrollment period, the enrollment documents shall include a statement that tuition is subject to change;

(7) the cost of any required books and supplies, which may be estimated if necessary;

(8) any other costs and charges to be paid by the student;

(9) the scheduled start and end dates of the program or each course and a description of the class schedule;

(10) the grounds for termination of enrollment by the institution before the student's completion of the program or each course. These grounds may include the student's insufficient progress, nonpayment, and failure to comply with the institution's published rules;

(11) the method by which the student can cancel or voluntarily terminate enrollment;

(12) the institution's refund policy for cancellations and terminations, as described in K.S.A. 74-32,169 and amendments thereto and K.A.R. 88-28-2. Reference may be given to the page where the refund policy is listed in the institution's catalog in effect at the time of enrollment;

(13) a statement disclaiming any guarantee of employment for the student after the program or each course is completed;

(14) the reasons why the institution could postpone the scheduled starting date or the class schedule, the maximum period of any possible delay, and any effect that the postponement could have on the institution's refund policy;

(15) a description of the nature and extent of any possible major or unusual change in any course content, program content, or materials and the amount of any extra expenses that could be charged to the student;

(16) the date on which the enrollment documents become effective, if applicable;

(17) an acknowledgment that the student who signs the enrollment documents has read and received a copy of the enrollment documents, if applicable;

(18) the signature of the student or the student's legal representative, if the student is a minor, and the date of this signature, if applicable;

(19) the signature of an official at the institution who is authorized to sign for the institution and the date of this signature, if applicable;

(20) if any extra charges are assessed, a description of what each charge is for and, if payment of these charges is collected in advance, a reasonable refund policy; and

(21) a description of any items or services required to be purchased from sources other than the institution, if any. (Authorized by K.S.A. 2016 Supp. 74-32,165; implementing K.S.A. 2016 Supp. 74-32,165, 74-32,169, and 74-32,176; effective Oct. 20, 2006; amended May 26, 2017.)

88-28-8. Student records upon closure of an institution. (a) Upon closure of an institution, an owner of the institution or the owner's designee

shall deliver or make available to the state board all records of the students who are or have been in attendance at the institution. These records shall be delivered or made available no more than 15 calendar days following the closure.

(b) If the student records are not delivered or made available to the state board as required by subsection (a), any action deemed necessary may be commenced by the state board to obtain possession of the records. (Authorized by K.S.A. 2016 Supp. 74-32,165; implementing K.S.A. 2016 Supp. 74-32,175; effective Oct. 20, 2006; amended May 26, 2017.)

Article 29.—QUALIFIED ADMISSION

88-29-1. (Authorized by and implementing K.S.A. 2014 Supp. 76-717; effective Aug. 1, 2007; amended, T-88-6-26-09, July 1, 2009; amended Nov. 13, 2009; amended July 22, 2011; amended April 13, 2012; amended Feb. 1, 2013; amended April 24, 2015; revoked Oct. 16, 2020.)

88-29-2. (Authorized by and implementing K.S.A. 76-717; effective Aug. 1, 2007; revoked Jan. 13, 2017.)

88-29-3. Categories of admission. (a) In the admission policies of each state educational institution, which are required by K.A.R. 88-29a-9 and K.A.R. 88-29c-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. 88-29a-9 and K.A.R. 88-29c-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 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. 88-29a-9 or K.A.R. 88-29c-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. 76-717; effective Aug. 1, 2007; amended July 22, 2011; amended Oct. 16, 2020.)

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. (Authorized by and implementing K.S.A. 2014 Supp. 76-717; effective Aug. 1, 2007; amended, T-88-6-26-09, July 1, 2009; amended Nov. 13, 2009; amended July 22, 2011; amended April 13, 2012; amended April 24, 2015; revoked Jan. 13, 2017.)

88-29-6. (Authorized by and implementing K.S.A. 2014 Supp. 76-717; effective Aug. 1, 2007; amended July 22, 2011; amended April 13, 2012; amended April 24, 2015; revoked Jan. 13, 2017.)

88-29-7. (Authorized by and implementing K.S.A. 2014 Supp. 76-717; effective Aug. 1, 2007; amended, T-88-6-26-09, July 1, 2009; amended Nov. 13, 2009; amended July 22, 2011; amended April 13, 2012; amended Feb. 1, 2013; amended April 24, 2015; revoked Jan. 13, 2017.)

88-29-7a. (Authorized by and implementing K.S.A. 2014 Supp. 76-717; effective July 22, 2011; amended April 13, 2012; amended April 24, 2015; revoked Jan. 13, 2017.)

88-29-8. (Authorized by K.S.A. 76-712 and K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; implementing K.S.A. 76-725 and K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; effective Aug. 1, 2007; amended, T-88-6-26-09, July 1, 2009; amended Nov. 13, 2009; amended July 22, 2011; amended Feb. 1, 2013; revoked Jan. 13, 2017.)

88-29-8a. The exception window for resident transfer admissions. Any state educational institution may admit any Kansas resident who has earned 24 or more transferable college credit hours,

but who does not meet the applicable requirements specified in K.A.R. 88-29-4, by means of the exception window for resident transfer admissions.

(a) The maximum number of students admitted by means of this exception window shall be calculated as follows:

(1) The total number of admitted new resident students who have earned at least 24 transferable college credit hours, 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 10 percent of the sum of the three numbers counted in paragraph (a)(1).

(b) In determining which students to admit as exceptions pursuant to this regulation, the state educational institution shall give preference to persons who are in military service, as defined in K.S.A. 76-717 and amendments thereto.

(c) 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 transfer admissions.

(d) Beginning with students admitted for the 2013 fall session, each state educational institution shall require each student who is admitted as an exception to the minimum qualified admission standards pursuant to this regulation to adopt an individual plan for success, before enrollment, and subsequently review that individual plan for success, as required by K.S.A. 76-717 and amendments thereto. (Authorized by K.S.A. 76-712 and K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; implementing K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11, and K.S.A. 76-725; effective, T-88-6-26-09, July 1, 2009; effective Nov. 13, 2009; amended Feb. 1, 2013.)

88-29-8b. The exception window for nonresident transfer admissions. Any state educational institution may admit any nonresident who has earned 24 or more transferable college credit hours, but who does not meet the applicable requirements specified in K.A.R. 88-29-4, by means of the exception window for nonresident transfer admissions.

(a) The maximum number of students admitted by means of this exception window shall be calculated as follows:

(1) The total number of admitted new non-resident students who have earned at least 24 transferable college credit hours, 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 10 percent of the sum of the three numbers counted in paragraph (a)(1).

(b) In determining which students to admit as exceptions pursuant to this regulation, the state educational institution shall give preference to persons who are in military service, as defined in K.S.A. 76-717 and amendments thereto.

(c) 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 transfer admissions.

(d) Beginning with students admitted for the 2013 fall session, each state educational institution shall require each student who is admitted as an exception to the minimum qualified admission standards pursuant to this regulation to adopt an individual plan for success, before enrollment, and subsequently review that individual plan for success, as required by K.S.A. 76-717 and amendments thereto. (Authorized by K.S.A. 76-712 and K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; implementing K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11, and K.S.A. 76-725; effective, T-88-6-26-09, July 1, 2009; effective Nov. 13, 2009; amended Feb. 1, 2013.)

88-29-8c. (Authorized by K.S.A. 76-712 and K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; implementing K.S.A. 76-725 and K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; effective July 22, 2011; amended Feb. 1, 2013; revoked Jan. 13, 2017.)

88-29-9. (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; revoked Jan. 13, 2017.)

88-29-10. (Authorized by and implementing K.S.A. 2011 Supp. 76-717; effective Aug. 1, 2007; amended July 22, 2011; amended April 13, 2012; revoked Jan. 13, 2017.)

88-29-11. (Authorized by and implementing K.S.A. 2016 Supp. 76-717; effective Aug. 1, 2007; amended, T-88-6-26-09, July 1, 2009; amended Nov. 13, 2009; amended July 22, 2011; amended Oct. 19, 2012; amended April 24, 2015; amended Jan. 13, 2017; revoked Oct. 16, 2020.)

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. 88-29a-5 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 wants 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. 88-29a-5 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. 88-29a-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 quali-

fied 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. 88-29a-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.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective Aug. 1, 2007; amended, T-88-6-26-09, July 1, 2009; amended Nov. 13, 2009; amended July 22, 2011; amended Oct. 16, 2020.)

88-29-13. Content requirements for qualified admission computer technology courses. Each qualified admission computer technology course shall include instruction in the following:

(a) The meaning of at least 90 of the terms in the following sets of terms:

(1) Disk operating system, MS-DOS, Mac OS, Microsoft Windows, operating system, OS/2, and UNIX;

(2) American standard code for information interchange (ASCII), binary, command, compression, directory or folder, file, format, menu, prompt, server, and utility programs;

(3) clipboard, graphical user interface (GUI), multiprocessing, multitasking, and root directory;

(4) central processing unit (CPU), computer hardware, keyboard, monitor, motherboard, mouse, printer, random-access memory (RAM), scanner, and video resolution color depth;

(5) bit, byte, compact disc read-only memory (CD-ROM), diskette, gigabyte, hard disk, kilobyte, magnetic storage media, megabyte, and optical storage;

(6) baud and modem;

(7) boldface, center, cut, edit, font, format, jus-

tify, paste, spell-check, type size, underline, and word processor;

(8) absolute reference, attributes of a cell, cell, chart, copy across, copy down, formula, relative reference, and spreadsheet;

(9) database, field, filter, record, report, and sort;

(10) presentation software and slides;

(11) client/server, ethernet, file transfer protocol, gopher, host, local area network, and network;

(12) bookmark, browser, bulletin board system (BBS), download and upload, hypertext, hypertext markup language (HTML), internet, uniform resource locator (URL), and world wide web;

(13) discussion list, e-mail, flame, frequently asked questions (FAQs), online telecommuting, teleconferencing, telnet, usenet, and virus; and

(14) computer crime, copyright, ethics, fraud, laws, legislation, and privacy;

(b) the following hardware skills:

(1) Entering commands from the keyboard, mouse, or other input device;

(2) turning a machine on and off; and

(3) identifying the operating system type and version;

(c) at least three of the following file management skills:

(1) Creating a directory, subdirectory, and folder;

(2) copying files from one directory to another directory;

(3) finding a file located on a hard disk or other storage device;

(4) renaming or deleting files and either directories or folders; or

(5) decompressing a file using a given decompression program;

(d) the following diskette skills:

(1) Copying files to and from a diskette;

(2) formatting a diskette; and

(3) checking a diskette for viruses using a virus check program;

(e) the following word processing skills:

(1) Launching a word processor and creating documents;

(2) formatting a document according to certain specifications, including the following skills:

(A) Entering text and changing margins, paragraph format, and page numbering;

(B) changing text styles, including the font, type size, and other special characteristics;

(C) entering a title and text; and

(D) centering the lines of text on the page, with the title in boldface and a larger type size than the body of the text;

(3) opening a saved document that is stored on a hard disk or floppy disk;

(4) checking for spelling and grammatical errors using the software;

(5) rearranging sentences and paragraphs using cut-and-paste methods; and

(6) saving and printing documents;

(f) the following spreadsheet skills:

(1) Launching a spreadsheet program and saving and printing a spreadsheet in portrait or landscape;

(2) creating a spreadsheet using formulas;

(3) changing cell text and number attributes;

(4) inserting or deleting a row into or from a spreadsheet;

(5) copying a formula with both relative and absolute references down a column or across a row;

(6) copying a formula from one cell and pasting the formula into another cell; and

(7) creating a chart from a spreadsheet;

(g) the following database software skills:

(1) Creating a database;

(2) sorting a database on any field in any order;

(3) creating a report that filters out some of the data; and

(4) printing a report;

(h) presentation software skills, including creating and printing a presentation document that meets specified requirements;

(i) the following multitasking skills:

(1) Opening several programs at once; and

(2) inserting material from one program, including e-mail, spreadsheet, database, and presentation software, into another program;

(j) the following networking and internet skills:

(1) Transferring a file by connecting to another computer to upload and download files in any format, including ASCII, binary, and binary hexadecimal (binhex);

(2) receiving, saving, and decoding attachments;

(3) creating e-mail messages, with attachments;

(4) accessing a site on the world wide web and copying a file from the site to disk; and

(5) following hypertext links from that site to several others and bookmarking the path;

(k) the following ethical standards:

(1) Making copies of copyrighted software without permission is software piracy;

(2) misusing passwords or otherwise using computers without permission is unethical; and

(3) interfering with the transmission, storage, or retrieval of data through deliberate virus infection, alteration of codes, or destruction or damage of operating systems is unethical; and

(l) additional topics, upon prior approval of the chief executive officer of the board of regents or the chief executive officer's designee.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective Aug. 1, 2007; amended Oct. 16, 2020.)

88-29-14. Content requirements for qualified admission English courses. Each qualified admission English course shall meet all of the following requirements:

(a) If the course is offered for high school credit only, the course shall be taught by an instructor who is licensed to teach English at the secondary level.

(b) The course shall include formal writing assignments, excluding answers to essay exams, that meet the following requirements for each grade level:

(1) Each ninth-grade course shall include at least two graded assignments of 250 or more words each, two graded assignments of 350 or more words each, and two graded assignments of 500 or more words each.

(2) Each tenth-grade course shall include at least three graded assignments of 500 or more words each and three graded assignments of 1,000 or more words each.

(3) Each eleventh-grade course shall include at least three graded assignments of 500 or more words each, two graded assignments of 1,000 or more words each, and a research paper of 750 or more words.

(4) Each twelfth-grade course shall include at least five graded assignments of 1,000 or more words each and a research paper of 1,500 or more words.

(c) The course shall include written assignments about the literature studied in class.

(d) The course shall include at least two written assignments according to the following criteria:

(1) Writing about local, regional, national, or international events;

(2) creative writing; and

(3) writing associated with research projects.

(e) The course shall include study of the writing process using the six-trait model or another model.

(f) The course shall include the study of complete works of literature rather than excerpts or abridged versions.

(g) The course shall include a study of literature that shall not be limited to a single audience or

content area. A single audience or content area may include children's literature, sports literature, science fiction or fantasy, and literature of the old American west.

(h) The course shall include a study of the literary elements and devices of plot, setting, character, theme, point of view, mood, tone, style, personification, alliteration, assonance, simile, metaphor, idiom, flashback, foreshadowing, analogy, and symbolism in written literature that meets the following criteria:

(1) Treats universal themes;

(2) offers sufficient complexity for multiple interpretations; and

(3) includes language that is demonstrative of the literary elements and devices specified in this subsection.

(i) The course shall include study of novels, plays, short stories, and poetry in the amount specified for each grade level as follows:

(1) Each ninth-grade course shall include at least 12 works distributed as follows:

(A) At least three works selected from novels and plays, with at least one work in each genre;

(B) at least five short stories; and

(C) at least four poems.

(2) Each tenth-grade course shall include at least 16 works distributed as follows:

(A) At least three works selected from novels and plays, with at least one work in each genre;

(B) at least eight short stories; and

(C) at least five poems.

(3) Each eleventh-grade course shall include at least 18 works distributed as follows:

(A) At least four works selected from novels and plays, with at least one work in each genre;

(B) at least eight short stories; and

(C) at least six poems.

(4) Each twelfth-grade course shall include at least 19 works distributed as follows:

(A) At least four works selected from novels and plays, with at least one work in each genre;

(B) at least eight short stories; and

(C) at least seven poems.

(j) The course may include additional genres or excerpts of literary works, upon prior approval of the chief executive officer of the board of regents or the chief executive officer's designee.

(k) The course shall include experience in speaking and listening, including at least two oral presentations, with reasonable accommodations made for any student who has a visual, auditory, or speech impairment.

(l) The course shall include the use of audiovisual materials.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective Aug. 1, 2007; amended Oct. 16, 2020.)

88-29-15. Content requirements for qualified admission mathematics courses.

Each qualified admission mathematics course shall meet all of the following requirements:

(a) The course shall be classified as a mathematics course in the course description.

(b) If the course is offered for high school credit only, the course shall be taught by an instructor who is licensed to teach mathematics at the secondary level.

(c) The course shall emphasize the following skills:

- (1) Algebraic and geometric thought;
- (2) mathematical reasoning in the context of real-world problem solving;
- (3) communicating about mathematics; and
- (4) using technology in mathematical contexts.

(d) The course shall meet the criteria for one of the following:

(1) A qualified admission algebra I course, which shall include instruction in the following topics:

(A) Linear equations and functions, including both symbolic and graphic representations;

(B) data analysis, including linear regression for a data set;

(C) solution of linear equations and inequalities, both singularly and in systems, with sufficient emphasis to produce proficiency;

(D) properties of positive and negative real numbers, with sufficient emphasis to produce proficiency;

(E) absolute value;

(F) exponents and radicals;

(G) factoring patterns;

(H) solutions of quadratic equations; and

(I) additional topics upon approval of the chief executive officer of the board of regents or the chief executive officer's designee;

(2) a qualified admission algebra II course, which shall meet the following requirements:

(A) Enrollment in the course shall be limited to students who have successfully completed qualified admission algebra I and qualified admission geometry; and

(B) the course shall include instruction in the following topics:

(i) Linear functions and equations;

(ii) the solution of quadratic equations by a variety of methods with sufficient emphasis to produce proficiency;

(iii) exponential and logarithmic equations and functions;

(iv) manipulation of algebraic fractions;

(v) connections between symbolic, numeric, and graphical representations;

(vi) the use of matrices to solve systems of equations and to organize and analyze data;

(vii) fundamentals of probability and combinatorics; and

(viii) additional topics upon approval of the chief executive officer of the board of regents or the chief executive officer's designee;

(3) a qualified admission geometry course, which shall meet the following requirements:

(A) Enrollment in the course shall be restricted to students who have successfully completed algebra I; and

(B) the course shall include instruction in the following topics:

(i) Euclidean, transformational, and coordinate geometry;

(ii) the Pythagorean theorem and distance formula, with sufficient emphasis to produce proficiency;

(iii) properties of polygons, circles, and three-dimensional figures, including prisms, cylinders, and cones;

(iv) measurement concepts related to perimeter, area, and volume;

(v) the use of similarity and congruence in solving problems and as tools in developing proofs and constructions;

(vi) development of mathematical reasoning, including several approaches to proof, with sufficient emphasis to produce proficiency; and

(vii) additional topics upon approval of the chief executive officer of the board of regents or the chief executive officer's designee; or

(4) any mathematics course for which enrollment is restricted to students who have successfully completed qualified admission algebra II.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective Aug. 1, 2007; amended Oct. 16, 2020.)

88-29-16. Content requirements for qualified admission natural science courses.

Each qualified admission natural science course shall meet all of the following requirements:

(a) The course shall be classified as a science course in the course description.

(b) The course shall include an average of at least one laboratory or field experience each week. The laboratory or field experiences shall meet both of the following requirements:

(1) At least two-thirds of the laboratory or field experiences shall be conducted with face-to-face contact with an instructor and with direct exposure to the organisms or processes, or both, to be studied.

(2) The laboratory or field experiences shall include instruction in the following skills:

(A) Designing and conducting scientific investigations;

(B) using technology and mathematics in science;

(C) formulating and revising scientific explanations and models using logic and evidence;

(D) recognizing and analyzing alternative explanations and models; and

(E) communicating and defending a scientific argument.

(c) The course shall meet one of the following requirements:

(1) Qualified admission advanced biology. This course shall meet all of the following requirements:

(A) If the course is offered for high school credit only, the course shall be taught by an instructor licensed to teach biology at the secondary level.

(B) Enrollment in the course shall be limited according to the following requirements:

(i) Junior or senior standing or gifted status shall be required for enrollment in the course.

(ii) A qualified admission biology course shall be a prerequisite for enrollment in the course.

(iii) If successful completion of a course in addition to a qualified admission biology course is required before enrollment in the qualified admission advanced biology course, the prerequisite course shall meet the requirements of subsections (a) and (b) and the applicable requirements of subsection (c).

(C) The course shall be limited to instruction in one or more of the following topics:

(i) The structure and function of the cell;

(ii) chromosomes, genes, the molecular basis of heredity, and the major concepts of biological evolution;

(iii) the interdependence of organisms and the interaction of organisms with the physical environment;

(iv) the behavior of animals and the connection between their nervous systems and behavior; or

(v) the structure, function, and diversity of organisms.

(2) Qualified admission biology. This course shall meet all of the following requirements:

(A) If the course is offered for high school credit only, the course shall be taught by an instructor who is licensed to teach biology at the secondary level.

(B) The course shall meet the requirements in “standard 3: life science” for grades eight through 12 established by the Kansas state board of education in the “Kansas curricular standards for science education,” as approved on November 8, 2005 and hereby adopted by reference.

(C) The course may include additional content upon approval of the chief executive officer of the board of regents or the chief executive officer’s designee.

(3) Qualified admission chemistry. This course shall meet all of the following requirements:

(A) If the course is offered for high school credit only, the course shall be taught by an instructor who is licensed to teach chemistry at the secondary level.

(B) The course shall meet the requirements in “standard 2A: chemistry” for grades eight through 12 established by the Kansas state board of education in the “Kansas curricular standards for science education,” as approved on November 8, 2005 and hereby adopted by reference.

(C) The course may include additional content upon approval of the chief executive officer of the board of regents or the chief executive officer’s designee.

(4) Qualified admission earth-space science. This course shall meet all of the following requirements:

(A) If the course is offered for high school credit only, the course shall be taught by an instructor who is licensed to teach earth-space science at the secondary level.

(B) The course shall meet the requirements in “standard 4: earth and space science” for grades eight through 12 established by the Kansas state board of education in the “Kansas curricular standards for science education,” as approved on November 8, 2005 and hereby adopted by reference.

(C) The course may include additional content upon approval of the chief executive officer of the board of regents or the chief executive officer’s designee.

(5) Qualified admission physics. This course shall meet all of the following requirements:

(A) If the course is offered for high school credit only, the course shall be taught by an instructor who is licensed to teach physics at the secondary level.

(B) The course shall meet the requirements in “standard 2B: physics” for grades eight through 12 established by the Kansas state board of education in the “Kansas curricular standards for science education,” as approved on November 8, 2005 and hereby adopted by reference.

(C) The course may include additional content upon approval of the chief executive officer of the board of regents or the chief executive officer’s designee.

(6) Principles of technology. This course shall include “principles of technology: unit and sub-unit objectives,” second edition, established by the center for occupation research and development (CORD), copyrighted 2005 and hereby adopted by reference.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective Aug. 1, 2007; amended Oct. 16, 2020.)

88-29-17. Content requirements for qualified admission social science courses. Each qualified admission social science course shall meet all of the requirements specified for one of the following courses:

(a) Qualified admission anthropology course. This course shall include instruction in the following topics:

- (1) Different theoretical approaches to anthropology;
- (2) research methods in anthropology;
- (3) cross-cultural examination of marriage and family;
- (4) cross-cultural examination of politico-economic organizations;
- (5) cross-cultural examination of belief systems;
- (6) ethnocentrism compared to cultural relativity;
- (7) expressive culture;
- (8) cultural change; and
- (9) other related topics as approved in advance by the chief executive officer of the board of regents or the chief executive officer’s designee.

(b) Qualified admission current social issues course. This course shall include instruction in the following topics:

- (1) Theoretical perspectives on social problems;
- (2) research methods in social problems;

(3) cross-cultural perspectives in politico-economic problems;

- (4) social problems related to social inequities;
- (5) social problems related to social institutions;
- (6) social problems related to social change; and
- (7) other related topics as approved in advance

by the chief executive officer of the board of regents or the chief executive officer’s designee.

(c) Qualified admission economics course. This course shall meet the curricular standards for high school for economics established by the Kansas state board of education on pages 232 through 239 in the “Kansas curricular standards for history and government; economics and geography” as approved in December 2004, revised on August 22, 2005, and hereby adopted by reference.

(d) Qualified admission United States government course. This course shall meet the curricular standards for high school for civics-government established by the Kansas state board of education on pages 225 through 231 in the “Kansas curricular standards for history and government; economics and geography” as approved in December 2004, revised on August 22, 2005, and hereby adopted by reference.

(e) Qualified admission United States history course. This course shall meet the curricular standards for high school for United States history established by the Kansas state board of education on pages 255 through 262 in the “Kansas curricular standards for history and government; economics and geography” as approved in December 2004, revised on August 22, 2005, and hereby adopted by reference.

(f) Qualified admission international relations course. This course shall include instruction in the following topics:

- (1) Theories of international relations;
- (2) historical background, including the Cold War;
- (3) international law;
- (4) international organizations;
- (5) armed conflict and its causes;
- (6) balance of power, deterrence, and arms control;
- (7) political and economic globalization;
- (8) trade and politics, including economic sanctions;
- (9) religious, ethnic, nationalistic, and humanitarian challenges to global order, including the following:

- (A) Poverty;
- (B) disease;

(C) militant ideologies;
 (D) environmental issues;
 (E) human rights; and
 (F) terrorism; and
 (10) other related topics as approved in advance by the chief executive officer of the board of regents or the chief executive officer's designee.

(g) Qualified admission psychology course. This course shall include instruction in the following topics:

(1) Ways to access information on the principles and principal proponents of psychological theories, using accepted methods of scientific inquiry;
 (2) the biological basis of behavior, including the following:

(A) Physiology of the brain and nervous system;
 (B) physiology of the sensory systems; and
 (C) perceptual processes;
 (3) learning theories and cognitive processes;
 (4) theories of motivation and emotion;
 (5) human life span development;
 (6) major theories of personality;
 (7) major disorders of abnormal psychology and their treatment;

(8) how the individual, group, and environment influence human interactions; and

(9) other related topics as approved in advance by the chief executive officer of the board of regents or the chief executive officer's designee.

(h) Qualified admission race and ethnic relations course. This course shall include instruction in the following topics:

(1) Racism and prejudice in the United States;
 (2) historical issues;
 (3) similarities and differences in racial and ethnic group experiences;
 (4) theoretical approaches to race and ethnicity;
 (5) immigration, assimilation, and separatism;
 (6) cultural, economic, and political implications of race and ethnicity;

(7) current debates related to cultural politics;
 (8) legal issues including antidiscrimination laws, hate crimes, and affirmative action; and

(9) other related topics as approved in advance by the chief executive officer of the board of regents or the chief executive officer's designee.

(i) Qualified admission sociology course. This course shall include instruction in the following topics:

(1) The foundations of sociology, including the following:

(A) The history and philosophy of sociology;
 (B) applications of sociology;

(C) major sociological perspectives; and
 (D) sociological research methods and related ethical issues;

(2) the foundations of society, including the following:

(A) Major components of culture;
 (B) major types of societies;
 (C) the process of socialization;
 (D) the components of social structure;
 (E) social interaction; and
 (F) theories of deviance and types of social control;

(3) social inequality, including the following:

(A) Major theoretical explanations of social inequality;
 (B) local, national, and global perspectives on social stratification; and
 (C) inequalities associated with gender, sexual orientation, age, race, and ethnicity;

(4) social institutions, including the following:
 (A) Economic institutions; and
 (B) the interrelationships between major social institutions;

(5) social change, including dynamics of population change, environment, and urbanization;

(6) perspectives on collective behavior, social movements, and social change in local, national, and global contexts; and

(7) other related topics as approved in advance by the chief executive officer of the board of regents or the chief executive officer's designee.

(j) Qualified admission world geography course. This course shall meet the curricular standards for high school geography established by the Kansas state board of education on pages 240 through 249 in the "Kansas curricular standards for history and government; economics and geography" as approved in December 2004, revised on August 22, 2005, and hereby adopted by reference.

(k) Qualified admission world history course. This course shall meet the curricular standards for high school for world history established by the Kansas state board of education on pages 263 through 271 in the "Kansas curricular standards for history and government; economics and geography" as approved in December 2004, revised on August 22, 2005, and hereby adopted by reference.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective Aug. 1, 2007; amended Oct. 16, 2020.)

88-29-18 and 88-29-19. (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; revoked Oct. 16, 2020.)

Article 29a.—STATE UNIVERSITY ADMISSIONS

88-29a-1. Definitions. This regulation shall be applicable to each state educational institution's review of applications beginning with the 2016 summer session and through the end of the 2021 spring session. Each of the following terms, wherever used in this article or in article 29 of the board of regents' regulations, shall have the meaning specified in this regulation:

(a) "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, or are within an education system designated accredited, by an 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.

(b) "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.

(c) "Admission category" means one of the admission categories adopted by a state educational institution pursuant to K.A.R. 88-29-3.

(d) "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 high school equivalency credential;

(4) when required pursuant to K.A.R. 88-29a-5 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.

(e) "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.

(f) "Earned a high school equivalency credential with at least the prescribed minimum scores" means one of the following:

(1) Took the GED test on or after January 1, 2014, with an overall score of at least 680 points and a minimum score of 150 points on each subset;

(2) took the high school equivalency test (HiSET) on or after January 1, 2014, with an overall score of at least 75 points and a minimum score of 8 points on each subset;

(3) took the GED test on or after January 1, 2002 and before January 1, 2014, with an overall score of at least 2,550 points and a minimum score of 510 points on each subset; or

(4) 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 subset.

(g) "Exception window for nonresident freshman class admissions" means a method by which any state educational institution, pursuant to 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. 88-29a-7, or K.A.R. 88-29a-7a, and who is not eligible for admission pursuant to the exception window for nonresident transfer admissions.

(h) "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 transferable college credit hours but who is not eligible for admission pursuant to K.A.R. 88-29-4.

(i) "Exception window for resident freshman class admissions" means a method by which any state educational institution, pursuant to 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, K.A.R. 88-29a-5, or K.A.R. 88-29a-6 and who is not eligible for admission pursuant to the exception window for resident transfer admissions.

(j) "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 transferable college credit

hours but who is not eligible for admission pursuant to K.A.R. 88-29-4.

(k) “Institution of higher education” means an educational institution in any state, territory, or country that meets 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.

(l) “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.

(m) “Kansas resident” means a person determined to be a resident for fee purposes, pursuant to K.S.A. 76-729 and amendments thereto.

(n) “Non-accredited private secondary school” has the meaning specified in K.A.R. 88-26-1. This term may include a home school.

(o) “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.

(p) “Precollege,” when used to describe a course or curriculum, means a type of course or curriculum offered at an accredited high school that meets both of the following conditions:

(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.

(q) “State educational institution” has the meaning specified in K.S.A. 76-711, and amendments thereto, except that, as used in this article or in article 29 of the board of regents’ regulations, the term shall not include the university of Kansas.

(r) “Transferable college credit hours” means postsecondary coursework that an admitting state educational institution will accept.

(s) “Unit” means a measure of secondary credit that may be awarded to a student for satisfactory completion of a particular course or subject, as determined by the local school district.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective Feb. 1, 2013; amended April 24, 2015; amended Oct. 16, 2020.)

88-29a-2. Scope. This regulation shall be applicable to each state educational institution’s review of applications beginning with the 2015 summer session. Unless expressly stated as applicable to non-degree-seeking students, this article shall apply only to undergraduate degree-seeking students at any state educational institution. (Authorized by and implementing K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; effective Feb. 1, 2013.)

88-29a-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 beginning with the 2015 summer session and through the end of the 2021 spring 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. 76-717b 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;

(B) the Kansas scholars curriculum established pursuant to K.A.R. 88-13-3; or

(C) for eligible applicants, the qualified admission precollege curriculum functional equivalent described in K.A.R. 88-29a-18 (a) through (e) or in K.A.R. 88-29a-18(f);

(3) meets at least one of the following criteria:

(A) Has achieved a composite score or a super-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 or a super-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) Has earned a high school equivalency credential with at least the prescribed minimum scores, as defined in K.A.R. 88-29a-1;

(2) has achieved a composite score or a super-score on the ACT of at least 21; and

(3) has achieved a minimum cumulative GPA of 2.0 on a 4.0 scale on all transferable college credit hours.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective July 22, 2011; amended April 13, 2012; amended April 24, 2015; amended Oct. 16, 2020.)

88-29a-6. Qualifications required for the admission of a Kansas resident who is 21 or older.

(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 one of the following criteria:

(1) Has graduated from an accredited high school in Kansas or, pursuant to K.S.A. 76-717b and amendments thereto, an accredited high school located out of state;

(2) has graduated from a non-accredited private secondary school; or

(3) has earned a high school equivalency credential with at least the prescribed minimum scores, as defined in K.A.R. 88-29a-1. (Authorized by and implementing K.S.A. 76-717; effective July 22, 2011; amended April 13, 2012; amended April 24, 2015; amended Oct. 16, 2020.)

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 and through the end of the 2021 spring 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 transferable college credit hours. If an applicant to whom this regulation is applicable does not meet the requirements 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 under the age of 21 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;

(B) the Kansas scholars curriculum established pursuant to K.A.R. 88-13-3; or

(C) the qualified admission precollege curriculum functional equivalent described in K.A.R. 88-29a-19;

(3) meets at least one of the following criteria:

(A) Has achieved a composite score or a super-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) Any state educational institution may admit any nonresident 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 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-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 or a super-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) Any state educational institution may admit any nonresident under the age of 21 who meets the following requirements:

(1) Has earned a high school equivalency credential with at least the prescribed minimum scores, as defined in K.A.R. 88-29a-1;

(2) has achieved a composite score or a super-score on the ACT of at least 21; and

(3) has achieved a minimum cumulative GPA of 2.0 on a 4.0 scale on all transferable college credit hours.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective July 22, 2011; amended April 13, 2012; amended Feb. 1, 2013; amended April 24, 2015; amended Oct. 16, 2020.)

88-29a-7a. Qualifications required for the admission of a nonresident who is 21 or older.

(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 one of the following criteria:

(1) Has graduated from an accredited high school; or

(2) has earned a high school equivalency credential with at least the prescribed minimum scores, as defined in K.A.R. 88-29a-1 or K.A.R. 88-29c-1. (Authorized by and implementing K.S.A. 76-717; effective July 22, 2011; amended April 13, 2012; amended April 24, 2015; amended Oct. 16, 2020.)

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 transferable college credit hours 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 transferable college credit hours, 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 10 percent of the sum of the three numbers counted in paragraph (a)(1).

(b) In determining which students to admit as exceptions pursuant to this regulation, the state educational institution shall give preference to persons who are in military service, as defined in K.S.A. 76-717 and amendments thereto.

(c) 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.

(d) Each state educational institution shall require each student who is admitted as an exception to the minimum qualified admission standards pursuant to this regulation to adopt an individual plan for success, before enrollment, and subsequently review that individual plan for success, as required by K.S.A. 76-717 and amendments thereto. (Authorized by and implementing K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; effective July 22, 2011; amended Feb. 1, 2013.)

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. 88-29a-7a and who has earned fewer than 24 transferable college credit hours, 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 transferable college credit hours, 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) In determining which students to admit as exceptions pursuant to this regulation, the state educational institution shall give preference to persons who are in military service, as defined in K.S.A. 76-717 and amendments thereto.

(c) 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.

(d) Each state educational institution shall require each student who is admitted as an exception to the minimum qualified admission standards pursuant to this regulation to adopt an individual plan for success, before enrollment, and subsequently review that individual plan for success, as required by K.S.A. 76-717 and amendments thereto. (Authorized by and implementing K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; effective July 22, 2011; amended Feb. 1, 2013.)

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 and through the end of the 2021 spring session. The 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 of the board of regents' regulations.

(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 and K.A.R. 88-29a-5 through 88-29a-7a.

(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 post-secondary 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 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 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 the 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.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective July 22, 2011; amended Oct. 16, 2020.)

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 and through the end of the 2021 spring 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 1060 on the SAT, excluding the writing portion of the SAT, shall be deemed the equivalent of a composite score of 21 or superscore of 21 on the ACT for purposes of this article of the board of regents' regulations.

(2) A documented composite score or a documented superscore 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 ACT-issued composite score or superscore for admission decisions.

(4) If an applicant has taken both the ACT and the 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) If the high school has not already calculated the grade point average in the qualified admission precollege curriculum and provided that information on the official high school transcript, each admission officer at a state educational institution shall calculate the grade point average in the qualified admission precollege curriculum for any applicant seeking admission pursuant to K.A.R. 88-29a-11, as follows:

(1) The admission officer shall ensure that the requirements of K.A.R. 88-29a-11 are met before calculating the 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 assign one grade point to each grade of P.

(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 calculate the grade for the college course, for purposes of determining the precollege curriculum grade point average as follows:

(A) Each college course with three or more credit hours, but no more than five credit hours, shall be treated as a one-unit high school course.

(B) Each college course with more than five credit hours shall be treated as a two-unit high school course.

(d) If the high school has not already calculated the grade point average in the Kansas scholars

curriculum and provided that information on the official high school transcript, each admission officer at a state educational institution shall calculate the grade point average in the Kansas scholars curriculum for any applicant seeking admission pursuant to K.A.R. 88-13-3, as follows:

(1) The admission officer shall ensure that the requirements established pursuant to K.A.R. 88-13-3 are met before calculating the grade point average.

(2) The admission officer shall calculate a grade point average only for approved Kansas scholars curriculum courses appearing on the official high school transcript.

(3) The admission officer shall consider a course to be part of the approved Kansas scholars curriculum only if the course was approved in accordance with guidelines established pursuant to K.A.R. 88-13-3 and if the applicant earned a grade of D or better.

(4)(A) If the high school transcript reports grades on a four-point scale, the admission officer shall calculate grade point averages in the approved Kansas scholars 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).

(5) 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 assign one grade point to each grade of P.

(6) If an applicant has retaken an approved Kansas scholars course, the admission officer shall use the highest grade when calculating the grade point average for the approved Kansas scholars curriculum.

(7) If an applicant has taken a college course to meet the requirements for the approved Kansas scholars curriculum and this college course ap-

pears on the applicant's official high school transcript, the admission officer shall calculate the grade in the college course, for purposes of determining the Kansas scholars curriculum grade point average, as follows:

(A) Each college course with at least three but no more than five credit hours shall be treated as a one-unit high school course.

(B) Each college course with more than five credit hours shall be treated as a two-unit high school course.

(e) If the high school has not already calculated the grade point average in the qualified admission precollege curriculum and provided that information on the official high school transcript, each admission officer at a state educational institution shall calculate the grade point average in the qualified admission precollege curriculum for any resident applicant seeking admission pursuant to K.A.R. 88-29a-18(a) through (e), as follows:

(1) The admission officer shall ensure that the requirements of K.A.R. 88-29a-18(a) through (e) are met before calculating the grade point average.

(2) The admission officer shall calculate the grade point average of approved qualified admission precollege curriculum courses taken from an accredited Kansas high school as described in paragraphs (c)(2) through (c)(8)(B).

(3) The admission officer shall calculate the grade point average of college preparatory courses taken from a high school located outside the state of Kansas as follows:

(A) The applicant shall have earned a grade of D or better.

(B)(i) If the high school transcript reports grades on a four-point scale, the admission officer shall calculate grade point averages in the 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.

(ii) 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).

(4) 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 assign one grade point to each grade of P.

(5) If an applicant has retaken a qualified admission precollege course, the admission officer shall use the highest grade when calculating the grade point average for the qualified admission precollege curriculum.

(6) If an applicant has taken a college course to meet the requirements for the qualified admission precollege curriculum and this college course appears on the applicant's official high school transcript, the admission officer shall calculate the grade in the college course, for purposes of determining the precollege curriculum grade point average, as follows:

(A) Each college course with at least three but no more than five credit hours shall be treated as a one-unit high school course.

(B) Each college course with more than five credit hours shall be treated as a two-unit high school course.

(f) For any resident applicant seeking admission pursuant to K.A.R. 88-29a-18(f), the admission officer shall calculate the 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-18(f) are met before calculating the grade point average.

(2) The admission officer shall calculate the grade point average of qualified admission precollege curriculum courses taken from an accredited Kansas high school as described in paragraphs (c) (2) through (c)(8)(B).

(3) The admission officer shall calculate the grade point average of college preparatory courses taken from high schools located outside the state of Kansas as described in paragraphs (e)(3) through (e)(6)(B).

(4) The admission officer shall calculate the grade point average of qualified admission precollege curriculum courses taken after high school graduation as described in paragraphs (e)(6)(A) and (e)(6)(B).

(g) If the high school has not already calculated the grade point average in the college preparatory curriculum established by the state in which

the applicant is a resident and provided that information on the official high school transcript, each admission officer at a state educational institution shall calculate the grade point average for that state's college preparatory curriculum for any nonresident applicant seeking admission pursuant to K.A.R. 88-29a-19(a) as follows:

(1) The admission officer shall ensure that the requirements of K.A.R. 88-29a-19(a) are met before calculating the grade point average.

(2) The admission officer shall calculate a grade point average only for college preparatory courses appearing on the official high school transcript.

(3) The admission officer shall consider a course to be part of the approved college preparatory curriculum only if the applicant earned a grade of D or better.

(4)(A) If the high school transcript reports grades on a four-point scale, the admission officer shall calculate grade point averages in the approved college preparatory 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).

(5) 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 assign one grade point to each grade of P.

(6) If an applicant has retaken a college preparatory course, the admission officer shall use the highest grade when calculating the grade point average for the college preparatory curriculum.

(7) If an applicant has taken a college course to meet the requirements for the college preparatory curriculum and this college course appears on the applicant's official high school transcript, the admission officer shall calculate the grade in the

college course, for purposes of determining the college preparatory curriculum grade point average, as follows:

(A) Each college course with at least three but no more than five credit hours shall be treated as a one-unit high school course.

(B) Each college course with more than five credit hours shall be treated as a two-unit high school course.

(h) At the time of admission of an applicant, the state educational institution shall notify the applicant 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.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective July 22, 2011; amended April 13, 2012; amended Oct. 16, 2020.)

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 and through the end of the 2021 spring 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 or after academic year 2014-2015 and in or before academic year 2020-2021, 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 May 4, 2016, which is hereby adopted by reference. If a course was approved by the board and included in the March 11, 2014 list of "Kansas board of regents precollege curriculum courses approved for university admissions," which is hereby adopted by reference, and the student successfully completed the course in an academic year for which the course

was approved, then that course shall count toward the student's qualified admission curriculum requirements in the subject area for which the course was approved. 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, which shall include reading, writing, and literature; or

(2) four units of approved qualified admission English courses, of which three and $\frac{1}{2}$ units shall include reading, writing, and literature and $\frac{1}{2}$ 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; or

(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, which shall include instruction in United States history, United States government, and geography; 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.

This regulation shall have no force and effect after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective July 22, 2011; amended April 13, 2012; amended Oct. 16, 2020.)

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, who graduates from high school in academic year 2014-2015 or later, and who applies for admission to attend before the 2021 summer semester to meet the require-

ments specified in subsections (a) through (e) or in subsection (f). An admission officer of a state educational institution shall not grant any exception to this regulation. The admission officer shall utilize subsections (a) through (e) only for resident applicants who have completed 15 or fewer quarters of high school in Kansas.

(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 documentation on the official high school transcript of completion of any four units of high school English. A general education English course consisting of three or more semester hours taken before high school graduation and either offered by or accepted in transfer by a state educational institution may be substituted for one unit of high school English. The course shall be documented on the official high school transcript.

(b) 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 documentation on the official high school transcript of completion of any three units of high school natural science courses chosen from one of the following areas:

- (1) Biology;
- (2) chemistry;
- (3) physics;
- (4) earth or space science;
- (5) principles of technology;
- (6) integrated science;
- (7) physical science; or
- (8) environmental science.

A general education natural science course consisting of three or more semester hours taken before high school graduation and either offered by or accepted in transfer by a state educational institution may be substituted for one unit of high school natural science. The course shall be documented on the official high school transcript.

(c) 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 documentation on the official high school transcript of completion of any three units of high school social science courses that meet Kansas high school graduation requirements.

A general education social science course consisting of three or more semester hours taken

before high school graduation and either offered by or accepted in transfer by a state educational institution may be substituted for one unit of high school social science. The course shall be documented on the official high school transcript.

(d) 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 documentation on the official high school transcript of completion of any three units of fine arts, computer or information systems, foreign languages, personal finance, speech, debate, forensics, journalism, career and technical education courses, or units of English, mathematics, social science, or natural science that are in addition to those required in subsections (a) through (c) and subsection (e).

A general education course consisting of three or more semester hours in 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 taken before high school graduation and either offered by or accepted in transfer by a state educational institution may be substituted for one unit of high school electives. The course shall be documented on the official high school transcript.

(e) Each applicant shall provide official documentation of successful completion of the math requirements specified in K.A.R. 88-29a-11(b)(1) or (b)(2).

(f) Any admission officer may utilize this subsection for any resident applicant who, upon high school graduation, has met most but not all of the precollege curriculum requirements specified in K.A.R. 88-29a-11, or the functional equivalents specified in subsections (a) through (e). Any resident applicant not meeting the precollege curriculum requirements of K.A.R. 88-29a-11, or the functional equivalents specified in subsections (a) through (e), may complete college credit courses to meet the unfulfilled precollege curriculum requirements, if all the following requirements are met:

(1) The course shall be transferable to a state educational institution.

(2) The course shall be three or more semester hours.

(3) The course shall be in the same subject area as the identified deficiency.

(4) The applicant shall submit documentation on the official college transcript of completion of the course.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective July 22, 2011; amended April 13, 2012; amended Oct. 16, 2020.)

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, who graduates from high school in academic year 2014-2015 or later, and who applies for admission to attend before the 2021 summer session to meet at least one of the sets of requirements specified in subsections (a) and (b). An admission officer of a state educational institution shall not grant any exception to this regulation.

To demonstrate successful completion of the functional equivalent of the qualified admission precollege curriculum described in K.A.R. 88-29a-11, each applicant shall provide one of the following:

(a) Documentation on the official high school transcript of completion of the college preparatory curriculum established by the state in which the applicant is a resident. This option may be used only if the resident state's college preparatory curriculum is at least as rigorous as that required by K.A.R. 88-29a-11; or

(b) official documentation of achievement of all four ACT college readiness benchmarks.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective July 22, 2011; amended April 13, 2012; amended Oct. 16, 2020.)

Article 29b.—UNIVERSITY OF KANSAS ADMISSIONS

88-29b-1. Definitions. This regulation shall be applicable to the university of Kansas' review of applications beginning with the 2016 summer session and through the end of the 2021 spring session. Each of the following terms, wherever used in this article of the board of regents' regulations, shall have the meaning specified in this regulation:

(a) "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, or are with-

in an education system designated accredited, by an 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.

(b) “Admission” means the permission given by the admission officer of the university of Kansas to an applicant to enroll as a degree-seeking student in the university of Kansas.

(c) “Admission category” means one of the admission categories adopted by the university of Kansas pursuant to K.A.R. 88-29b-3.

(d) “Complete application file” means the entire set of the following student records that have been received in the admission office of the university of Kansas:

(1) A completed application to the university of Kansas;

(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 high school equivalency credential;

(4) when required pursuant to K.A.R. 88-29a-5, K.A.R. 88-29b-5, K.A.R. 88-29a-7, or K.A.R. 88-29b-7, an official copy of all ACT or SAT scores; and

(5) any other materials required by the university of Kansas for advising or placement purposes.

(e) “Degree-seeking student” means a student who has been accepted for enrollment at the university of Kansas and who has formally indicated to the university of Kansas 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.

(f) “Earned a high school equivalency credential with at least the prescribed minimum scores” means one of the following:

(1) Took the GED test on or after January 1, 2014, with an overall score of at least 680 points and a minimum score of 150 points on each subset;

(2) took the high school equivalency test (HiSET) on or after January 1, 2014, with an overall score of at least 75 points and a minimum score of 8 points on each subtest;

(3) took the GED test on or after January 1, 2002 and before January 1, 2014, with an overall score of at least 2,550 points and a minimum score of 510 points on each subtest; or

(4) 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.

(g) “Exception window for nonresident freshman class admissions” means a method by which the university of Kansas, pursuant to K.A.R. 88-29b-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. 88-29b-4, K.A.R. 88-29a-7, K.A.R. 88-29b-7, K.A.R. 88-29a-7a, or K.A.R. 88-29b-7a, and who is not eligible for admission pursuant to the exception window for nonresident transfer admissions.

(h) “Exception window for nonresident transfer admissions” means a method by which the university of Kansas, pursuant to K.A.R. 88-29b-8b, may admit a person who is not a resident of Kansas and has earned at least 24 transferable college credit hours but who is not eligible for admission pursuant to K.A.R. 88-29-4 or K.A.R. 88-29b-4.

(i) “Exception window for resident freshman class admissions” means a method by which the university of Kansas, pursuant to K.A.R. 88-29b-8, may admit a Kansas resident who does not meet the applicable requirements specified in K.A.R. 88-29-4, K.A.R. 88-29b-4, K.A.R. 88-29a-5, K.A.R. 88-29b-5, K.A.R. 88-29a-6, or K.A.R. 88-29b-6 and who is not eligible for admission pursuant to the exception window for resident transfer admissions.

(j) “Exception window for resident transfer admissions” means a method by which the university of Kansas, pursuant to K.A.R. 88-29b-8a, may admit a Kansas resident who has earned at least 24 transferable college credit hours but is not eligible for admission pursuant to K.A.R. 88-29-4 or K.A.R. 88-29b-4.

(k) “Institution of higher education” means an educational institution in any state, territory, or country that meets 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.

(l) “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.

(m) “Kansas resident” means a person determined to be a resident for fee purposes, pursuant to K.S.A. 76-729 and amendments thereto.

(n) “Non-accredited private secondary school” has the meaning specified in K.A.R. 88-26-1. This term may include a home school.

(o) “Non-degree-seeking student” means a student who has been accepted for enrollment at the university of Kansas and who has formally indicated to the university 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.

(p) “Precollege,” when used to describe a course or curriculum, means a type of course or curriculum offered at an accredited high school that meets both of the following conditions:

(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.

(q) “State educational institution” has the meaning specified in K.S.A. 76-711, and amendments thereto.

(r) “Transferable college credit hours” means postsecondary coursework that the university of Kansas will accept.

(s) “Unit” means a measure of secondary credit that may be awarded to a student for satisfacto-

ry completion of a particular course or subject, as determined by the local school district.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective Feb. 1, 2013; amended April 24, 2015; amended Oct. 16, 2020.)

88-29b-2. Scope. This regulation shall be applicable to the university of Kansas’ review of applications beginning with the 2016 summer session. Unless expressly stated as applicable to non-degree-seeking students, this article shall apply only to undergraduate degree-seeking students at the university of Kansas. (Authorized by and implementing K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; effective Feb. 1, 2013.)

88-29b-3. Categories of admission. (a) In the admission policies that are required by K.A.R. 88-29b-9 and K.A.R. 88-29d-9, the university of Kansas shall adopt the regular admission category, which shall include any applicant who is given permission from the university to enroll as a degree-seeking student at the university without any conditions or restrictions other than that the student will be subject to all policies of the university.

(b) In the admission policies that are required by K.A.R. 88-29b-9 and K.A.R. 88-29d-9, the university of Kansas 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 university to enroll as a degree-seeking student at the university for a specified period of time not to exceed one calendar year, during which period the student shall be required to provide the university with the student’s complete application file; and

(2) the provisional admission category, which shall include any applicant who is given permission from the university to enroll as a degree-seeking student at the university 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 university;

(B) the applicant shall enroll in the developmental or college preparatory courses specified by the university;

(C) the applicant shall participate in an advising program specified by the university;

(D) the applicant shall achieve a certain grade point average specified by the university at the end of a period of time specified by the university; and

(E) the applicant shall meet any other provisions established in the university's admission policy for provisional admission established in accordance with K.A.R. 88-29b-9 or K.A.R. 88-29d-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 university for which the student is eligible. (Authorized by and implementing K.S.A. 76-717; effective Feb. 1, 2013; amended Oct. 16, 2020.)

88-29b-4. Qualifications required for the admission of an applicant with 24 or more transferable college credit hours. This regulation shall be applicable to the university of Kansas' review of applications beginning with the 2016 summer session.

(a) The requirements established in this regulation shall apply to any applicant who has earned 24 or more transferable college credit hours. If an applicant to whom this regulation is applicable does not meet the requirements of subsection (b) or paragraph (d)(1) and does not meet the requirements of K.A.R. 88-29-4, the applicant may be admitted by means of the exception window for resident transfer admissions described in K.A.R. 88-29b-8a or the exception window for nonresident transfer admissions described in K.A.R. 88-29b-8b. Applicants who are admitted pursuant to subsection (c) or paragraph (d)(2) and who do not meet the requirements of K.A.R. 88-29-4 may be admitted only by means of the exception window for resident transfer admissions described in K.A.R. 88-29b-8a or the exception window for nonresident transfer admissions described in K.A.R. 88-29b-8b.

(b) The university of Kansas shall admit any Kansas resident who submits an application for admission to the university on or before July 1 of the academic year for which the student is applying and who meets the following criteria:

(1) Has earned 24 or more transferable college credit hours; and

(2) has earned a cumulative grade point average of 2.5 or higher on a 4.0 scale in all transferable postsecondary coursework.

(c)(1) The university of Kansas may admit any Kansas resident applicant who meets the following conditions:

(A)(i) Submits an application for admission to the university after July 1 of the academic year for which the student is applying; or

(ii) submits an application for admission on or before July 1 but does not meet the criteria specified in subsection (b); and

(B) is recommended for admission by the university's admission review committee.

(2) The admission review committee shall consider the following factors in making admission recommendations:

(A) The applicant's completed coursework in relation to the admission standards in K.A.R. 88-29-4;

(B) the applicant's grade point average in all postsecondary coursework;

(C) the degree of difficulty of the applicant's postsecondary coursework;

(D) the applicant's grade trend;

(E) the applicant's ability to enhance the cultural, economic, or geographic diversity of the university;

(F) the applicant's academic potential;

(G) any outstanding talent in a particular area that the applicant has demonstrated;

(H) the applicant's personal challenges or family circumstances that have affected academic performance;

(I) the applicant's eligibility for and likelihood of benefitting from organized support services available at the university; and

(J) any other factors that the admission review committee deems appropriate and that have been included in the university's admission policies established pursuant to K.A.R. 88-29b-9.

(d) The university of Kansas may admit any nonresident applicant who meets one of the following conditions:

(1) Submits an application for admission to the university on or before July 1 of the academic year for which the student is applying and meets the following conditions:

(A) Has earned 24 or more transferable college credit hours; and

(B) has earned a cumulative grade point average of 2.5 or higher on a 4.0 scale in all transferable postsecondary coursework;

(2) submits an application for admission to the university after July 1 of the academic year for which the student is applying and is recommended for admission by the university's admission review committee upon consideration of the factors listed in paragraph (c)(2); or

(3) submits an application for admission on or before July 1, does not meet the criteria specified in paragraph (d)(1), and is recommended for admission by the university's admission review committee upon consideration of the factors listed in paragraph (c)(2). (Authorized by and implementing K.S.A. 2014 Supp. 76-717; effective Feb. 1, 2013; amended April 24, 2015.)

88-29b-5. Qualifications required for the admission of a Kansas resident who is under the age of 21. This regulation shall be applicable to the university of Kansas' review of applicants beginning with the 2016 summer session and through the end of the 2021 spring 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 transferable college credit hours. If an applicant to whom this regulation is applicable does not meet the requirements of subsections (b), (c), and (d) and does not meet the requirements of K.A.R. 88-29a-5, the applicant may be admitted by means of the exception window for resident freshman class admissions described in K.A.R. 88-29b-8. Any applicant who is admitted pursuant to subsection (e) and does not meet the requirements of K.A.R. 88-29a-5 may be admitted only by means of the exception window for resident freshman class admissions described in K.A.R. 88-29b-8.

(b) The university of Kansas shall admit any Kansas resident under the age of 21 who submits an application for admission to the university on or before February 1 and meets either of the following requirements:

(1)(A) Has graduated from an accredited high school in Kansas or, pursuant to K.S.A. 76-717b and amendments thereto, an accredited high school located out of state, with a minimum cumulative grade point average of 3.0 on a 4.0 scale;

(B) has completed one of the following with a minimum grade point average of 2.0 on a 4.0 scale:

(i) The qualified admission precollege curriculum described in K.A.R. 88-29a-11;

(ii) the Kansas scholars curriculum established pursuant to K.A.R. 88-13-3; or

(iii) for eligible applicants, the qualified admission precollege curriculum functional equivalent described in K.A.R. 88-29a-18 (a) through (e) or in K.A.R. 88-29a-18(f);

(C) has achieved a composite score or a super-score on the ACT of at least 24; and

(D) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours; or

(2)(A) Has graduated from an accredited high school in Kansas or, pursuant to K.S.A. 76-717b and amendments thereto, an accredited high school located out of state, with a minimum cumulative grade point average of 3.25 on a 4.0 scale;

(B) has completed one of the following with a minimum grade point average of 2.0 on a 4.0 scale:

(i) The qualified admission precollege curriculum described in K.A.R. 88-29a-11;

(ii) the Kansas scholars curriculum established pursuant to K.A.R. 88-13-3; or

(iii) for eligible applicants, the qualified admission precollege curriculum functional equivalent described in K.A.R. 88-29a-18 (a) through (e) or in K.A.R. 88-29a-18(f);

(C) has achieved a composite score or a super-score on the ACT of at least 21; and

(D) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours.

(c) The university of Kansas shall admit any Kansas resident under the age of 21 who submits an application for admission to the university on or before February 1 and meets either of the following requirements:

(1)(A) Has graduated from a non-accredited private secondary school with a minimum cumulative grade point average of 3.0 on a 4.0 scale;

(B) has completed one of the following:

(i) Coursework equivalent to the qualified admission precollege curriculum as described in K.A.R. 88-29a-11; or

(ii) coursework equivalent to the Kansas scholars curriculum established pursuant to K.A.R. 88-13-3;

(C) has achieved a composite score or a super-score on the ACT of at least 24; and

(D) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours; or

(2)(A) Has graduated from a non-accredited private secondary school with a minimum cumulative grade point average of 3.25 on a 4.0 scale;

(B) has completed one of the following:

(i) Coursework equivalent to the qualified admission precollege curriculum as described in K.A.R. 88-29a-11; or

(ii) coursework equivalent to the Kansas scholars curriculum established pursuant to K.A.R. 88-13-3;

(C) has achieved a composite score or a super-score on the ACT of at least 21; and

(D) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours.

(d) The university of Kansas shall admit any Kansas resident under the age of 21 who submits an application for admission to the university on or before February 1 and who meets the following requirements:

(1) Has earned a high school equivalency credential with at least the prescribed minimum scores, as defined in K.A.R. 88-29b-1;

(2) has achieved a composite score or a super-score on the ACT of at least 21; and

(3) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours.

(e)(1) The university of Kansas may admit any Kansas resident under the age of 21 who meets the following conditions:

(A)(i) Submits an application for admission to the university after February 1; or

(ii) submits an application for admission on or before February 1 but does not meet the criteria specified in subsections (b), (c), and (d); and

(B) is recommended for admission by the university's admission review committee.

(2) The admission review committee shall consider the following factors in making admission recommendations:

(A) The applicant's completed coursework in relation to the admission standards in K.A.R. 88-29a-5;

(B) the applicant's academic performance, including the following:

(i) Grade point average in all high school coursework;

(ii) ACT scores; and

(iii) high school class rank;

(C) the degree of difficulty of the applicant's high school coursework;

(D) the applicant's grade trend;

(E) the applicant's ability to enhance the cultural, economic, or geographic diversity of the university;

(F) the applicant's academic potential;

(G) any outstanding talent in a particular area that the applicant has demonstrated;

(H) the applicant's successful completion of advanced placement, international baccalaureate, and dual-credit coursework while in high school;

(I) specification of whether the applicant is a first-generation postsecondary student;

(J) the applicant's personal challenges or family circumstances that have affected academic performance;

(K) the applicant's eligibility for and likelihood of benefitting from organized support services available at the university; and

(L) any other factors that the admission review committee deems appropriate and that have been included in the university's admission policies established pursuant to K.A.R. 88-29b-9.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective Feb. 1, 2013; amended April 24, 2015; amended Oct. 16, 2020.)

88-29b-6. Qualifications required for the admission of a Kansas resident who is 21 or older. This regulation shall be applicable to the university of Kansas' review of applicants beginning with the 2016 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 university of Kansas, except that the requirements shall not apply to any applicant who has earned 24 or more transferable college credit hours. If an applicant to whom this regulation is applicable does not meet the requirements of subsection (b) and does not meet the requirements of K.A.R. 88-29a-6, the applicant may be admitted by means of the exception window for resident freshman class admissions described in K.A.R. 88-29b-8. Any applicant who is admitted pursuant to subsection (c) and does not meet the requirements of K.A.R. 88-29a-6 may be admitted only by means of the exception window for resident freshman class admissions described in K.A.R. 88-29b-8.

(b) The university of Kansas shall admit any Kansas resident who is 21 or older, submits an application for admission to the university on or before February 1, and meets one of the following criteria:

(1) Has graduated from an accredited high school in Kansas or, pursuant to K.S.A. 76-717b

and amendments thereto, an accredited high school located out of state;

(2) has graduated from a non-accredited private secondary school; or

(3) has earned a high school equivalency credential with at least the prescribed minimum scores, as defined in K.A.R. 88-29b-1 or K.A.R. 88-29d-1.

(c) The university of Kansas may admit any Kansas resident who is 21 or older and meets the following conditions:

(1)(A) Submits an application for admission to the university after February 1; or

(B) submits an application for admission on or before February 1 but does not meet the criteria specified in subsection (b); and

(2) is recommended for admission by the university's admission review committee upon consideration of the factors listed in K.A.R. 88-29b-5(e)(2) or K.A.R. 88-29d-5(e)(2). (Authorized by and implementing K.S.A. 76-717; effective Feb. 1, 2013; amended April 24, 2015; amended Oct. 16, 2020.)

88-29b-7. Qualifications required for the admission of a nonresident who is under the age of 21. This regulation shall be applicable to the university of Kansas' review of applicants beginning with the 2016 summer session and through the end of the 2021 spring 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 transferable college credit hours. If an applicant to whom this regulation is applicable does not meet the requirements in subsections (b), (c), and (d) and does not meet the requirements of K.A.R. 88-29a-7, the applicant may be admitted by means of the exception window for nonresident freshman class admissions described in K.A.R. 88-29b-8c. Any applicant who is admitted pursuant to subsection (e) and does not meet the requirements of K.A.R. 88-29a-7 may be admitted only by means of the exception window for nonresident freshman class admissions described in K.A.R. 88-29b-8c.

(b) The university of Kansas may admit any nonresident under the age of 21 who submits an application for admission to the university on or before February 1 and meets either of the following requirements:

(1)(A) Has graduated from an accredited high school with a minimum cumulative grade point average of 3.0 on a 4.0 scale;

(B) has completed one of the following with a minimum grade point average of 2.5 on a 4.0 scale:

(i) The qualified admission precollege curriculum described in K.A.R. 88-29a-11;

(ii) the Kansas scholars curriculum established pursuant to K.A.R. 88-13-3; or

(iii) the qualified admission precollege curriculum functional equivalent described in K.A.R. 88-29a-19;

(C) has achieved a composite score or a super-score on the ACT of at least 24; and

(D) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours; or

(2)(A) Has graduated from an accredited high school with a minimum cumulative grade point average of 3.25 on a 4.0 scale;

(B) has completed one of the following with a minimum grade point average of 2.5 on a 4.0 scale:

(i) The qualified admission precollege curriculum described in K.A.R. 88-29a-11;

(ii) the Kansas scholars curriculum established pursuant to K.A.R. 88-13-3; or

(iii) the qualified admission precollege curriculum functional equivalent described in K.A.R. 88-29a-19;

(C) has achieved a composite score or a super-score on the ACT of at least 21; and

(D) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours.

(c) The university of Kansas may admit any nonresident under the age of 21 who submits an application for admission to the university on or before February 1 and meets either of the following requirements:

(1)(A) Has graduated from a non-accredited private secondary school with a minimum cumulative grade point average of 3.0 on a 4.0 scale;

(B) has completed one of the following with a minimum grade point average of 2.5 on a 4.0 scale:

(i) Coursework equivalent to the qualified admission precollege curriculum as described in K.A.R. 88-29a-11; or

(ii) coursework equivalent to the Kansas scholars curriculum established pursuant to K.A.R. 88-13-3;

(C) has achieved a composite score or a super-score on the ACT of at least 24; and

(D) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours; or

(2)(A) Has graduated from a non-accredited private secondary school with a minimum cumulative grade point average of 3.25 on a 4.0 scale;

(B) has completed one of the following with a minimum grade point average of 2.5 on a 4.0 scale:

(i) Coursework equivalent to the qualified admission precollege curriculum as described in K.A.R. 88-29a-11; or

(ii) coursework equivalent to the Kansas scholars curriculum established pursuant to K.A.R. 88-13-3;

(C) has achieved a composite score or a super-score on the ACT of at least 21; and

(D) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours.

(d) The university of Kansas may admit any nonresident under the age of 21 who submits an application for admission to the university on or before February 1 and meets the following requirements:

(1) Has earned a high school equivalency credential with at least the prescribed minimum scores, as defined in K.A.R. 88-29b-1;

(2) has achieved a composite score or a super-score on the ACT of at least 21; and

(3) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours.

(e) The university of Kansas may admit any nonresident under the age of 21 who meets the following conditions:

(1)(A) Submits an application for admission to the university after February 1; or

(B) submits an application for admission on or before February 1 but does not meet the criteria specified in subsections (b), (c), and (d); and

(2) is recommended for admission by the university's admission review committee upon consideration of the factors listed in K.A.R. 88-29b-5(e)(2).

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective Feb. 1, 2013; amended April 24, 2015; amended Oct. 16, 2020.)

88-29b-7a. Qualifications required for the admission of a nonresident who is 21 or older. This regulation shall be applicable to the university of Kansas' review of applicants beginning with the 2016 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

university of Kansas, except that this regulation shall not apply to any applicant who has earned 24 or more transferable college credit hours. If an applicant to whom this regulation is applicable does not meet the requirements of subsection (b) and does not meet the requirements of K.A.R. 88-29a-7a, the applicant may be admitted by means of the exception window for nonresident freshman class admissions described in K.A.R. 88-29b-8c. Any applicant who is admitted pursuant to subsection (c) and does not meet the requirements of K.A.R. 88-29a-7a may be admitted only by means of the exception window for nonresident freshman class admissions described in K.A.R. 88-29b-8c.

(b) The university of Kansas may admit any nonresident who is 21 or older, submits an application for admission to the university on or before February 1, and meets one of the following criteria:

(1) Has graduated from an accredited high school; or

(2) has earned a high school equivalency credential with at least the prescribed minimum scores, as defined in K.A.R. 88-29b-1 or K.A.R. 88-29d-1.

(c) The university of Kansas may admit any nonresident who is 21 or older and meets the following conditions:

(1)(A) Submits an application for admission to the university after February 1; or

(B) submits an application for admission on or before February 1 but does not meet the criteria specified in subsection (b); and

(2) is recommended for admission by the university's admission review committee upon consideration of the factors listed in K.A.R. 88-29b-5(e)(2) or K.A.R. 88-29d-5(e)(2). (Authorized by and implementing K.S.A. 76-717; effective Feb. 1, 2013; amended April 24, 2015; amended Oct. 16, 2020.)

88-29b-8. The exception window for resident freshman class admissions. This regulation shall be applicable to the university of Kansas' review of applicants beginning with the 2016 summer session. (a) The university of Kansas may admit any Kansas resident who does not meet the applicable requirements specified in K.A.R. 88-29b-5(b), (c), or (d), K.A.R. 88-29b-6, K.A.R. 88-29a-5, or K.A.R. 88-29a-6 and who has earned fewer than 24 transferable college credit hours 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 transferable college credit hours, 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 10 percent of the sum of the three numbers counted in paragraph (a)(1).

(b) In determining which students to admit as exceptions pursuant to this regulation, the university of Kansas shall give preference to persons who are in military service, as defined in K.S.A. 76-717 and amendments thereto.

(c) If the university of Kansas 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.

(d) The university of Kansas shall require each student who is admitted as an exception to the minimum qualified admission standards pursuant to this regulation to adopt an individual plan for success, before enrollment, and subsequently review that individual plan for success, as required by K.S.A. 76-717 and amendments thereto. (Authorized by and implementing K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; effective Feb. 1, 2013.)

88-29b-8a. The exception window for resident transfer admissions. This regulation shall be applicable to the university of Kansas' review of applications beginning with the 2016 summer session. The university of Kansas may admit any Kansas resident who has earned 24 or more transferable college credit hours, but who does not meet the applicable requirements specified in K.A.R. 88-29b-4(b) or K.A.R. 88-29-4, by means of the exception window for resident transfer admissions.

(a) The maximum number of students admitted by means of this exception window shall be calculated as follows:

(1) The total number of admitted new resident students who have earned at least 24 transferable college credit hours, 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 10 percent of the sum of the three numbers counted in paragraph (a)(1).

(b) In determining which students to admit as exceptions pursuant to this regulation, the university of Kansas shall give preference to persons who are in military service, as defined in K.S.A. 76-717 and amendments thereto.

(c) If the university of Kansas 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 transfer admissions.

(d) The university of Kansas shall require each student who is admitted as an exception to the minimum qualified admission standards pursuant to this regulation to adopt an individual plan for success, before enrollment, and subsequently review that individual plan for success, as required by K.S.A. 76-717 and amendments thereto. (Authorized by and implementing K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; effective Feb. 1, 2013.)

88-29b-8b. The exception window for nonresident transfer admissions. This regulation shall be applicable to the university of Kansas' review of applications beginning with the 2016 summer session. The university of Kansas may admit any nonresident who has earned 24 or more transferable college credit hours, but who does not meet the applicable requirements specified in K.A.R. 88-29b-4(d)(1) or K.A.R. 88-29-4, by means of the exception window for nonresident transfer admissions.

(a) 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 at least 24 transferable college credit hours, 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 10 percent of the sum of the three numbers counted in paragraph (a)(1).

(b) In determining which students to admit as exceptions pursuant to this regulation, the university of Kansas shall give preference to persons who are in military service, as defined in K.S.A. 76-717 and amendments thereto.

(c) If the university of Kansas 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 transfer admissions.

(d) The university of Kansas shall require each student who is admitted as an exception to the minimum qualified admission standards pursuant to this regulation to adopt an individual plan for success, before enrollment, and subsequently review that individual plan for success, as required by K.S.A. 76-717 and amendments thereto. (Authorized by and implementing K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; effective Feb. 1, 2013.)

88-29b-8c. The exception window for nonresident freshman class admissions. This regulation shall be applicable to the university of Kansas' review of applicants beginning with the 2016 summer session. (a) The university of Kansas may admit any nonresident who does not meet the applicable requirements specified in K.A.R. 88-29b-7(b), (c), or (d), K.A.R. 88-29b-7a(b), K.A.R. 88-29a-7, or K.A.R. 88-29a-7a and who has earned fewer than 24 transferable college credit hours, 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 transferable college credit hours, 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) In determining which students to admit as exceptions pursuant to this regulation, the university of Kansas shall give preference to persons who are in military service, as defined in K.S.A. 76-717 and amendments thereto.

(c) If the university of Kansas 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.

(d) The university of Kansas shall require each student who is admitted as an exception to the minimum qualified admission standards pursuant to this regulation to adopt an individual plan for success, before enrollment, and subsequently review that individual plan for success, as required by K.S.A. 76-717 and amendments thereto. (Authorized by and implementing K.S.A. 2011 Supp. 76-717, as amended by L. 2012, ch. 168, sec. 11; effective Feb. 1, 2013.)

88-29b-9. Admission policies. This regulation shall be applicable to the university of Kansas' review of applicants beginning with the 2016 summer session and through the end of the 2021 spring session. The chancellor of the university of Kansas 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 of the board of regents' regulations or, where applicable, the provisions of articles 29 and 29a of the board of regents' regulations.

(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. 88-29b-4 through 88-29b-7a.

(2) The student is admitted by means of the exception window for resident freshmen class admissions described in K.A.R. 88-29b-8.

(3) The student is admitted by means of the exception window for resident transfer admissions described in K.A.R. 88-29b-8a.

(4) The student is admitted by means of the exception window for nonresident transfer admissions described in K.A.R. 88-29b-8b.

(5) The student is admitted by means of the exception window for nonresident freshman class admissions described in K.A.R. 88-29b-8c.

(d) The policies shall include an explanation of the exception windows and the university of Kansas' method to determine which applicants would be admitted if there were more applicants than

the university is allowed under K.A.R. 88-29b-8, K.A.R. 88-29b-8a, K.A.R. 88-29b-8b, or K.A.R. 88-29b-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 university of Kansas 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 university considers these credits, the admission decision shall be made in accordance with K.A.R. 88-29-4 or K.A.R. 88-29b-4.

(g) The policies shall include a statement of whether the university of Kansas enrolls students in the temporary or provisional admission category.

(1) If the university of Kansas enrolls any students in the temporary admission category, the policies shall include 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; and

(D) A statement that each applicant who is admitted in the temporary admission category pursuant to K.A.R. 88-29b-10(a)(2) or (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.

(2) If the university of Kansas enrolls any students in the provisional admission category, the policies shall include 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 university shall be disenrolled.

(3) The policies 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 fulfills the requirements for exiting each of the categories in which the student is initially enrolled.

(h) The policies shall be required to be approved in advance by the board of regents.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective Feb. 1, 2013; amended Oct. 16, 2020.)

88-29b-10. Methods for evaluating qualifications for admission. This regulation shall be applicable to the university of Kansas' review of applicants beginning with the 2016 summer session and through the end of the 2021 spring session.

(a) The admission officer at the university of Kansas shall consider each applicant's ACT or SAT scores as follows:

(1) A documented score of 1060 on the SAT, excluding the writing portion of the SAT, shall be deemed the equivalent of a composite score of 21 or superscore of 21 on the ACT for purposes of this article of the board of regents' regulations. A documented score of 1160 on the SAT, excluding the writing portion of the SAT, shall be deemed the equivalent of a composite score of 24 on the ACT for purposes of this article of the board of regents' regulations.

(2) A documented composite score or a documented superscore 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 ACT-issued composite score or superscore for admission decisions.

(4) If an applicant has taken both the ACT and the SAT, the admission officer shall consider the applicant's better score on the two tests for admission decisions.

(b) The admission officer at the university of Kansas 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 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) If the high school has not already calculated the overall grade point average or the grade point average in the qualified admission precollege curriculum and provided that information on the official high school transcript, the admission officer at the university of Kansas shall calculate the overall grade point average and the grade point average in the qualified admission precollege curriculum for any applicant seeking admission pursuant to K.A.R. 88-29a-5, K.A.R. 88-29b-5, K.A.R. 88-29a-7, or K.A.R. 88-29b-7, as follows:

(1) The admission officer shall ensure that the requirements of K.A.R. 88-29a-11 are met before calculating the grade point average.

(2) The admission officer shall calculate a grade point average only for courses appearing on the applicant's 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 applicant's 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 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 indi-

cate the minimum letter grade corresponding to a P, the admission officer shall assign one grade point to each grade of P.

(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 official high school transcript, the admission officer shall calculate the grade for the college course, for purposes of determining the precollege curriculum grade point average, as follows:

(A) Each college course with three or more credit hours, but no more than five credit hours, shall be treated as a one-unit high school course.

(B) Each college course with more than five credit hours shall be treated as a two-unit high school course.

(d) If the high school has not already calculated the overall grade point average or the grade point average in the Kansas scholars curriculum and provided that information on the official high school transcript, the admission officer at the university of Kansas shall calculate the overall grade point average and the grade point average in the Kansas scholars curriculum for any applicant seeking admission pursuant to K.A.R. 88-13-3, as follows:

(1) The admission officer shall ensure that the requirements established pursuant to K.A.R. 88-13-3 are met before calculating the grade point average.

(2) The admission officer shall calculate a grade point average only for courses appearing on the applicant's official high school transcript.

(3) The admission officer shall consider a course to be part of the approved Kansas scholars curriculum only if the course was approved in accordance with guidelines established pursuant to K.A.R. 88-13-3 and if the applicant earned a grade of D or better.

(4) The admission officer shall calculate grade point averages in accordance with paragraphs (c)(5) through (8).

(e) If the high school has not already calculated the overall grade point average and the grade point average in the qualified admission precollege curriculum and provided that information on the official high school transcript, the admission

officer at the university of Kansas shall calculate the overall grade point average and the grade point average in the qualified admission precollege curriculum for any resident applicant seeking admission pursuant to K.A.R. 88-29a-18(a) through (e), as follows:

(1) The admission officer shall ensure that the requirements of K.A.R. 88-29a-18(a) through (e) are met before calculating the grade point average.

(2) The admission officer shall calculate the applicant's grade point average for approved qualified admission precollege curriculum courses taken from an accredited Kansas high school as described in paragraphs (c)(2) through (c)(8)(B).

(3) The admission officer shall calculate the applicant's grade point average for college preparatory courses taken from a high school located outside the state of Kansas, as follows:

(A) The applicant shall have earned a grade of D or better.

(B) The admission officer shall calculate grade point averages in accordance with paragraphs (c)(5) through (8).

(f) For any resident applicant seeking admission pursuant to K.A.R. 88-29a-18(f), the admission officer at the university of Kansas shall calculate the overall grade point average and the 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-18(f) are met before calculating the grade point average.

(2) The admission officer shall calculate the applicant's grade point average for qualified admission precollege curriculum courses taken from an accredited Kansas high school as described in paragraphs (c)(2) through (c)(8)(B).

(3) The admission officer shall calculate the applicant's grade point average for college preparatory courses taken from high schools located outside the state of Kansas as described in paragraph (e)(3).

(4) The admission officer shall calculate the applicant's grade point average for qualified admission precollege curriculum courses taken after high school graduation as described in paragraphs (c)(8)(A) and (c)(8)(B).

(g) If the high school has not already calculated the overall grade point average or the grade point average in the college preparatory curriculum established by the state in which the applicant is a resident and provided that information on the official high school transcript, the admission officer

at the university of Kansas shall calculate the overall grade point average and the grade point average for that state's college preparatory curriculum for any nonresident applicant seeking admission pursuant to K.A.R. 88-29a-19(a), as follows:

(1) The admission officer shall ensure that the requirements of K.A.R. 88-29a-19(a) are met before calculating the grade point average.

(2) The admission officer shall calculate a grade point average only for college preparatory courses appearing on the applicant's official high school transcript.

(3) The admission officer shall consider a course to be part of the approved college preparatory curriculum only if the applicant earned a grade of D or better.

(4) The admission officer shall calculate grade point averages in accordance with paragraphs (c)(5) through (8).

(h) At the time of admission of an applicant, the university of Kansas shall notify the applicant 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.

This regulation shall have no force and effect on and after June 1, 2021. (Authorized by and implementing K.S.A. 76-717; effective Feb. 1, 2013; amended Oct. 16, 2020.)

Article 29c.—STATE UNIVERSITY ADMISSIONS BEGINNING WITH REVIEW OF APPLICATIONS FOR 2021 SUMMER SESSION

88-29c-1. Definitions. This regulation shall be applicable to each state educational institution's review of applications beginning with the 2021 summer session. Each of the following terms, wherever used in this article, in article 29, or in article 29a of the board of regents' regulations, shall have the meaning specified in this regulation:

(a) "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, or are within an education system designated accredited, by

an 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.

(b) “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.

(c) “Admission category” means one of the admission categories adopted by a state educational institution pursuant to K.A.R. 88-29-3.

(d) “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 the high school from which the student graduated, including a transcript documenting graduation from high school, or a high school equivalency credential;

(4) when required pursuant to K.A.R. 88-29c-5 or K.A.R. 88-29c-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.

(e) “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.

(f) “Earned a high school equivalency credential with at least the prescribed minimum scores” means one of the following:

(1) Took the GED test on or after January 1, 2014, with an overall score of at least 680 points and a minimum score of 150 points on each subset;

(2) took the high school equivalency test (HiSET) on or after January 1, 2014, with an overall score of at least 75 points and a minimum score of 8 points on each subset;

(3) took the GED test on or after January 1, 2002 and before January 1, 2014, with an overall score of at least 2,550 points and a minimum score of 510 points on each subset; or

(4) 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.

(g) “Exception window for nonresident freshman class admissions” means a method by which any state educational institution, pursuant to 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. 88-29c-7, or K.A.R. 88-29a-7a, and who is not eligible for admission pursuant to the exception window for nonresident transfer admissions.

(h) “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 transferable college credit hours but who is not eligible for admission pursuant to K.A.R. 88-29-4.

(i) “Exception window for resident freshman class admissions” means a method by which any state educational institution, pursuant to 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, K.A.R. 88-29c-5, or K.A.R. 88-29a-6 and who is not eligible for admission pursuant to the exception window for resident transfer admissions.

(j) “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 transferable college credit hours but who is not eligible for admission pursuant to K.A.R. 88-29-4.

(k) “Institution of higher education” means an educational institution in any state, territory, or country that meets 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.

(l) “Kansas resident” means a person determined to be a resident for fee purposes, pursuant to K.S.A. 76-729 and amendments thereto.

(m) “Non-accredited private secondary school” has the meaning specified in K.A.R. 88-26-1. This term may include a home school.

(n) “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.

(o) “State educational institution” has the meaning specified in K.S.A. 76-711, and amendments thereto, except that, as used in this article, in article 29, or in article 29a of the board of regents’ regulations, the term shall not include the university of Kansas.

(p) “Transferable college credit hours” means postsecondary coursework that an admitting state educational institution will accept. (Authorized by and implementing K.S.A. 76-717; effective Oct. 16, 2020.)

88-29c-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 beginning with the 2021 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. 76-717b and amendments thereto, an accredited high school located out of state;

(2) meets at least one of the following criteria:

(A) Has achieved a composite score or a super-score on the ACT of at least 21; or

(B)(i) For applicants to Emporia state university, Fort Hays state university, Pittsburg state university, and Wichita state university, graduated from high school with a minimum cumulative grade point average of 2.25 on a 4.0 scale; and

(ii) for applicants to Kansas state university, graduated from high school with a minimum cumulative grade point average of 3.25 on a 4.0 scale; and

(3) 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 achieved a composite score or a super-score on the ACT of at least 21; and

(3) 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) Has earned a high school equivalency credential with at least the prescribed minimum scores, as defined in K.A.R. 88-29c-1;

(2) has achieved a composite score or a super-score on the ACT of at least 21; and

(3) 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. 76-717; effective Oct. 16, 2020.)

88-29c-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 2021 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 transferable college credit hours. If an applicant to whom this regulation is applicable

does not meet the requirements 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 under the age of 21 who meets the following requirements:

(1) Has graduated from an accredited high school;

(2) meets at least one of the following criteria:

(A) Has achieved a composite score or a super-score on the ACT of at least 21; or

(B)(i) For applicants to Emporia state university, Fort Hays state university, Pittsburg state university, and Wichita state university, graduated from high school with a minimum cumulative grade point average of 2.25 on a 4.0 scale; and

(ii) for applicants to Kansas state university, graduated from high school with a minimum cumulative grade point average of 3.25 on a 4.0 scale; and

(3) 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 under the age of 21 who meets the following requirements:

(1) Has graduated from a non-accredited private secondary school;

(2) has achieved a composite score or a super-score on the ACT of at least 21; and

(3) has achieved a minimum cumulative GPA of 2.0 on a 4.0 scale on all transferable college credit hours.

(d) Any state educational institution may admit any nonresident under the age of 21 who meets the following requirements:

(1) Has earned a high school equivalency credential with at least the prescribed minimum scores, as defined in K.A.R. 88-29c-1;

(2) has achieved a composite score or a super-score on the ACT of at least 21; and

(3) 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. 76-717; effective Oct. 16, 2020.)

88-29c-9. Admission policies for state educational institutions. This regulation shall be applicable to each state educational institution's review of applicants beginning with the 2021 summer session. The 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 of the board of regents' regulations.

(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, K.A.R. 88-29c-5, K.A.R. 88-29a-6, K.A.R. 88-29c-7, and 88-29a-7a.

(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 post-secondary 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 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; and

(D) A statement that each applicant who is admitted in the temporary admission category pursuant to K.A.R. 88-29c-10(a)(2) shall be allowed to exit from the temporary admission category and enter the regular admission category only upon verification of high school graduation.

(2) If the state educational institution enrolls any students in the provisional admission category, the policies shall include 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 fulfills 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. 76-717; effective Oct. 16, 2020.)

88-29c-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 2021 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 1060 on the SAT, excluding the writing portion of the SAT, shall be deemed the equivalent of a composite score of 21 or superscore of 21 on the ACT for purposes of this article of the board of regents' regulations.

(2) A documented composite score or a documented superscore 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 ACT-issued composite score or superscore for admission decisions.

(4) If an applicant has taken both the ACT and the SAT, the admission officer shall consider the applicant's better score on the two tests for admission decisions.

(b) If the high school has not already calculated the applicant's final cumulative grade point average and provided that information on the official high school transcript, each admission officer at a state educational institution shall calculate the grade point average for any applicant seeking admission pursuant to K.A.R. 88-29c-5 or 88-29c-7, as follows:

(1) The admission officer shall calculate a grade point average only for courses appearing on the official high school transcript.

(2)(A) If the high school transcript reports grades on a four-point scale, the admission officer shall calculate grade point averages by assigning four points to a grade of A, three points to a grade of B, two points to a grade of C, one point to a grade of D, and zero points to a grade of F. 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)(2)(A).

(3) 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 assign one grade point to each grade of P.

(4) If an applicant has retaken a course, the admission officer shall use the highest grade when calculating the grade point average.

(5) If an applicant has taken a college course and if this college course appears on the applicant's official high school transcript, the admission officer shall calculate the grade for the college course, for purposes of determining the grade point average, as follows:

(A) Each college course with three or more credit hours, but no more than five credit hours, shall be treated as a one-unit high school course.

(B) Each college course with more than five credit hours shall be treated as a two-unit high school course.

(c) At the time of admission of an applicant, the state educational institution shall notify the applicant 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. 76-717; effective Oct. 16, 2020.)

Article 29d.—UNIVERSITY OF KANSAS ADMISSIONS BEGINNING WITH REVIEW OF APPLICATIONS FOR 2021 SUMMER SESSION

88-29d-1. Definitions. This regulation shall be applicable to the university of Kansas' review of applications beginning with the 2021 summer session. Each of the following terms, wherever used in this article or in article 29b of the board of regents' regulations, shall have the meaning specified in this regulation:

(a) "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, or are within an education system designated accredited, by an 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.

(b) "Admission" means the permission given by the admission officer of the university of Kansas to an applicant to enroll as a degree-seeking student in the university of Kansas.

(c) "Admission category" means one of the admission categories adopted by the university of Kansas pursuant to K.A.R. 88-29b-3.

(d) "Complete application file" means the entire set of the following student records that have been received in the admission office of the university of Kansas:

(1) A completed application to the university of Kansas;

(2) verification that all applicable application fees have been paid;

(3) an official copy of the final transcript from the high school from which the student graduated, including a transcript documenting graduation from high school, or a high school equivalency credential;

(4) when required pursuant to K.A.R. 88-29c-5, K.A.R. 88-29d-5, K.A.R. 88-29c-7, or K.A.R. 88-29d-7, an official copy of all ACT or SAT scores; and

(5) any other materials required by the university of Kansas for advising or placement purposes.

(e) "Degree-seeking student" means a student who has been accepted for enrollment at the university of Kansas and who has formally indicated to the university of Kansas 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.

(f) "Earned a high school equivalency credential with at least the prescribed minimum scores" means one of the following:

(1) Took the GED test on or after January 1, 2014, with an overall score of at least 680 points and a minimum score of 150 points on each subtest;

(2) took the high school equivalency test (HiSET) on or after January 1, 2014, with an overall score of at least 75 points and a minimum score of 8 points on each subtest;

(3) took the GED test on or after January 1, 2002 and before January 1, 2014, with an overall score of at least 2,550 points and a minimum score of 510 points on each subtest; or

(4) 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.

(g) “Exception window for nonresident freshman class admissions” means a method by which the university of Kansas, pursuant to K.A.R. 88-29b-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. 88-29b-4, K.A.R. 88-29c-7, K.A.R. 88-29d-7, K.A.R. 88-29a-7a, or K.A.R. 88-29b-7a, and who is not eligible for admission pursuant to the exception window for nonresident transfer admissions.

(h) “Exception window for nonresident transfer admissions” means a method by which the university of Kansas, pursuant to K.A.R. 88-29b-8b, may admit a person who is not a resident of Kansas and has earned at least 24 transferable college credit hours but who is not eligible for admission pursuant to K.A.R. 88-29-4 or K.A.R. 88-29b-4.

(i) “Exception window for resident freshman class admissions” means a method by which the university of Kansas, pursuant to K.A.R. 88-29b-8, may admit a Kansas resident who does not meet the applicable requirements specified in K.A.R. 88-29-4, K.A.R. 88-29b-4, K.A.R. 88-29c-5, K.A.R. 88-29d-5, K.A.R. 88-29a-6, or K.A.R. 88-29b-6 and who is not eligible for admission pursuant to the exception window for resident transfer admissions.

(j) “Exception window for resident transfer admissions” means a method by which the university of Kansas, pursuant to K.A.R. 88-29b-8a, may admit a Kansas resident who has earned at least 24 transferable college credit hours but is not eligible for admission pursuant to K.A.R. 88-29-4 or K.A.R. 88-29b-4.

(k) “Institution of higher education” means an educational institution in any state, territory, or country that meets 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.

(l) “Kansas resident” means a person determined to be a resident for fee purposes, pursuant to K.S.A. 76-729 and amendments thereto.

(m) “Non-accredited private secondary school” has the meaning specified in K.A.R. 88-26-1. This term may include a home school.

(n) “Non-degree-seeking student” means a student who has been accepted for enrollment at the university of Kansas and who has formally indicated to the university 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.

(o) “State educational institution” has the meaning specified in K.S.A. 76-711, and amendments thereto.

(p) “Transferable college credit hours” means postsecondary coursework that the university of Kansas will accept. (Authorized by and implementing K.S.A. 76-717; effective Oct. 16, 2020.)

88-29d-5. Qualifications required for the admission of a Kansas resident who is under the age of 21. This regulation shall be applicable to the university of Kansas’ review of applicants beginning with the 2021 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 transferable college credit hours. If an applicant to whom this regulation is applicable does not meet the requirements of subsections (b), (c), and (d) and does not meet the requirements of K.A.R. 88-29c-5, the applicant may be admitted by means of the exception window for resident freshman class admissions described in K.A.R. 88-29b-8. Any applicant who is admitted pursuant to subsection (e) and does not meet the requirements of K.A.R. 88-29c-5 may be admitted only by means of the exception window for resident freshman class admissions described in K.A.R. 88-29b-8.

(b) The university of Kansas shall admit any Kansas resident under the age of 21 who submits an application for admission to the university on or before February 1 and meets either of the following requirements:

(1)(A) Has graduated from an accredited high school in Kansas or, pursuant to K.S.A. 76-717b and amendments thereto, an accredited high school located out of state, with a minimum cumulative grade point average of 3.0 on a 4.0 scale;

(B) has achieved a composite score or a super-score on the ACT of at least 24; and

(C) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours; or

(2)(A) Has graduated from an accredited high school in Kansas or, pursuant to K.S.A. 76-717b and amendments thereto, an accredited high school located out of state, with a minimum cumulative grade point average of 3.25 on a 4.0 scale;

(B) has achieved a composite score or a super-score on the ACT of at least 21; and

(C) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours.

(c) The university of Kansas shall admit any Kansas resident under the age of 21 who submits an application for admission to the university on or before February 1 and meets either of the following requirements:

(1)(A) Has graduated from a non-accredited private secondary school with a minimum cumulative grade point average of 3.0 on a 4.0 scale;

(B) has achieved a composite score or a super-score on the ACT of at least 24; and

(C) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours; or

(2)(A) Has graduated from a non-accredited private secondary school with a minimum cumulative grade point average of 3.25 on a 4.0 scale;

(B) has achieved a composite score or a super-score on the ACT of at least 21; and

(C) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours.

(d) The university of Kansas shall admit any Kansas resident under the age of 21 who submits an application for admission to the university on or before February 1 and who meets the following requirements:

(1) Has earned a high school equivalency cre-

dential with at least the prescribed minimum scores, as defined in K.A.R. 88-29d-1;

(2) has achieved a composite score or a super-score on the ACT of at least 21; and

(3) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours.

(e)(1) The university of Kansas may admit any Kansas resident under the age of 21 who meets the following conditions:

(A)(i) Submits an application for admission to the university after February 1; or

(ii) submits an application for admission on or before February 1 but does not meet the criteria specified in subsections (b), (c), and (d); and

(B) is recommended for admission by the university's admission review committee.

(2) The admission review committee shall consider the following factors in making admission recommendations:

(A) The applicant's completed coursework;

(B) the applicant's academic performance, including the following:

(i) Grade point average in all high school coursework;

(ii) ACT scores; and

(iii) high school class rank;

(C) the degree of difficulty of the applicant's high school coursework;

(D) the applicant's grade trend;

(E) the applicant's ability to enhance the cultural, economic, or geographic diversity of the university;

(F) the applicant's academic potential;

(G) any outstanding talent in a particular area that the applicant has demonstrated;

(H) the applicant's successful completion of advanced placement, international baccalaureate, and dual-credit coursework while in high school;

(I) specification of whether the applicant is a first-generation postsecondary student;

(J) the applicant's personal challenges or family circumstances that have affected academic performance;

(K) the applicant's eligibility for and likelihood of benefitting from organized support services available at the university; and

(L) any other factors that the admission review committee deems appropriate and that have been included in the university's admission policies established pursuant to K.A.R. 88-29d-9. (Authorized by and implementing K.S.A. 76-717; effective Oct. 16, 2020.)

88-29d-7. Qualifications required for the admission of a nonresident who is under the age of 21. This regulation shall be applicable to the university of Kansas' review of applicants beginning with the 2021 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 transferable college credit hours. If an applicant to whom this regulation is applicable does not meet the requirements in subsections (b), (c), and (d) and does not meet the requirements of K.A.R. 88-29c-7, the applicant may be admitted by means of the exception window for nonresident freshman class admissions described in K.A.R. 88-29b-8c. Any applicant who is admitted pursuant to subsection (e) and does not meet the requirements of K.A.R. 88-29c-7 may be admitted only by means of the exception window for nonresident freshman class admissions described in K.A.R. 88-29b-8c.

(b) The university of Kansas may admit any nonresident under the age of 21 who submits an application for admission to the university on or before February 1 and meets either of the following requirements:

(1)(A) Has graduated from an accredited high school with a minimum cumulative grade point average of 3.0 on a 4.0 scale;

(B) has achieved a composite score or a super-score on the ACT of at least 24; and

(C) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours; or

(2)(A) Has graduated from an accredited high school with a minimum cumulative grade point average of 3.25 on a 4.0 scale;

(B) has achieved a composite score or a super-score on the ACT of at least 21; and

(C) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours.

(c) The university of Kansas may admit any nonresident under the age of 21 who submits an application for admission to the university on or before February 1 and meets either of the following requirements:

(1)(A) Has graduated from a non-accredited private secondary school with a minimum cumulative grade point average of 3.0 on a 4.0 scale;

(B) has achieved a composite score or a super-score on the ACT of at least 24; and

(C) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours; or

(2)(A) Has graduated from a non-accredited private secondary school with a minimum cumulative grade point average of 3.25 on a 4.0 scale;

(B) has achieved a composite score or a super-score on the ACT of at least 21; and

(C) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours.

(d) The university of Kansas may admit any nonresident under the age of 21 who submits an application for admission to the university on or before February 1 and meets the following requirements:

(1) Has earned a high school equivalency credential with at least the prescribed minimum scores, as defined in K.A.R. 88-29d-1;

(2) has achieved a composite score or a super-score on the ACT of at least 21; and

(3) has achieved a minimum cumulative GPA of 2.5 on a 4.0 scale on all transferable college credit hours.

(e) The university of Kansas may admit any nonresident under the age of 21 who meets the following conditions:

(1)(A) Submits an application for admission to the university after February 1; or

(B) submits an application for admission on or before February 1 but does not meet the criteria specified in subsections (b), (c), and (d); and

(2) is recommended for admission by the university's admission review committee upon consideration of the factors listed in K.A.R. 88-29d-5(e) (2). (Authorized by and implementing K.S.A. 76-717; effective Oct. 16, 2020.)

88-29d-9. Admission policies. This regulation shall be applicable to the university of Kansas' review of applicants beginning with the 2021 summer session. The chancellor of the university of Kansas 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 of the board of regents' regulations or, where applicable, the provisions of articles 29, 29a, and 29c of the board of regents' regulations.

(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. 88-29b-4 through 88-29b-7a, K.A.R. 88-29d-5, and K.A.R. 88-29d-7.

(2) The student is admitted by means of the exception window for resident freshmen class admissions described in K.A.R. 88-29b-8.

(3) The student is admitted by means of the exception window for resident transfer admissions described in K.A.R. 88-29b-8a.

(4) The student is admitted by means of the exception window for nonresident transfer admissions described in K.A.R. 88-29b-8b.

(5) The student is admitted by means of the exception window for nonresident freshman class admissions described in K.A.R. 88-29b-8c.

(d) The policies shall include an explanation of the exception windows and the university of Kansas' method to determine which applicants would be admitted if there were more applicants than the university is allowed under K.A.R. 88-29b-8, K.A.R. 88-29b-8a, K.A.R. 88-29b-8b, or K.A.R. 88-29b-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 university of Kansas 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 university considers these credits, the admission decision shall be made in accordance with K.A.R. 88-29-4 or K.A.R. 88-29b-4.

(g) The policies shall include a statement of whether the university of Kansas enrolls students in the temporary or provisional admission category.

(1) If the university of Kansas enrolls any students in the temporary admission category, the policies shall include 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; and

(D) a statement that each applicant who is admitted in the temporary admission category pursuant to K.A.R. 88-29d-10(a)(2) shall be allowed to exit from the temporary admission category and enter the regular admission category only upon verification of high school graduation.

(2) If the university of Kansas enrolls any students in the provisional admission category, the policies shall include 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 university shall be disenrolled.

(3) The policies 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 fulfills the requirements for exiting each of the categories in which the student is initially enrolled.

(h) The policies shall be required to be approved in advance by the board of regents. (Authorized by and implementing K.S.A. 76-717; effective Oct. 16, 2020.)

88-29d-10. Methods for evaluating qualifications for admission. This regulation shall be applicable to the university of Kansas' review of applicants beginning with the 2021 summer session.

(a) The admission officer at the university of Kansas shall consider each applicant's ACT or SAT scores as follows:

(1) A documented score of 1060 on the SAT, excluding the writing portion of the SAT, shall be deemed the equivalent of a composite score of 21 or superscore of 21 on the ACT for purposes of this article of the board of regents' regulations. A documented score of 1160 on the SAT, excluding the writing portion of the SAT, shall be deemed the equivalent of a composite score of 24 on the ACT for purposes of this article of the board of regents' regulations.

(2) A documented composite score or a documented superscore 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 ACT-issued composite score or superscore for admission decisions.

(4) If an applicant has taken both the ACT and the SAT, the admission officer shall consider the applicant's better score on the two tests for admission decisions.

(b) If the high school has not already calculated the overall grade point average and provided that information on the official high school transcript, the admission officer at the university of Kansas shall calculate the overall grade point average for any applicant seeking admission pursuant to K.A.R. 88-29d-5, or K.A.R. 88-29d-7, as follows:

(1) The admission officer shall calculate a grade point average only for courses appearing on the applicant's official high school transcript.

(2)(A) If the high school transcript reports grades on a four-point scale, the admission officer shall calculate grade point averages by assigning four points to a grade of A, three points to a grade of B, two points to a grade of C, one point to a grade of D, and zero points to a grade of F. 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)(2)(A).

(3) 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 assign one grade point to each grade of P.

(4) If an applicant has retaken a course, the admission officer shall use the highest grade when calculating the grade point.

(5) If an applicant has taken a college course and if this college course appears on the official high school transcript, the admission officer shall

calculate the grade for the college course, for purposes of determining the grade point average, as follows:

(A) Each college course with three or more credit hours, but no more than five credit hours, shall be treated as a one-unit high school course.

(B) Each college course with more than five credit hours shall be treated as a two-unit high school course.

(c) At the time of admission of an applicant, the university of Kansas shall notify the applicant 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. 76-717; effective Oct. 16, 2020.)

Article 30.—STUDENT HEALTH INSURANCE PROGRAM

88-30-1. Definitions. Each of the following terms, wherever used in this article of the board of regents' regulations, shall have the meaning 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 percent 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 of the board of regents' regulations, 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 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. On and after August 1, 2020, the limitations of paragraph (f)(2)(A) shall

not apply during any semester for which a state educational institution suspends or substantially modifies its in-person attendance requirements.

(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 percent 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 percent 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. (Authorized by and implementing K.S.A. 75-4101; effective, T-88-6-14-07, June 14, 2007; effective Oct. 12, 2007; amended Aug. 1, 2011; amended, T-88-6-26-20, June 26, 2020; amended Oct. 23, 2020.)

88-30-2. Election of coverage. Any student may elect coverage under the student health insurance program for any of the following sets of people, to the extent that the coverage is offered by the state board:

(a) The student;

(b) the student and the student's spouse;

(c) the student and any dependents; or

(d) the student, the student's spouse, and any dependents. (Authorized by and implementing K.S.A. 75-4101; effective, T-88-6-14-07, June 14, 2007; effective Oct. 12, 2007; amended Oct. 23, 2020.)

Agency 91

State Department of Education

Editor's Note:

Regulations adopted under constitutional authority are exempt from the general filing act. See, Opinion of Attorney General No. 81-236. See K.S.A. 72-7514b for filing requirements for regulations adopted under constitutional authority.

Articles

- 91-1. CERTIFICATE REGULATIONS.
- 91-31. ACCREDITATION.
- 91-38. SCHOOL BUS TRANSPORTATION.
- 91-40. SPECIAL EDUCATION.
- 91-42. EMERGENCY SAFETY INTERVENTIONS.

Article 1.—CERTIFICATE REGULATIONS

91-1-70a. Accreditation. The following portions of the document titled “CAEP accreditation standards,” as approved by the council for the accreditation of educator preparation (CAEP) board of directors on August 29, 2013, are hereby adopted by reference:

(a) Standard 1 on pages 2 and 3 and the related glossary on page 3;

(b) standard 2 and the related glossary on page 6;

(c) standard 3 on pages 8 and 9 and the related glossary on page 10, except for the following text in 3.2:

(1) The second and third bulleted items; and

(2) the three paragraphs immediately following the bulleted list;

(d) standard 4 on page 13; and

(e) standard 5 on pages 14 and 15 and the related glossary on page 15. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 1997; amended Jan. 4, 2002; amended July 7, 2017.)

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 K.A.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 education 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) “Standard,” when used to describe a license, means that the license is current, unrestricted, nonprobationary, nonprovisional, nonsubstitute, or nontemporary; is issued by the state board or a comparable agency in another state; and allows an individual to work as a teacher, administrator, or school specialist in accredited school systems in Kansas or another state.

(dd) “Standards board” means the teaching and school administration professional standards advisory board.

(ee) “State board” means state board of education.

(ff) “STEM license” means a license that allows an individual to teach only an approved subject in a hiring LEA, as specified in K.A.R. 91-1-203 (m).

(gg) “Subject” means a specific teaching area within a general instructional field.

(hh) “Substitute teaching license” means a license issued to an individual that allows access to practice as a substitute as defined in K.A.R. 91-31-34(b).

(ii) “Teacher education institution” means a college or university that has an accredited administrative unit for the purpose of preparing teachers.

(jj) “Transitional license” means a license that allows an individual to temporarily practice if the individual held a license but does not meet recent credit, recent experience, or renewal requirements to qualify for an initial or professional license.

(kk) “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.

(ll) “Visiting scholar teaching license” means a license that allows an individual who has documented exceptional talent or outstanding distinction in a particular subject area to practice on a temporary, limited basis. (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; amended, T-91-6-30-14, June 30, 2014; amended Oct. 24, 2014.)

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) STEM license;
- (14) substitute teaching license;
- (15) transitional license; and
- (16) 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 K.A.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.

(q)(1) Each STEM license shall be valid only through June 30 of the school year for which the license is issued.

(2) Each STEM license shall be valid for grades 8 through 12. (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; amended, T-91-6-30-14, June 30, 2014; amended Oct. 24, 2014.)

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) Elementary education;
- (2) elementary education, unified;
- (3) English for speakers of other languages (ESOL);
- (4) gifted;
- (5) high-incidence special education; and
- (6) low-incidence special education.

(d) Endorsements available for teaching at the late childhood through early adolescence license level (grades 5 through 8) shall be as follows:

- (1) English for speakers of other languages (ESOL);
- (2) English language arts;
- (3) gifted;
- (4) high-incidence special education;
- (5) history, government, and social studies;
- (6) low-incidence special education;

(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) Agriculture;
 - (2) biology;
 - (3) business;
 - (4) chemistry;
 - (5) communication technology;
 - (6) earth and space science;
 - (7) English for speakers of other languages (ESOL);
 - (8) English language arts;
 - (9) family and consumer science;
 - (10) gifted;
 - (11) high-incidence special education;
 - (12) history, government, and social studies;
 - (13) journalism;
 - (14) low-incidence special education;
 - (15) mathematics;
 - (16) physics;
 - (17) power, energy, and transportation technology;
 - (18) production technology;
 - (19) psychology;
 - (20) speech and theatre;
 - (21) special education generalist, high-incidence; and
 - (22) technology education.
- (f) Endorsements available for teaching at the early childhood through late adolescence and adulthood level (prekindergarten through grade 12) shall be as follows:
- (1) Art;
 - (2) deaf or hard-of-hearing;
 - (3) English for speakers of other languages (ESOL);
 - (4) foreign language;
 - (5) gifted;
 - (6) health;
 - (7) high-incidence special education;
 - (8) instrumental music;
 - (9) low-incidence special education;
 - (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; and
 - (2) district 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) English for speakers of other languages (ESOL);

- (2) gifted;
- (3) high-incidence special education; and
- (4) low-incidence special education.

(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 childhood through early adolescence license level (grades 5 through 8) shall be as follows:

(1) English for speakers of other languages (ESOL);

- (2) English language arts;
- (3) gifted;
- (4) high-incidence special education;
- (5) history, government, and social studies;
- (6) low-incidence special education;
- (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) Agriculture;
- (2) biology;
- (3) business;
- (4) chemistry;
- (5) communication technology;

(6) earth and space science;

(7) English for speakers of other languages (ESOL);

(8) English language arts;

(9) family and consumer science;

(10) gifted;

(11) high-incidence special education;

(12) journalism;

(13) low-incidence special education;

(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) Art;

(2) deaf or hard-of-hearing;

(3) English for speakers of other languages (ESOL);

(4) foreign language;

(5) gifted;

(6) health;

(7) high-incidence special education;

(8) instrumental music;

(9) low-incidence special education;

(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 a low-incidence or high-incidence 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 competency in the following:

(A) The learner and learning; learner development, learning differences, and learning environments;

(B) content: content knowledge and application of content;

(C) instructional practice: assessment, planning for instruction, and instructional strategies;

(D) professional responsibility: professional learning and ethical practice, leadership, and collaboration; and

(E) the ability to apply the acquired knowledge to teach general education 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; amended, T-91-6-30-14, June 30, 2014; amended Oct. 24, 2014.)

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) if application is made for a district leadership endorsement, verification from an accredited institution by the unit head or designee of completion of an approved building leadership program;

(D) verification of a minimum 3.25 cumulative GPA on a 4.0 scale in graduate leadership program coursework;

(E) verification of successful completion of a school leadership 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 leadership license;

(H) the licensure fee; and

(I) verification of five years of experience in a state-accredited school while holding a standard teaching or school specialist license and having achieved the professional-level license, a professional clinical license, or a full 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 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;

(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 as a teacher, as a library media specialist or reading specialist, or as a school counselor meeting the requirements of paragraph (a)(3)(F)(i);

(E) verification of a minimum 3.25 cumulative GPA on a 4.0 scale in graduate teacher leader program 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.

Paragraphs (b)(4)(B)(i) and (ii) shall remain in effect only through July 1, 2016.

(5) When required by this subsection, the performance assessment for teaching and school specialist licenses shall be completion of at least a year-long approved mentoring program based on model mentoring program guidelines and chosen by the local education agency. The performance assessment for school leadership licenses shall be completion of at least a year-long approved mentoring program chosen by the local education agency and based on guidelines developed by a research-based leadership institute.

(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.

(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 (h)(2) 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 at least 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 on-site 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 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 (i) (2) 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 K.A.R. 91-1-203(a) or (b) or K.A.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 in K.A.R. 91-1-205(b)(3)(C), if the person meets the requirements of K.A.R. 91-1-206 and K.A.R. 91-1-215 through 91-1-219.

(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 in K.A.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 high-incidence special education, low-incidence special education, deaf or hard of hearing, gifted special education, or visually impaired 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 K.A.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.

(m) STEM license.

(1) Each applicant for a STEM license shall submit to the state board the following:

(A) An official transcript verifying the granting of an undergraduate or graduate degree in one of the following subjects: life science, physical science, earth and space science, mathematics, engineering, computer technology, finance, or accounting;

(B) verification of at least five years of full-time professional work experience in the subject;

(C) verification that a local education agency will employ the applicant and assign the applicant to teach only the subject specified on the license if the license is issued;

(D) verification that the hiring local education agency will provide professional learning opportunities determined as appropriate by the hiring local education agency;

(E) an application for the STEM license; and

(F) the licensure fee.

(2) Any applicant may apply for a STEM license valid for subsequent school years by submitting the following:

(A) The verification specified in paragraphs (m) (1)(C) and (D);

(B) an application for renewal; and

(C) 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; amended, T-91-6-30-14, June 30, 2014; amended Oct. 24, 2014.)

91-1-204. Licensure of out-of-state and foreign applicants. (a) Despite 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. If the applicant is seeking licensure to teach content in grades 8 through 12, this verification shall not be required if the applicant submits verification of having secured a commitment for hire from a local education agency;

(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. If the applicant is seeking licensure to teach content in grades 8 through 12, this verification shall not be required if the applicant submits verification of having secured a commitment for hire from a local education agency;

(C) a copy of the applicant's currently valid out-of-state standard teaching license;

(D)(i) Evidence of successful completion of pedagogical, content, and performance assess-

ments prescribed by the state board or evidence of successful completion of the three assessments in the state in which the applicant holds the standard license;

(ii) verification of at least three years of recent accredited experience under a standard license; or

(iii) verification of at least five years of accredited experience under a standard 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) if application is made for a district leadership endorsement, verification from an accredited institution by the unit head or designee of completion of an approved building leadership program;

(D) verification of a minimum 3.25 cumulative GPA in graduate leadership program coursework;

(E) verification of successful completion of a school leadership 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 initial school leadership license;

(H) the licensure fee; and

(I) verification of five years of experience in a state-accredited school while holding a standard teaching license or standard school specialist license and having achieved the professional-level license, a professional clinical license, a leadership license, or a full 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 school specialist program 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 leadership program coursework;

(D) verification of at least one year of recent accredited experience or at least eight semester hours of recent credit;

(E) verification of five years of experience in a state-accredited school while holding a standard teaching license or standard school specialist license and having achieved the professional-level license, a professional clinical license, a leadership license, or a full technical education 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 standard school leadership license;

(ii) verification of at least three years of recent accredited experience in a school leadership position while holding a standard school leadership license; or

(iii) verification of at least five years of accredited school leadership experience under a standard 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 school specialist program 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 standard school specialist license;

(ii) verification of at least three years of recent accredited experience in a school specialist position while holding a valid standard school specialist license; or

(iii) verification of at least five years of accredited school specialist experience under a standard 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 verification of all documentation specified in paragraph (c)(8)(A) and one of the following:

(i) Verification of at least three years of recent accredited experience as a school counselor while holding a valid, standard school counselor license;

(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 accrediting agency recognized by the state board and while the applicant holds a standard school counselor 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; or

(iii) verification of at least five years of accredited school counselor experience under a standard school counselor license.

(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)(A) 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.

(B) Any person who holds a valid license in another state earned through completion of an alternative teacher-education program and who has five or more years of accredited experience earned under a standard license, three years of which are continuous in the same local education agency, may apply for a professional teaching license by meeting the requirements of paragraph (c)(3).

(2) To obtain an interim alternative license, each applicant specified in paragraph (e)(1)(A) 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 specified; and

(ii) verification that the person meets the requirements of K.A.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 in K.A.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; amended, T-91-6-30-14, June 30, 2014; amended Oct. 24, 2014.)

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.)

91-1-208. General requirements. (a) Application procedures. Application for each license, renewal, or duplicate license shall be made by the person seeking the license. Each application shall be submitted on a form provided by the state department of education. The form shall be filled out completely, including all names under which the applicant has been known. The application shall be submitted by mail or in person, with the correct fee and, when required, official documentation to the certification section of the state department of education.

(b) Child abuse and neglect central registry. Each application shall include a completed child abuse and neglect central registry release.

(c) Renewal period. Any license may be renewed up to six months before its expiration date.

(d) License registration. Each teacher or other licensed person employed in a public school shall file a valid license in the office of the superintendent of the district in which the person is employed. (Authorized by and implementing Article

6, Section 2(a) of the Kansas Constitution; effective July 1, 2003; amended July 7, 2017.)

91-1-209. Additional endorsements. (a)

Any person who holds a currently valid teaching, school service, or school leadership license may add additional endorsements to that license by submitting to the state board the following:

(1) Verification from an accredited institution by a unit head or designee of completion of an approved content area program;

(2) verification of successful completion of the appropriate endorsement content assessment prescribed by the state board;

(3) an application for an added endorsement; and

(4) the application fee.

(b)(1) Any person who holds a currently valid teaching license with a science endorsement at the early adolescence through late adolescence and adulthood level may add an additional science endorsement for that level by submitting to the state board the following:

(A) Verification of successful completion of the appropriate science endorsement content assessment prescribed by the state board;

(B) an application for an added endorsement; and

(C) the application fee.

(2) This subsection shall remain in force and effect only through June 30, 2012.

(c)(1) Any person who holds a currently valid teaching license at any level may add a content area endorsement for the late childhood through early adolescence level by submitting to the state board the following:

(A) Verification from an accredited institution by a unit head or designee of completion of 15 semester credit hours in the content area for which endorsement is sought;

(B) verification of one of the following:

(i) A pedagogy course for the late childhood through early adolescence level; or

(ii) recent accredited experience of one year or more in one of the grades 5 through 8;

(C) verification of successful completion of the appropriate content assessment prescribed by the state board;

(D) an application for an added endorsement; and

(E) the application fee.

(2) Teaching endorsements for adaptive, functional, gifted, deaf or hard-of-hearing, and visu-

ally impaired shall not be available under this subsection.

(3) This subsection shall remain in force and effect only through June 30, 2012.

(d)(1) Any person who holds a currently valid teaching license with a content area endorsement at the early adolescence through late adolescence and adulthood level may add an additional content area endorsement for that level by submitting to the state board the following:

(A) Verification from an accredited institution by a unit head or designee of completion of 50 percent or more of an approved content area program, including the content methods course;

(B) verification of successful completion of the appropriate endorsement content assessment prescribed by the state board;

(C) an application for an added endorsement; and

(D) the application fee.

(2) Any person who holds a currently valid teaching license with a content area endorsement at the late childhood through early adolescence level may add the same content area endorsement at the early adolescence through late adolescence and adulthood level by submitting to the state board verification of meeting the requirements specified in paragraph (d)(1).

(3) Teaching endorsements for adaptive, functional, gifted, deaf or hard-of-hearing, and visually impaired shall not be available under this subsection.

(4) This subsection shall remain in force and effect only through June 30, 2012.

(e) (1) Any person who holds a valid out-of-state teaching license with an additional endorsement that was earned by completion of coursework specified by the other state may add that endorsement to the person's Kansas license by submitting to the state board the following:

(A) A copy of the out-of-state license showing the endorsement;

(B) verification that the person completed the specified coursework;

(C) verification of successful completion of the appropriate 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;

(D) an application for an added endorsement; and

(E) the licensure fee.

(2) This subsection shall remain in force and effect only through June 30, 2012.

(f)(1) Except as prescribed in paragraph (f)(2), any person who holds a valid teaching license may add an additional teaching endorsement by submitting to the state board the following:

(A) Verification of successful completion of the endorsement content assessment prescribed by the state board;

(B) an application for an added endorsement; and

(C) the application fee.

(2) Teaching endorsements for early childhood, early childhood unified, early childhood through late childhood generalist, adaptive, functional, gifted, deaf or hard-of-hearing, or visually impaired shall not be available under paragraph (f)(1). (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective July 1, 2003; amended Aug. 10, 2007; amended July 18, 2008; amended July 27, 2012.)

91-1-214. Criminal history records check.

(a) Each person submitting any of the following shall also submit, at the time of the application, a complete set of legible fingerprints of the person taken by a qualified law enforcement agency or properly trained school personnel:

(1) An initial application for a Kansas certificate or license;

(2) an application for renewal of an expired Kansas certificate or license; or

(3) an application for renewal of a valid Kansas certificate or license, if the person has never submitted fingerprints as part of any previous application for a Kansas certificate or license issued by the state board.

Fingerprints submitted pursuant to this regulation shall be released by the Kansas state department of education to the Kansas bureau of investigation for the purpose of conducting criminal history records checks, utilizing the files and records of the Kansas bureau of investigation and the federal bureau of investigation. A list of those applicants who are required to submit fingerprints at the time of license or certificate renewal shall be maintained by the Kansas state department of education.

(b) Each applicant shall pay the appropriate fee for the criminal history records check, to be determined on an annual basis.

(c) In addition to any other requirements established by regulation for the issuance of any cer-

tificate or license specified in subsection (a), the submittal of fingerprints shall be a prerequisite to the issuance of any certificate or license by the state board. A person submitting an application who does not comply with this regulation shall not be issued a certificate or license. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Sept. 13, 2002; amended Oct. 31, 2014.)

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 non-public 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.)

91-1-220. Career and technical education certificate. (a) Any individual may apply for a restricted career and technical education certificate, a full career and technical education certificate, a career and technical education endorsement certificate, or a career and technical education specialized certificate.

(b)(1) Each restricted career and technical education certificate shall be valid for two years from the date of issuance and shall be valid for instruction in grades 8 through 12.

(2) Each restricted career and technical education certificate shall be valid for providing instruction in career and technical education pathways for agriculture, food, and natural resources; architecture and construction; arts, audio-video technology, and communications; business management and administration; finance; health science; hospitality and tourism; human services; information technology; law, public safety, and security; manufacturing; marketing; science, technology, engineering, and mathematics (STEM); and transportation, distribution, and logistics.

(c) Each applicant for a restricted career and technical education certificate shall submit the following to the state board:

(1) Verification that a local education agency will employ the applicant in a career and technical education pathway if the certificate is issued;

(2) verification of at least 4,000 hours of occupational work experience in the career and technical education content area in which the certificate is sought;

(3) documentation of the following:

(A) Verification of occupational competency in the career and technical education content area. Verification shall be dependent upon the content area and may include any of the following:

(i) Successful completion of any recognized competency exam;

(ii) having a valid, appropriate occupational license in programs for which a license is required;

(iii) holding the appropriate educational degree; or

(iv) having a valid, industry-recognized credential;

(B) a written plan to qualify for full certification during the four-year period immediately following issuance of the initial restricted career and technical education certificate. The plan shall be based upon completion of the requirements of a professional education program for a full career and technical education certificate;

(C) verification from the employing local education agency that the agency has assigned a certified or licensed teacher with at least three years of experience to serve as a mentor for the applicant; and

(D) verification from the employing local education agency that the applicant has completed a supervised practical training experience that addresses, at a minimum, lesson plan development, teaching methodologies, student assessment, and classroom management;

(4) an application for a restricted career and technical education certificate; and

(5) the certificate fee.

(d) Any individual may renew a restricted career and technical education certificate one time. Each applicant for renewal shall submit the following to the state board:

(1) Verification of completion of at least 50 percent of the applicant's plan of study;

(2) verification of continued employment in the career and technical education pathway;

(3) an application for a restricted career and technical education certificate; and

(4) the certificate fee.

(e) To qualify for a full career and technical education certificate, each individual holding a restricted career and technical education certificate shall meet the requirements for a full career and technical education certificate during the period of validity of the individual's restricted certification.

(f)(1) Each full career and technical education certificate shall be valid for five years from the date of issuance and shall be valid for instruction in grades 8 through 12.

(2) Each full career and technical education certificate shall be valid for instruction in career and technical education pathways for agriculture, food, and natural resources; architecture and construction; arts, audio-video technology, and communications; business management and administration; finance; health science; hospitality and tourism; human services; information technology; law, public safety, and security; manufacturing; marketing; science, technology, engineering, and mathematics (STEM); and transportation, distribution, and logistics.

(3) Each applicant for a full career and technical education certificate shall submit the following to the state board:

(A) An application for a full career and technical education certificate and the appropriate fee;

(B) documentation of successful completion of the professional education program for career and technical education certification as specified in subsection (g);

(C) verification of successful completion of a pedagogical assessment as determined by the state board;

(D) verification of successful completion of two years of teaching experience in a career and technical education pathway; and

(E) verification of professional learning opportunities related to the content area during each year of the restricted certificate period.

(g) Each applicant for a full career and technical education certificate shall have successfully completed an approved professional education program delivered through an institution of higher education or an approved professional learning program provider. At a minimum, each approved professional education program shall provide the competencies specified in the professional education standards adopted by the state board in each of the following areas:

(1) The learner and learning: learner development, learning differences, and learning environments;

(2) content: content knowledge and application of content;

(3) instructional practice: assessment, planning for instruction, and instructional strategies; and

(4) professional responsibility: professional learning, ethical practice, leadership, and collaboration.

(h) Any person may renew a full career and technical education certificate by submitting the following to the state board:

(1) An application for renewal and the required fee; and

(2)(A) Verification that the person, within the term of the current full career and technical education certificate, has earned at least 160 professional development points under an approved individual development plan filed with a local professional development council. The individual development plan shall include professional learning opportunities related to the content area during each year of the duration of the certificate; or

(B) if the applicant holds an advanced degree, verification that the person, within the term of the current full career and technical education certificate, has earned at least 120 professional development points under an approved individual development plan filed with a local professional

development council. The individual development plan shall include professional learning opportunities related to the content area during each year of the duration of the certificate.

(i) Any person whose full career and technical education certificate has expired may apply for a transitional career and technical education certificate by submitting to the state board the following:

(1) An application for a transitional certificate; and

(2) the certification fee.

(j) Any person may upgrade a transitional career and technical education certificate to a full career and technical education certificate by submitting to the state board verification of meeting the renewal requirements in paragraph (h)(2).

(k) Any person who holds a valid teaching license or a full career and technical education certificate may add a career and technical education endorsement certification by submitting to the state board the following:

(1) An application for a career and technical education endorsement certification;

(2) verification of occupational competency in the career and technical education content area. Verification shall be dependent upon the content area and may include any of the following:

(A) Successful completion of any recognized competency exam;

(B) having a valid, appropriate occupational license in programs for which a license is required; or

(C) having a valid, industry-recognized credential; and

(3) the certification fee.

(l) A career and technical education specialized certificate may be issued to allow an individual with appropriate occupational knowledge, skills, and experience to instruct in a career and technical education pathway assignment.

(1) Each career and technical education specialized certificate shall be valid for three school years. Each certificate shall be valid only for the endorsed career and technical education area for grades 8 through 12 and only for the local education agency identified on the certificate.

(2) To obtain a career and technical education specialized certificate, each applicant shall submit to the state board the following:

(A) A written request for issuance from a local education agency that authorizes the applicant to teach each identified course;

(B)(i) Verification of an industry-recognized certificate in the technical profession and verification of at least five years of full-time work experience in the technical profession for which the industry-recognized certificate is held; or

(ii) verification of the applicant's occupational competency in the career and technical content area. Verification shall be dependent upon the content area and may include any of the following: successful completion of any recognized competency exam; having a valid, appropriate occupational license in programs for which a license is required; holding the appropriate educational degree; having an industry-recognized credential; or having 4,000 hours of occupational work experience related to the endorsed career and technical education area;

(C) an application for a career and technical education specialized certificate; and

(D) the certification fee.

(3) The career and technical education specialized certificate issued to each individual meeting the requirements of paragraph (l)(2) shall allow the individual to instruct in a career and technical education pathway up to a .5 FTE assignment.

(4) Any person may renew a career and technical education specialized certificate by submitting the following to the state board:

(A) An application for renewal;

(B) the certification fee; and

(C) a written request for issuance by the local education agency authorizing the applicant to continue to teach each identified course. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Aug. 5, 2005; amended July 18, 2008; amended, T-91-6-30-14, June 30, 2014; amended Oct. 24, 2014.)

91-1-221. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective Aug. 5, 2005; amended July 18, 2008; revoked July 7, 2017.)

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 accreditation 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 successfully:

(A) Coursework that constitutes a major in the subject at the institution or that is equivalent to a major;

(B) at least 12 weeks of student teaching; and

(C) a validated preservice candidate work sample.

(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 designat-

ed 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.

Any institution may challenge the appointment of a review team member. The institution's challenge shall be submitted in writing and received by the commissioner no later than 30 days after the notification of review team appointments is sent to the institution. Each challenge to the appointment of a review team member shall be 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 designated by the teacher education institution.

(2) Any institution may prepare a response to the review team's report. This response shall be prepared and submitted to the commissioner no later than 45 days of receipt of the review team's report. Receipt of the review team's report shall be presumed to occur three days after mailing. 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 designated by the teacher education institution and to the commissioner.

(e) Request for hearing.

(1) Within 30 days of receipt of an initial recommendation of the evaluation review committee, the teacher education institution may submit a written request by certified mail to the evaluation review committee for a hearing before the committee to appeal the initial recommendation. Receipt of the initial recommendation of the evaluation review committee shall be presumed to occur three days after mailing. This request shall specify, in detail, the basis for the appeal, includ-

ing 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 designated by 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 by certified mail within the time allowed under paragraph (e)(1), 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; amended July 7, 2017.)

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 reg-

ular 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 31.—ACCREDITATION

91-31-32. Performance and quality criteria. (a) Each school shall be assigned its accreditation status based upon the extent to which the school has met the performance and quality criteria established by the state board in this regulation.

(b) The performance criteria shall be as follows:

(1) Except as provided in subsection (d), having met the percentage prescribed by the state board of students performing at or above the proficient level on state assessments or having increased overall student achievement by a percentage prescribed by the state board;

(2) having 95% or more of all students and 95% or more of each student subgroup take the state assessments;

(3) having an attendance rate equal to or greater than that prescribed by the state board; and

(4) for high schools, having a graduation rate equal to or greater than that prescribed by the state board.

(c) The quality criteria shall consist of the following quality measures, which shall be required to be in place at each school:

(1) A school improvement plan that includes a results-based staff development plan;

(2) an external technical assistance team;

(3) locally determined assessments that are aligned with the state standards;

(4) formal training for teachers regarding the state assessments and curriculum standards;

(5) 100% of the teachers assigned to teach in those areas assessed by the state or described as core academic subjects by the United States department of education, and 95% or more of all other faculty, fully certified for the positions they hold;

(6) policies that meet the requirements of S.B.R. 91-31-34;

(7) local graduation requirements that include at least those requirements imposed by the state board;

(8) curricula that allow each student to meet the regent's qualified admissions requirements and the state scholarship program;

(9) programs and services to support student learning and growth at both the elementary and secondary levels, including the following:

- (A) Computer literacy;
- (B) counseling services;
- (C) fine arts;
- (D) language arts;
- (E) library services;
- (F) mathematics;
- (G) physical education, which shall include instruction in health and human sexuality;
- (H) science;
- (I) services for students with special learning needs; and

(J) history, government, and celebrate freedom week. Each local board of education shall include the following in its history and government curriculum:

(i) Within one of the grades seven through 12, a course of instruction in Kansas history and government. The course of instruction shall be offered for at least nine consecutive weeks. The local board of education shall waive this requirement for any student who transfers into the district at a grade level above that in which the course is taught; and

(ii) for grades kindergarten through eight, instruction concerning the original intent, meaning, and importance of the declaration of independence and the United States constitution, including the bill of rights, in their historical contexts, pursuant to K.S.A. 2015 Supp. 72-1130 and amendments thereto. The study of the declaration of independence shall include the study of the relationship of the ideas expressed in that document to subsequent American history;

(10) programs and services to support student learning and growth at the secondary level, including the following:

- (A) Business;
- (B) family and consumer science;
- (C) foreign language; and
- (D) industrial and technical education;
- (11) local policies ensuring compliance with other accreditation regulations and state education laws; and

(12) programs for all school staff regarding suicide awareness and prevention. Each local board of education shall include the following in its suicide awareness and prevention programs:

(A) At least one hour of training each calendar year based on programs approved by the state board of education. The training requirement

may be met through independent self-review of suicide prevention training material; and

(B) a building crisis plan developed for each school building. The building crisis plan shall include the following:

- (i) Steps for recognizing suicide ideation;
- (ii) appropriate methods of intervention; and
- (iii) a crisis recovery plan.

(d) If the grade configuration of a school does not include any of the grades included in the state assessment program, the school shall use an assessment that is aligned with the state standards. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution and K.S.A. 2015 Supp. 72-1130; effective July 1, 2005; amended Jan. 10, 2014; amended Dec. 9, 2016.)

Article 38.—SCHOOL BUS TRANSPORTATION

91-38-1. Definitions. (a) “Activity bus” means any bus utilized by a governing body only to transport students to and from school activities as authorized by K.S.A. 72-8301 (c)(3), and amendments thereto. An activity bus may be a color other than school bus yellow.

(b) “Bus” means any motor vehicle that is designed for transporting more than 10 passengers in addition to the driver.

(c) “Driver-trainer” means any person who is assigned by a transportation supervisor to provide instruction and training to other school transportation providers, including knowledge of vehicles used to provide student transportation, safe driving practices, emergency procedures, and passenger control. The driver-trainer shall maintain current licensure to operate the largest vehicle about which the driver-trainer is to provide instruction and shall have experience as a school bus driver.

(d) “Governing body” means the local board of education or other entity having authority over a school district.

(e) “Multipurpose passenger vehicle” means a motor vehicle, as defined in K.S.A. 8-126 and amendments thereto, that is designed to transport 10 or fewer persons, in addition to the driver, and that is constructed on a truck chassis.

(f) “School bus” means school bus as defined in K.S.A. 72-8301, and amendments thereto. A school bus may be owned by a school district, a private school, or a private company. The term shall include any van or other vehicle rated by the manufacturer, or having a door label, as a bus.

(g) “School bus driver” means any person employed by a school district or school bus contractor to drive a school bus or activity bus.

(h) “School district” means any unified school district or private school.

(i) “School passenger vehicle” means any passenger car or multipurpose passenger vehicle that is owned or leased by a school district or private individual and is used regularly to provide student transportation on behalf of a school district.

(j) “School passenger vehicle driver” means any person employed by a school district primarily to provide transportation for students in a school passenger vehicle.

(k) “School transportation provider” means either a school bus driver or a school passenger vehicle driver.

(l) “School vehicle” means any activity bus, school bus, or school passenger vehicle.

(m) “Short-term leased vehicle” means any school vehicle that is leased by a school district for a period of 30 or fewer days.

(n) “Substitute driver” means any person who is not assigned to a regular route but is employed to serve as a school transportation provider when necessary due to driver absences or emergencies.

(o) “Transportation supervisor” means a person designated by a governing body to be responsible for transportation activities within a school district. (Authorized by and implementing K.S.A. 8-2009; effective July 1, 2000; amended March 28, 2003; amended July 7, 2017.)

91-38-2. General limitations and requirements. (a) No governing body shall have a school bus in service after July 1, 1992, unless the school bus was manufactured after April 1, 1977 and either is no more than 25 years old or has been modified to meet current standards. Each school bus shall meet the standards specified by law and this article of the department’s regulations.

(b) The owner’s name shall be displayed on each side of any school bus.

(c) Activity buses shall not be utilized to provide student transportation from any student’s home to school or from school to any student’s home.

(d) Each school bus, activity bus, and school passenger vehicle shall be equipped with a two-way communication system.

(e)(1) Each bus shall contain the following emergency supplies:

(A) At least one 2A-10BC fire extinguisher;

(B) at least one readily identifiable first-aid kit in a removable, waterproof, and dustproof container;

(C) at least one readily identifiable body fluid clean-up kit in a removable, waterproof, and dustproof container;

(D) at least three reflectorized triangle warning devices, securely stored but in an accessible location; and

(E) at least one emergency seat belt cutter.

(2) The first-aid kit, body fluid clean-up kit, fire extinguisher, and seat belt cutter shall be mounted in full view of, and readily accessible to, the driver.

(f) Each governing body shall ensure that occupant restraint systems are provided for, and utilized by, all occupants of school passenger vehicles. When providing transportation for infants and preschool children in school passenger vehicles, age- and size-appropriate child safety restraining systems shall be utilized, pursuant to K.S.A. 8-1344 and amendments thereto. (Authorized by K.S.A. 8-2009; implementing K.S.A. 8-2009, K.S.A. 2015 Supp. 8-2009a; effective July 1, 2000; amended March 28, 2003; amended July 7, 2017.)

91-38-3. School transportation supervisor; duties and responsibilities. (a) Appointment and general responsibilities.

(1) Each governing body shall designate an employee to be the transportation supervisor.

(2)(A) The transportation supervisor shall be responsible for supervision and maintenance of the school district’s transportation system.

(B) The transportation supervisor shall act as liaison between the school district and any contracted bus transportation service.

(b) School transportation routes and stops.

(1) The transportation supervisor shall be responsible for establishing all regular transportation routes and stops for the loading and unloading of students along those routes. The supervisor shall keep a current map on file for each regular transportation route, with all stops noted and a current map of the school district showing each attendance center.

(2) The transportation supervisor shall not establish stops on any interstate highway, state toll road, or other limited-access highway.

(3) The transportation supervisor shall give special consideration to road conditions and safety concerns when planning the regular transportation routes. If a safety hazard is encountered, the

appropriate authorities shall be contacted about eliminating or correcting the hazard, if possible.

(4) Each driver shall report to the transportation supervisor any condition encountered by the driver on a transportation route that appears to pose a safety hazard.

(5) If visibility is less than 500 feet when approaching an established school bus stop from any direction, the transportation supervisor shall contact state, county, or township road authorities and request that warning signs be posted for the school bus stop. Whenever practicable, stops shall be established only at points where visibility is at least 500 feet for all motorists.

(c) Driver training meetings.

(1) Each transportation supervisor shall conduct at least 10 safety meetings per year for all school transportation providers employed by the school district.

(2) Attendance at each meeting shall be documented with a sign-in sheet or similar document. The record of attendance and the agenda shall be retained by the supervisor for at least two years.

(3) Safety meeting topics shall include school transportation safety concerns from drivers regarding route safety, changes in laws or regulations, and other safety issues as determined appropriate by the transportation supervisor.

(4) Safety meetings may be electronically recorded so that drivers who are unable to attend a particular meeting can view the program at another time.

(5) Each school transportation provider shall attend at least 10 safety meetings per year. Newly hired drivers shall be required to attend only those meetings held following their employment.

(d) Records retention.

(1) The transportation supervisor shall be responsible for maintenance and repair records for all school buses, activity buses, and school passenger vehicles used for student transportation, except short-term leased vehicles, that are either owned or leased and are operated by the school district. These records shall include information on scheduled maintenance, lubrication records, repair orders, and other maintenance.

(2) The maintenance record for each vehicle shall be kept as long as the school owns or leases the vehicle, and for at least two years following disposition of the vehicle.

(3) Maintenance records shall be available for inspection by the Kansas highway patrol, other law enforcement agencies, and Kansas state department of education officials.

(e) Contracts for bus transportation services. Each school district that contracts for bus transportation services shall ensure that each contract for those services includes a provision requiring the contractor to meet the requirements of subsections (c) and (d).

(f) Students with special needs. Each school district shall, before transportation, notify the transportation supervisor of any student with special health care concerns, special needs for transportation, or an individualized education program requiring transportation. The supervisor shall ensure that all drivers, substitute drivers, and attendants are informed of these needs and receive any training that is necessary to safely transport the student or to accommodate the student's special needs. (Authorized by and implementing K.S.A. 8-2009; effective July 1, 2000; amended March 28, 2003; amended July 7, 2017.)

91-38-4. Compliance with chassis and body construction standards. (a) Except as otherwise provided in subsection (c), a governing body shall not allow students to be transported on any school bus acquired or leased after the effective date of this regulation until the governing body has on file a verified statement, as prescribed by the state board, from the seller or lessor of the school bus attesting that the school bus meets the following requirements:

(1) The school bus chassis and body construction standards promulgated by the United States department of transportation that apply to the particular bus; and

(2) the bus chassis and body construction standards, including standards for specially equipped school buses, if applicable, prescribed in the national school transportation specifications adopted by the national congress on school transportation.

(b) A governing body shall not alter, change, or otherwise modify any school bus used to transport students in any manner that results in nullification of the statement required in subsection (a) or that results in the failure of the school bus to comply with standards applicable to it under K.S.A. 8-2009a, and amendments thereto.

(c) If a governing body is acquiring a school bus from another governing body, the governing body acquiring the school bus shall obtain the following statements from the governing body that is disposing of the school bus:

(1) The verified statement obtained by the governing body under subsection (a); and

(2) a verified statement from the governing body that is disposing of the school bus attesting to the fact that the governing body has not altered, changed, or otherwise modified the school bus in any manner that results in nullification of the statement required in subsection (a) or that results in the failure of the school bus to comply with the standards applicable to it under K.S.A. 8-2009a, and amendments thereto. (Authorized by K.S.A. 8-2009; implementing K.S.A. 8-2009, K.S.A. 2015 Supp. 8-2009a; effective July 1, 2000; amended July 7, 2017.)

91-38-5. Annual inspection of school vehicles. (a)(1) Each governing body that either owns or leases and that operates any school bus or activity bus shall have each of those buses inspected annually in accordance with this regulation.

(2) Each person or entity that contracts with any governing body to provide bus transportation services to students shall have each school bus or activity bus used to transport students inspected annually in accordance with this regulation.

(3) Except for new buses, which shall be inspected upon delivery and before being used to transport students, the inspection process shall be conducted between June 1 and September 30. No school bus or activity bus shall be used to transport students until the inspection process has been completed and the bus is in proper working order.

(b)(1) Each governing body and each bus transportation contractor shall have each school bus and each activity bus that is operated by the governing body or the contractor inspected by a mechanic who is knowledgeable about the mechanical systems of school buses. In addition, each governing body shall have each school passenger vehicle that is used to transport students inspected annually by a mechanic. The mechanic shall inspect each school vehicle to determine whether the mechanical system is in proper working order.

(2) Each mechanic shall indicate the results of the inspection on the form provided by the state department of education and shall return the form to the governing body or bus transportation contractor.

(c)(1) After the inspection prescribed in subsection (b) is completed, each school vehicle shall be inspected by the Kansas highway patrol to determine whether the school vehicle is equipped with the appropriate safety devices and those devices are in proper working order.

(2) The results of the inspection shall be indicated by the highway patrol officer on the form provided by the state department of education. Following completion of this form, it shall be returned to the governing body or bus transportation contractor and shall become a maintenance record.

(d) Upon successful completion of the inspection process specified in subsections (b) and (c), a school vehicle inspection sticker issued by the Kansas highway patrol shall be placed on the school vehicle's windshield in a location that will not impair the driver's vision.

(e)(1) If any school vehicle fails either the mechanical or safety inspection specified in this regulation, that school vehicle shall not be used for student transportation until all defects have been corrected and the school vehicle has been approved.

(2) If repairs or other corrections are required for a school vehicle to pass the inspection and these repairs or corrections are completed within 10 days after the initial inspection, then only the defective items shall be reexamined. If the repairs or corrections are not made within 10 days following the initial inspection, the school vehicle shall be completely reinspected.

(f) At any time, spot inspections of any school vehicle used for student transportation may be conducted by the Kansas highway patrol.

(g) Each school bus, activity bus, and school passenger vehicle that is purchased at any time following the required annual inspection for school vehicles shall pass the inspections required by this regulation before being used to transport students. (Authorized by and implementing K.S.A. 8-2009; effective July 1, 2000; amended March 28, 2003; amended July 7, 2017.)

91-38-6. School transportation driver qualifications. (a) Driver's licensing and age requirements. Each person employed by a school district or by a school bus contractor who, at any time, will provide student transportation shall be licensed pursuant to K.S.A. 8-234b and amendments thereto, or the appropriate licensing statutes of the person's state of residence. Each person also shall meet the following requirements:

(1) Each driver of a school bus or activity bus with a gross weight of over 26,000 pounds shall maintain a commercial class A or B driver's license, with passenger and school bus endorsements.

(2) Each driver of a school bus or activity bus that has a gross weight of 26,000 pounds or less

and is designed for transporting 16 passengers or more shall maintain a commercial class A, B, or C driver's license, with passenger and school bus endorsements.

(3) Each driver of a school passenger vehicle or a school bus or activity bus that has a gross weight of 26,000 pounds or less and is designed to transport fewer than 16 passengers shall maintain an appropriate noncommercial operator's license.

(4) Each driver's license shall be valid within the driver's state of residence.

(5) Each driver of an activity bus shall be 21 years of age or older.

(b) Criminal and driving records.

(1) Each prospective school transportation provider or other school employee who may transport students shall be required to sign a statement indicating whether that individual has been convicted in any state or federal court of any crime involving a child. A person who has been convicted of such a crime shall not be employed, reemployed, or retained as an employee to provide student transportation.

(2) Each prospective driver shall be required to sign a statement indicating whether, within the past 10 years, that individual has been convicted in any state of any felony or any major traffic violations specified in subsection (c).

(3) For purposes of this regulation, a conviction shall mean entering a plea of guilty or nolo contendere, a finding of guilty by a court or jury, or forfeiture of bond.

(4) Each prospective school transportation provider shall give written authorization to the prospective employer to obtain the applicant's driving record through a local law enforcement agency or the Kansas department of revenue, division of vehicles, pursuant to K.S.A. 74-2012 and amendments thereto. The authorization also shall allow the prospective employer to obtain the applicant's driving record in states other than Kansas through a local law enforcement agency or the appropriate agency of the other state.

(c) Disqualification from employment.

(1) Except as otherwise provided in paragraph (c)(2), a governing body shall not employ or retain to transport students any person who discloses or whose driving record indicates that, within the past 10 years, the person has been convicted of any of the following major traffic violations:

(A) Hit-and-run driving;

(B) driving while under the influence of alcohol or drugs;

(C) vehicular homicide;

(D) reckless driving; or

(E) any offense for which the driver's license was suspended or revoked pursuant to K.S.A. 8-254 and 8-255, and amendments thereto.

(2) A governing body may waive the disqualification for employment by a unanimous vote of the full membership of the governing body.

(d) Driver experience and training requirements.

(1) Each driver who operates a school vehicle to transport students shall have at least one year's experience in operating a motor vehicle.

(2)(A) Each school bus driver shall be provided with at least 12 hours of bus driver training. The first six hours of training shall be completed without student passengers, but the remaining hours may be completed with student passengers if the driver-trainer is on the bus. All driver training shall be supervised by the assigned driver-trainer.

(B) Except as otherwise provided in paragraph (d)(2)(C), each school transportation provider shall complete a first aid and cardiopulmonary resuscitation (CPR) course, approved by the state department of education, within 30 days after the first day the driver is allowed to transport students. Each driver completing any training session shall obtain a wallet card or other certificate attesting to that individual's completion of the training program and shall maintain this certification.

(C) A school transportation provider who is certified as an emergency medical service provider shall not be required to complete first aid and CPR training, if the emergency medical certification is maintained in valid status.

(e)(1) Each school transportation provider shall successfully complete a vehicle accident prevention course approved by the state department of education, within 30 days after the first day the driver transports students. The driver shall obtain a completion certificate or wallet card as evidence that the course requirements have been met.

(2) After completion of the initial accident prevention course, each driver shall be required to maintain certification by completion of an accident prevention course at least every three years.

(3) The transportation supervisor shall maintain documentation of driver training for school transportation providers for the duration of the driver's employment, and at least two years thereafter.

(f) Substitute and emergency school transportation providers.

(1) Substitute school transportation providers shall meet the requirements in this regulation, but these individuals may be allowed up to 30 days following employment to complete the first aid, CPR, and accident prevention course training requirements.

(2) Any person who holds a valid commercial driver's license with passenger and school bus endorsements and a current medical certificate may operate a school bus in an emergency situation. For purposes of this paragraph, an "emergency situation" shall mean a situation in which no qualified driver or substitute driver is available. A specific driver shall not drive as an emergency driver for more than five days during a school year.

(g) Physical examination and health requirements.

(1) The physical qualification requirements for school transportation providers in Kansas shall be those in 49 C.F.R. 391.41, as in effect on January 14, 2014, which is hereby adopted by reference. The medical examiner's report form and the medical examiner's certificate that are approved by the state department of education shall be used to document the results of each examination.

(2) The physical examination shall be certified by a doctor of medicine, doctor of osteopathy, doctor of chiropractic, physician assistant, nurse practitioner, or any medical professional on the federal motor carrier safety administration's national registry of certified medical examiners, according to the following schedule:

(A) Before beginning employment as a school transportation provider;

(B) at least every two years after the date of the initial physical examination; and

(C) at any time requested by the driver's employer, the school transportation supervisor, or the state department of education.

(3) A certified medical examiner's certificate required under this subsection shall not constitute the certification of health required by K.S.A. 72-5213, and amendments thereto.

(4) Each governing body shall keep on file a current medical examiner's certificate for each school transportation provider. If a provider leaves employment for any reason, the person's last medical examiner's certificate shall be kept for two years after the person leaves.

(h) Waiver of physical requirements.

(1)(A) Any person failing to meet the requirements of subsection (g) may be permitted to be a school transportation provider for a particular

school district, if a waiver is granted by the governing board of that school district under this subsection. Each waiver shall meet the following requirements:

(i) The person seeking the waiver, the transportation supervisor for the school district, and the contract manager, if applicable, shall submit a joint application for a waiver to the local board of education.

(ii) Each application shall be accompanied by reports from two of the following, indicating their opinions regarding the person's ability to safely operate a school bus: doctor of medicine, doctor of osteopathy, doctor of chiropractic, physician assistant, or nurse practitioner.

(iii) The application shall contain a description of the type and size of the vehicle to be driven and any special equipment required to accommodate the driver to safely operate the vehicle, the general area and type of roads to be traveled, distances and time period contemplated, and the experience of the person in driving vehicles of the type to be driven.

(B) An application for a waiver shall be granted only by unanimous approval of the governing board.

(2)(A) A waiver as described in paragraph (h)(1) shall not be granted for a period longer than two years, but may be renewed by following the procedures in paragraph (h)(1).

(B) While on duty, the driver shall keep in the driver's possession the original document granting the waiver or a legible copy of this document.

(C) Each governing body shall retain the original document granting the waiver or a legible copy of the waiver in the driver's personnel file for as long as the driver is employed and for at least two years following termination of the driver's employment.

(D) A waiver may be revoked, for cause, by the governing body. Before revocation, the governing body shall perform the following:

(i) Suspend the driver from service;

(ii) provide notice of the proposed revocation to the driver, including the reason or reasons for the proposed revocation; and

(iii) allow the driver a reasonable opportunity to show cause, if any, why the revocation should not occur.

(i) Alcohol and drug testing requirements. Any governing body may develop a policy to include all drivers of any school motor vehicles in the alcohol and drug testing program required for drivers not

holding commercial driver's licenses. (Authorized by and implementing K.S.A. 8-2009; effective July 1, 2000; amended March 28, 2003; amended July 7, 2017.)

91-38-7. Driver's duties and responsibilities. (a) Each school transportation provider shall inspect a school vehicle before its use to ascertain that the vehicle is in a safe condition and equipped as required by law and that all required equipment is in working order. The school transportation provider shall document each inspection.

(b) If any defect is discovered, students shall not be transported in the vehicle until the defect is corrected.

(c) Documentation of the inspections of each school vehicle shall be kept on file for at least one year following the vehicle inspection.

(d) A school transportation provider shall not drive a school vehicle for more than 10 consecutive hours or for more than a total of 10 hours in any 15-hour period.

(e) Each school transportation provider shall ensure that all doors are closed before the vehicle is put into motion and remain closed while the vehicle is moving.

(f) Each school transportation provider shall ensure that openings for the service door, emergency exits, and aisles are kept clear of any obstructions.

(g) Each school transportation provider shall utilize the driver's safety belt at all times while the vehicle is in motion.

(h) If the school transportation provider leaves the driver's seat, the parking brake shall be set, the motor turned off, and the keys removed. However, drivers of specially equipped buses may leave the motor running to operate a power lift after setting the parking brake.

(i) If a school vehicle is refueled during any trip when passengers are being transported, the school transportation provider shall unload all passengers from the vehicle and turn off the vehicle's motor before beginning refueling procedures. Fuel shall not be transported in any manner, except in the vehicle's fuel tank.

(j) Following the completion of any trip, each school transportation provider shall perform a walk-through inspection of the school bus or activity bus or a visual check of the school passenger vehicle that the provider was driving, to ensure that all passengers have disembarked.

(k) A driver of a school bus or activity bus shall not tow any trailer or other vehicle with the bus,

while any passenger is on the bus. (Authorized by and implementing K.S.A. 8-2009; effective July 1, 2000; amended March 28, 2003; amended July 7, 2017.)

91-38-8. Loading and unloading procedures. (a) On routes.

(1) Each school bus driver shall activate the alternately flashing warning lights as required by K.S.A. 8-1556 and amendments thereto, at any time that the loading or unloading of students occurs on the traveled portion of any roadway.

(2) Each governing body shall adopt procedures for the loading and unloading of students, consistent with the requirements of this article of the department's regulations. The procedures shall include the following:

(A) Each school bus driver shall load and unload students off the roadway whenever adequate space is provided, unless parking the bus off the roadway would threaten the safety or stability of the bus or safety of the students.

(B) Each school bus driver shall direct students who cross the roadway when loading or unloading from a school bus to cross only in front of the bus. The driver shall ensure that all traffic has stopped and shall instruct students to wait for a signal from the driver before crossing the roadway.

(C) Students shall not be required to cross any divided highway, as defined in K.S.A. 8-1414 and amendments thereto, or any roadway consisting of more than one lane of traffic traveling in the same direction excluding turn lanes in order to board the bus or to reach the students' destination upon unloading from the bus.

(D) When the loading or unloading of students takes place on a roadway, the bus shall stop in the far right-hand lane of the roadway.

(E) Each driver shall ensure that all students who have unloaded from the bus have moved a safe distance away from the bus before the driver moves the bus.

(b) At school.

(1) Whenever possible, each governing body shall provide bus parking so that the loading or unloading of students is conducted in an area away from vehicular traffic and off the roadway.

(2) Before each school's dismissal time, and where adequate space is available, the bus drivers shall park the buses in single file.

(3) If the loading or unloading of students is conducted on the traveled portion of a roadway, each bus driver shall park the bus on the side of

the roadway nearest to the school, with the entry door opening away from the traveled portion of the roadway. Buses shall be parked adjacent to curbing, if present. If there is no curbing, the buses shall be parked as far to the right of the roadway as possible without threatening the stability of the bus.

(4) Each board shall ensure that there is adult supervision during loading and unloading procedures at each school building, except at buildings utilized exclusively for senior high school students.

(c) On activity trips.

(1) Whenever possible, each bus driver shall park the bus so that the loading or unloading of students takes place in an area away from other vehicular traffic.

(2) The transportation supervisor shall designate, in advance, stops for the loading and unloading of buses along each activity trip route.

(d) In school passenger vehicles. Each driver of a school passenger vehicle shall park the vehicle in a location so that students are loaded or unloaded in an area off the roadway. (Authorized by and implementing K.S.A. 8-2009; effective July 1, 2000; amended July 7, 2017.)

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 Fri-

day, 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 ac-

cordance 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 optimization 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 re-evaluation 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 supplementary 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.)

Article 42.—EMERGENCY SAFETY INTERVENTIONS

91-42-1. Definitions. As used in this article, each of the following terms shall have the meaning specified in this regulation: (a) "Administrative

review" means review by the state board upon request of a parent.

(b) "Chemical restraint" means the use of medication to control a student's violent physical behavior or restrict a student's freedom of movement.

(c) "Commissioner" means commissioner of education.

(d) "Complaint" means a written document that a parent files with a local board as provided for in this article.

(e) "Department" means the state department of education.

(f) "District" means a school district organized under the laws of this state that is maintaining a public school for a school term pursuant to K.S.A. 72-1106, and amendments thereto. This term shall include the governing body of any accredited nonpublic school.

(g) "Emergency safety intervention" means the use of seclusion or physical restraint.

(h) "Hearing officer" means the state board's designee to conduct an administrative review as specified in K.A.R. 91-42-5. The hearing officer shall be an officer or employee of the department.

(i) "Incident" means each occurrence of the use of an emergency safety intervention.

(j) "Local board" means the board of education of a district or the governing body of any accredited nonpublic school.

(k) "Mechanical restraint" means any device or object used to limit a student's movement.

(l) "Parent" means any of the following:

(1) A natural parent;

(2) an adoptive parent;

(3) a person acting as a parent, as defined in K.S.A. 72-1046 and amendments thereto;

(4) a legal guardian;

(5) an education advocate for a student with an exceptionality;

(6) a foster parent, unless the foster parent's child is a student with an exceptionality; or

(7) a student who has reached the age of majority or is an emancipated minor.

(m) "Physical escort" means the temporary touching or holding the hand, wrist, arm, shoulder, or back of a student who is acting out for the purpose of inducing the student to walk to a safe location.

(n) "Physical restraint" means bodily force used to substantially limit a student's movement, except that consensual, solicited, or unintentional contact and contact to provide comfort, assistance or instruction shall not be deemed to be physical restraint.

(o) “School” means any learning environment, including any nonprofit institutional day or residential school or accredited nonpublic school, that receives public funding or which is subject to the regulatory authority of the state board.

(p) “Seclusion” means placement of a student in a location where all the following conditions are met:

(1) The student is placed in an enclosed area by school personnel.

(2) The student is purposefully isolated from adults and peers.

(3) The student is prevented from leaving, or the student reasonably believes that the student will be prevented from leaving, the enclosed area.

(q) “State board” means Kansas state board of education.

(r) “Time-out” means a behavioral intervention in which a student is temporarily removed from a learning activity without being secluded. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective April 19, 2013; amended, T-91-2-17-16, Feb. 17, 2016; amended June 10, 2016; amended July 7, 2017.)

91-42-2. Standards for the use of emergency safety interventions. (a) An emergency safety intervention shall be used only when a student presents a reasonable and immediate danger of physical harm to the student or others with the present ability to effect such physical harm. Less restrictive alternatives to emergency safety interventions, including positive behavior interventions support, shall be deemed inappropriate or ineffective under the circumstances by the school employee witnessing the student’s behavior before the use of any emergency safety interventions. The use of an emergency safety intervention shall cease as soon as the immediate danger of physical harm ceases to exist. Violent action that is destructive of property may necessitate the use of an emergency safety intervention.

(b) Use of an emergency safety intervention for purposes of discipline or punishment or for the convenience of a school employee shall not meet the standard of immediate danger of physical harm.

(c)(1) A student shall not be subjected to an emergency safety intervention if the student is known to have a medical condition that could put the student in mental or physical danger as a result of the emergency safety intervention.

(2) The existence of the medical condition must be indicated in a written statement from the stu-

dent’s licensed health care provider, a copy of which shall be provided to the school and placed in the student’s file. The written statement shall include an explanation of the student’s diagnosis, a list of any reasons why an emergency safety intervention would put the student in mental or physical danger and any suggested alternatives to the use of emergency safety interventions.

(3) Notwithstanding the provisions of this subsection, a student may be subjected to an emergency safety intervention, if not subjecting the student to an emergency safety intervention would result in significant physical harm to the student or others.

(d) When a student is placed in seclusion, a school employee shall be able to see and hear the student at all times.

(e) Each seclusion room equipped with a locking door shall be designed to ensure that the lock automatically disengages when the school employee viewing the student walks away from the seclusion room, or in cases of emergency, including fire or severe weather.

(f) Each seclusion room shall be a safe place with proportional and similar characteristics as other rooms where students frequent. Each room shall be free of any condition that could be a danger to the student and shall be well-ventilated and sufficiently lighted.

(g) The following types of restraint shall be prohibited:

(1) Prone, or face-down, physical restraint;

(2) supine, or face-up, physical restraint;

(3) any restraint that obstructs the airway of a student;

(4) any restraint that impacts a student’s primary mode of communication;

(5) chemical restraint, except as prescribed treatments for a student’s medical or psychiatric condition by a person appropriately licensed to issue these treatments; and

(6) the use of mechanical restraint, except those protective or stabilizing devices either ordered by a person appropriately licensed to issue the order for the device or required by law, any device used by a law enforcement officer in carrying out law enforcement duties, and seatbelts and any other safety equipment when used to secure students during transportation.

(h) The following shall not be deemed an emergency safety intervention, if its use does not otherwise meet the definition of an emergency safety intervention:

(1) Physical escort; and
(2) time-out. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective April 19, 2013; amended, T-91-2-17-16, Feb. 17, 2016; amended June 10, 2016; amended July 7, 2017.)

91-42-3. District policy; training; local board dispute resolution. (a) Each district shall develop and implement written policies to govern the use of emergency safety interventions over all schools. At a minimum, written district policies shall conform to the standards, definitions, and requirements of this article. The written policies shall also include the following:

(1) (A) School personnel training shall be designed to meet the needs of personnel as appropriate to their duties and potential need for the use of emergency safety interventions;

(B) training shall address prevention techniques, de-escalation techniques, and positive behavioral intervention strategies;

(C) any training on the use of emergency safety interventions by the district shall be consistent with nationally recognized training programs; and

(D) schools and programs shall maintain written or electronic documentation on training provided and lists of participants in each training; and

(2) a local dispute resolution process, which shall include the following:

(A) A procedure for a parent to file a complaint with the local board. If a parent believes that an emergency safety intervention has been used with the parent's child in violation of this article or the district's emergency safety intervention policy, the parent may file a complaint with the local board. The complaint shall be filed within 30 days of the date on which the parent was informed of the use of that emergency safety intervention;

(B) a complaint investigation procedure;

(C) a dispute resolution final decision. The local board's final decision shall be in writing and shall include findings of fact and any corrective action required by the district if the local board deems these actions necessary. The local board's final decision shall be mailed to the parent and the department within 30 days of the local board's receipt of the complaint; and

(D) a statement of the parent's right to request an administrative review by the state board as specified in K.A.R. 91-42-5, including information as to the deadline by which the parent must submit the request to the state board;

(3) a system for the collection and maintenance of documentation for each use of an emergency safety intervention, which shall include the following:

(A) The date and time of the emergency safety intervention;

(B) the type of emergency safety intervention;

(C) the length of time the emergency safety intervention was used;

(D) the school personnel who participated in or supervised the emergency safety intervention;

(E) whether the student had an individualized education program at the time of the incident;

(F) whether the student had a section 504 plan at the time of the incident; and

(G) whether the student had a behavior intervention plan at the time of the incident;

(4) procedures for the periodic review of the use of emergency safety intervention at each school, which shall be compiled and submitted at least biannually to the district superintendent or district designee; and

(5) a schedule for when and how parents are provided with notice of the written policies on the use of emergency safety interventions.

(b) Written policies developed pursuant to this article shall be accessible on each school's web site and shall be included in each school's code of conduct, school safety plan, or student handbook. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective, T-91-2-17-16, Feb. 17, 2016; effective June 10, 2016.)

91-42-4. Parent notification; required meeting; filing a complaint. (a) When an emergency safety intervention is used with a student, the school shall notify the parent the same day the emergency safety intervention was used. The school shall attempt to contact the parent using at least two methods of contact, one of which shall be the preferred method of contact if so designated by the parent as specified in this subsection. The same-day notification requirement of this subsection shall be deemed satisfied if the school attempts at least two methods of contact. A parent may designate a preferred method of contact to receive the same-day notification required by this subsection. A parent may agree, in writing, to receive only one same-day notification from the school for multiple incidents occurring on the same day.

(b) The school shall provide written documentation of the emergency safety intervention used to

the parent no later than the school day following the day on which the emergency safety intervention was used. This documentation shall include the following:

- (1) The date and time of the intervention;
- (2) the type of intervention;
- (3) the length of time the intervention was used;
- (4) the school personnel who participated in or supervised the intervention;
- (5) the events leading up to the incident;
- (6) the student behaviors that necessitated the emergency safety intervention;
- (7) the steps taken to transition the student back into the educational setting;
- (8) space or an additional form for parents to provide feedback or comments to the school regarding the incident;
- (9) a statement that invites and strongly encourages parents to schedule a meeting to discuss the incident and how to prevent future use of emergency safety interventions; and
- (10) email and phone information for the parent to contact the school to schedule the emergency safety intervention meeting. Schools may group incidents together when documenting the items in paragraphs (b)(5) through (7) if the triggering issue necessitating the emergency safety interventions is the same.

(c) In addition to the documentation required by subsection (b), the school shall provide the parent the following information:

(1) After the first incident in which an emergency safety intervention is used with a student during the school year, the school shall provide the following information in printed form to the parent or, upon the parent's written request, by email:

(A) A copy of the standards of when emergency safety interventions can be used;

(B) a flyer on the parent's rights;

(C) information on the parent's right to file a complaint through the local dispute resolution process and the complaint process of the state board of education; and

(D) information that will assist the parent in navigating the complaint process, including contact information for the parent training and information center and protection and advocacy system.

(2) After subsequent incidents in which an emergency safety intervention is used with a student during the school year, the school shall provide a full and direct web site address containing the information in paragraph (c)(1).

(d) After each incident, a parent may request a meeting with the school to discuss and debrief the incident. A parent may request the meeting verbally, in writing or by electronic means. A school shall hold a meeting requested under this subsection within 10 school days of the date on which the parent sent the request. The focus of any meeting convened under this subsection shall be to discuss proactive ways to prevent the need for emergency safety interventions and to reduce incidents in the future.

(1) For a student who has an individualized education program or a section 504 plan, the student's individualized education program team or section 504 plan team shall discuss the incident and consider the need to conduct a functional behavioral analysis, develop a behavior intervention plan, or amend either if already in existence.

(2) For a student with a section 504 plan, the student's section 504 plan team shall discuss and consider the need for an evaluation under the special education for exceptional children act, K.S.A. 72-961 et seq., and amendments thereto.

(3) For a student who has an individualized education program and is placed in a private school by a parent, a meeting called under this subsection shall include the parent and the designee of the private school, who shall consider whether the parent should request an individualized education program team meeting. If the parent requests an individualized education program team meeting, the private school shall help facilitate the meeting.

(4) For a student who does not have an individualized education program or section 504 plan, the parent and school shall discuss the incident and consider the appropriateness of a referral for an evaluation under the special education for exceptional children act, K.S.A. 72-961 et seq. and amendments thereto, the need for a functional behavioral analysis, or the need for a behavior intervention plan. Each meeting called pursuant to this subsection shall include the student's parent, a school administrator for the school where the student attends, one of the student's teachers, a school employee involved in the incident, and any other school employees designated by the school administrator as appropriate for the meeting.

(5) The parent shall determine whether the student shall be invited to any meeting called pursuant to this subsection.

(6) The time for calling a meeting pursuant to this subsection shall be extended beyond the 10-school-day limit if the parent of the student is unable to attend within that time period.

(7) Nothing in this subsection shall be construed to prohibit the development and implementation of a functional behavioral analysis or a behavior intervention plan for any student if the student could benefit from such measures.

(e) If a school is aware that a law enforcement officer or school resource officer has used seclusion, physical restraint or mechanical restraint on a student on school grounds or during a school-sponsored activity, the school shall notify the parent on the same day the school becomes aware of the use, using the parent's preferred method of contact as described in K.A.R. 91-42-4(a). A school shall not be required to provide written documentation to a parent, as set forth in subsection (b) or (c) regarding law enforcement use of an emergency safety intervention, or report to the department law enforcement use of an emergency safety intervention. For purposes of this subsection, mechanical restraint includes, but is not limited to, the use of handcuffs.

(f) If a parent believes that emergency safety interventions have been used in violation of this article or policies of the school district, then within 30 days from being informed of the use of emergency safety intervention, the parent may file a complaint through the local dispute resolution process. Any parent may request an administrative review by the state board within 30 days from the date the final decision was issued pursuant to the local dispute resolution process. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective, T-91-2-17-16, Feb. 17, 2016; effective June 10, 2016; amended July 7, 2017.)

91-42-5. Administrative review. (a) Any parent who filed a written complaint with a local board regarding the use of emergency safety intervention may request an administrative review by the state board of the local board's final decision.

(b) Each parent seeking administrative review shall provide the following information in the request:

(1) The name of the student and the student's contact information;

(2) the name and contact information, to the extent known, for all involved parties, including teachers, aides, administrators, and district staff;

(3) a detailed statement of the basis for seeking administrative review, with all supporting facts and documentation. The documentation shall include a copy of the complaint filed with the local

board and shall include the local board's final decision, if issued. The request shall be legibly written or typed and shall be signed by the parent. Relevant written instruments or documents in the possession of the parent shall be attached as exhibits or, if unavailable, referenced in the request for administrative review; and

(4) written consent to disclose any personally identifiable information from the student's education records necessary to conduct an investigation pursuant to this regulation.

(c)(1) Each request for administrative review shall be filed with the commissioner within 30 days from the date a final decision is issued pursuant to the local dispute resolution process or, if a final decision is not issued, within 60 days from the date a written complaint was filed with the local board.

(2) The hearing officer shall forward a copy of the request for administrative review to the clerk of the local board from whom the administrative review is sought.

(d) Upon receipt of each request for administrative review, the hearing officer shall consider the local board's final decision and may initiate its own investigation of the complaint. Any investigation may include the following:

(1) A discussion with the parent, during which additional information may be gathered and specific allegations identified, verified, and recorded;

(2) contact with the local board or other district staff against which the request for administrative review is filed to allow the local board to respond to the request with facts and information supporting the local board's final decision; and

(3) an on-site investigation by department officers or employees.

(e) If the hearing officer receives information that the hearing officer determines was not previously made available to both parties during the local board dispute resolution process, the hearing officer may remand the issue back to the local board. The local board then has 30 days to issue a written amended final decision.

Upon remand, the hearing officer's case will be closed. All rights to and responsibilities of an administrative review shall begin again when the local board's amended final decision is issued or upon 30 days from when the hearing officer's remand is issued, whichever occurs first.

(f) Within 60 days of the commissioner's receipt of the request for administrative review, the hearing officer shall inform the parent, the school's

head administrator, the district superintendent, the local board clerk, and the state board in writing of the results of the administrative review. This time frame may be extended for good cause upon approval of the commissioner.

(g) The results of the administrative review shall contain findings of fact, conclusions of law, and, if needed, suggested corrective action. The hearing officer shall determine whether the district is in violation of this article based solely on the information obtained by the hearing officer during the course of the investigation and the administrative review process. This determination shall include one of the following:

(1) The local board appropriately resolved the complaint pursuant to its dispute resolution process.

(2) The local board should reevaluate the complaint pursuant to its dispute resolution process with suggested findings of fact.

(3) The hearing officer's suggested corrective action is necessary to ensure that local board policies meet the requirements of law.

(h) Nothing in this regulation shall require exhaustion of remedies under this regulation before using procedures or seeking remedies that are otherwise available. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective, T-91-2-17-16, Feb. 17, 2016; effective June 10, 2016.)

91-42-6. Exemptions. (a) As used in this regulation, each of the following terms shall have the meaning specified in this subsection:

(1) "Appointing authority" means a person or group of persons empowered by statute to make human resource decisions that affect the employment of officers.

(2) "Campus police officer" means a school security officer designated by the board of education of any school district pursuant to K.S.A. 72-8222, and amendments thereto.

(3) "Law enforcement officer" and "police officer" mean a full-time or part-time salaried officer or employee of the state, a county, or a city, whose duties include the prevention or detection of crime and the enforcement of criminal or traffic laws of this state or of any Kansas municipality. This term shall include "campus police officer."

(4) "Legitimate law enforcement purpose" means a goal within the lawful authority of an officer that is to be achieved through methods or conduct condoned by the officer's appointing authority.

(5) "School resource officer" means a law enforcement officer or police officer employed by a local law enforcement agency who is assigned to a district through an agreement between the local law enforcement agency and the district.

(6) "School security officer" means a person who is employed by a board of education of any school district for the purpose of aiding and supplementing state and local law enforcement agencies in which the school district is located, but is not a law enforcement officer or police officer.

(b) Campus police officers and school resource officers shall be exempt from the requirements of this article when engaged in an activity that has a legitimate law enforcement purpose.

(c) School security officers shall not be exempt from the requirements of this article. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective, T-91-2-17-16, Feb. 17, 2016; effective June 10, 2016.)

91-42-7. Reporting. (a) Each district shall report information from all incidents of emergency safety interventions that the department deems necessary to the department by the date and in the form specified by the department.

(b) The department shall compile reports from schools on the use of emergency safety interventions and provide the results based on aggregate data on the department web site and to the state board, the governor and the committees on education in the senate and the house of representatives by January 20, 2016, and annually thereafter. The department's reported results shall include but shall not be limited to the following information:

(1) The number of incidents in which emergency safety interventions were used on students who have an individualized education program;

(2) the number of incidents in which emergency safety interventions were used on students who have a section 504 plan;

(3) the number of incidents in which emergency safety interventions were used on students who do not have an individualized education program or a section 504 plan;

(4) the total number of incidents in which emergency safety interventions were used on students;

(5) the total number of students with behavior intervention plans subjected to an emergency safety intervention;

(6) the number of students physically restrained;

(7) the number of students placed in seclusion;

(8) the maximum and median number of minutes a student was placed in seclusion;

(9) the maximum number of incidents in which emergency safety interventions were used on a student;

(10) the information reported under paragraphs (c)(1) through (c)(3) reported by school to the extent possible;

(11) the information reported under paragraphs (c)(1) through (c)(9) aggregated by age, ethnicity,

gender and eligibility for free and reduced lunch of the students on a statewide basis; and

(12) any other information that the department deems necessary to report.

(c) Actual data values shall be used when providing statewide aggregate data for the reports. (Authorized by and implementing Article 6, Section 2(a) of the Kansas Constitution; effective, T-91-2-17-16, Feb. 17, 2016; effective June 10, 2016; amended July 7, 2017.)

Agency 92

Kansas Department of Revenue

Articles

- 92-12. INCOME TAX.
- 92-14. LIQUEFIED PETROLEUM FUEL TAX.
- 92-19. KANSAS RETAILERS' SALES TAX.
- 92-23. CHARITABLE GAMING.
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- 92-28. RETAIL DEALER INCENTIVE.
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- 92-57. TAX ON CONSUMABLE MATERIAL.

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 identification 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.)

92-12-146. Definitions. (a) “Contribution,” as defined in K.S.A. 2016 Supp. 72-99a02 and amendments thereto, shall include any donation of cash, stocks and bonds, personal property, or real property.

(1) Stocks and bonds shall be valued at the stock market price on the date of the transfer.

(2) Personal property shall be valued at the lesser of its fair market value or the cost to the donor. The value may include costs incurred in making the donation but shall not include sales tax. If the donor received the personal property as a gift or inheritance and the item is considered a rare and valuable antique or work of art, an independent appraisal may be necessary in determining the fair market value.

(3) The donation of real property shall be allowable for tax credit if title to the real property is in fee simple absolute and is clear of any encumbrances. The amount of tax credit allowable for donations of real property shall be based upon the lesser of two current, independent appraisals conducted by state-licensed appraisers.

(b) “Contributor” shall mean any of the following entities making a contribution:

(1) A taxpayer filing an income tax return pursuant to the Kansas income tax act, and amendments thereto;

(2) a taxpayer filing a privilege tax return pursuant to K.S.A. 79-1105c et seq., and amendments thereto; or

(3) a taxpayer filing an insurance premium tax return pursuant to K.S.A. 40-252, and amendments thereto. (Authorized by and implementing K.S.A. 2016 Supp. 72-99a07, as amended by L. 2017, ch. 95, sec. 97; effective Dec. 5, 2014; amended Jan. 5, 2018.)

92-12-147. Tax credit agreement. (a) Each scholarship-granting organization for which an allocation of tax credits has been authorized pursuant to L. 2014, ch. 93, sec. 61, and amendments thereto, shall enter into an annual tax credit agreement with the secretary for the scholarship-granting organization’s allocation of tax credits.

(b) Each scholarship-granting organization for which an allocation of tax credits has been authorized pursuant to L. 2014, ch. 93, sec. 61, and amendments thereto, shall enter into a new tax credit agreement with the secretary at least one month before the beginning of each calendar year for which the tax credits are available. (Authorized by and implementing L. 2014, ch. 93, sec. 61; effective Dec. 5, 2014.)

92-12-148. Tax credit application. (a) Each contributor making a contribution to a scholarship-granting organization shall complete a tax credit application with the scholarship-granting organization on a form furnished by the secretary. Each application shall include the following information:

(1) The name, address, and either the social security number or the employer identification number of the contributor;

(2) the name of the scholarship-granting organization to which the contribution is being made;

(3) the amount and type of the contribution;

(4) the date of the contribution; and

(5) any other supporting documentation that the secretary requires to review the tax credit application.

(b) Each scholarship-granting organization shall submit the completed tax credit application and supporting documentation to the secretary for review. The application, including the supporting documentation, may be filed by electronic

means in a manner approved by the secretary. The scholarship-granting organization shall receive written notification from the secretary when the application is approved or denied. The scholarship-granting organization shall provide a copy of this approval or denial to the contributor that has made the contribution. (Authorized by K.S.A. 2016 Supp. 72-99a07, as amended by L. 2017, ch. 95, sec. 97; implementing K.S.A. 2016 Supp. 72-99a07, as amended by L. 2017, ch. 95, sec. 97, and K.S.A. 2016 Supp. 79-32,265; effective Dec. 5, 2014; amended Jan. 5, 2018.)

92-12-149. Quarterly reports. Each scholarship-granting organization shall submit a quarterly report indicating the amount of contributions qualifying for tax credits. This report shall be submitted to the secretary on a form furnished by the secretary. Any quarterly report may be filed by electronic means in a manner approved by the secretary. A quarterly report shall be submitted on or before the tenth day following the end of each calendar quarter even if no qualifying contributions are received in that quarter. Each quarterly report shall include the following information:

(a) The name and either the social security number or the employer identification number of each contributor in that quarter;

(b) the amount and type of each contribution received in that quarter;

(c) the total amount of qualified tax credits based on the contributions received in that quarter;

(d) the total amount of tax credits that remain from the scholarship-granting organization's annual allocation; and

(e) any documentation that the secretary requires to support the quarterly report. (Authorized by K.S.A. 2016 Supp. 72-99a07, as amended by L. 2017, ch. 95, sec. 97; implementing K.S.A. 2016 Supp. 72-99a07, as amended by L. 2017, ch. 95, sec. 97, and K.S.A. 2016 Supp. 79-32,265; effective Dec. 5, 2014; amended Jan. 5, 2018.)

Article 14.—LIQUEFIED PETROLEUM FUEL TAX

92-14-6. Sales of LP gas to special LP-gas permit users; use of special LP-gas permit user decals. (a) Each operator of any motor vehicle that bears a Kansas special permit LP-gas user decal shall either self-report tax on the use of LP

gas on a mileage basis or pay the tax in advance, pursuant to K.S.A. 79-3492a through K.S.A. 79-3492c and amendments thereto. Each LP-gas dealer who delivers gas into the tank of any vehicle that bears a permit decal shall record the user's permit number and name on the sales invoice if tax is not collected on the sale.

(b) Except as provided in subsection (c), if a motor vehicle that is authorized to operate under a special LP-gas user permit is destroyed, sold, traded, or otherwise disposed of before the end of a calendar year or if for any other reason the permit holder removes the decal from the vehicle, the permit holder shall immediately notify the director of taxation in writing of the nature of the vehicle transfer or the destruction of the decal. Failure to remove a permit decal from a vehicle that has been disposed of and to notify the director shall be grounds for cancellation of the authorization to operate on a mileage basis.

(c) If a permit holder sells a vehicle that is registered for LP-gas purposes to another permit holder or to a person who is applying for a permit, the purchaser may request the transfer of the permit, decal, and all other related rights and obligations to the purchaser. This transfer may be authorized by the director.

(d) If taxes have been paid in advance on a motor vehicle that is destroyed, sold, traded, otherwise disposed of, or converted from LP-gas use before the first of December in any year, the permit holder may apply for a refund of the taxes.

(e) Special LP-gas permit user decals shall be issued on a calendar-year basis. The decals shall be placed inside on the lower driver's side of the windshield. (Authorized by K.S.A. 79-34,102; implementing K.S.A. 2013 Supp. 79-3491a, K.S.A. 79-3492a, K.S.A. 2013 Supp. 79-3492b, K.S.A. 79-3492c, 79-3492d; effective, E-73-20, July 1, 1973; effective Jan. 1, 1974; amended March 29, 2002; amended Oct. 17, 2014.)

92-14-9. (Authorized by K.S.A. 79-34,102; implementing K.S.A. 79-3490, 79-3492; effective May 1, 1982; amended May 1, 1983; amended March 29, 2002; revoked Oct. 17, 2014.)

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 retail-

er 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 retailer 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 allow-

ance 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 taxable 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 re-

ceipts 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, lubri-

cants, 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.)

92-19-56. (Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3603 as amended by L. 1987, Ch. 182, Sec. 108; effective May 1, 1988; revoked Jan. 3, 2020.)

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 relied 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 non-profit 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 in-

clude 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 23.—CHARITABLE GAMING

92-23-9. (Authorized by K.S.A. 79-4708; implementing K.S.A. 79-4706, 79-4708; effective May 1, 1985; revoked Feb. 12, 2016.)

92-23-10. (Authorized by and implementing K.S.A. 2000 Supp. 79-4708; effective May 1, 1985; amended Feb. 22, 2002; revoked Feb. 12, 2016.)

92-23-11. (Authorized by and implementing K.S.A. 79-4708; effective May 1, 1985; revoked Feb. 12, 2016.)

92-23-12. (Authorized by and implementing K.S.A. 79-4708; effective May 1, 1985; revoked Feb. 12, 2016.)

92-23-13. (Authorized by and implementing K.S.A. 79-4708; effective May 1, 1985; revoked Feb. 12, 2016.)

92-23-14. (Authorized by K.S.A. 79-4708; implementing K.S.A. 79-4706; effective May 1, 1985; revoked Feb. 12, 2016.)

92-23-15. (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4706; effective May 1, 1985; amended Feb. 22, 2002; revoked Feb. 12, 2016.)

92-23-16. (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4706; effective May 1, 1986; amended Feb. 22, 2002; revoked Feb. 12, 2016.)

92-23-17. (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4704; effective Feb. 22, 2002; revoked Feb. 12, 2016.)

92-23-18. (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4704 and 79-4705; effective Feb. 22, 2002; revoked Feb. 12, 2016.)

92-23-19. (Authorized by and implementing K.S.A. 2000 Supp. 79-4708; effective Feb. 22, 2002; revoked Feb. 12, 2016.)

92-23-20. (Authorized by and implementing K.S.A. 2000 Supp. 79-4708; effective Feb. 22, 2002; revoked Feb. 12, 2016.)

92-23-21. (Authorized by and implementing K.S.A. 2000 Supp. 79-4708; effective Feb. 22, 2002; revoked Feb. 12, 2016.)

92-23-22. (Authorized by and implementing K.S.A. 2000 Supp. 79-4708; effective Feb. 22, 2002; revoked Feb. 12, 2016.)

92-23-23. (Authorized by and implementing K.S.A. 2000 Supp. 79-4708; effective Feb. 22, 2002; revoked Feb. 12, 2016.)

92-23-25. (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4706; effective Feb. 22, 2002; revoked Feb. 12, 2016.)

92-23-30. (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4706; effective Feb. 22, 2002; revoked Feb. 12, 2016.)

92-23-31. (Authorized by and implementing K.S.A. 2000 Supp. 79-4706; effective Feb. 22, 2002; revoked Feb. 12, 2016.)

92-23-37. (Authorized by K.S.A. 1976 Supp. 79-4708; effective, E-77-49, Sept. 30, 1976; effective Feb. 15, 1977; revoked Feb. 12, 2016.)

92-23-38. (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4706; effective, E-77-49, Sept. 30, 1976; effective Feb. 15, 1977; amended, E-81-27, Sept. 10, 1980;

amended May 1, 1981; amended May 1, 1985; amended May 1, 1986; amended Feb. 22, 2002; revoked Feb. 12, 2016.)

92-23-38a. (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4706 and 79-4708; effective, E-81-27, Sept. 10, 1980; effective May 1, 1981; amended May 1, 1985; amended Feb. 22, 2002; revoked Feb. 12, 2016.)

92-23-39. (Authorized by K.S.A. 1976 Supp. 79-4708; effective, E-77-49, Sept. 30, 1976; effective Feb. 15, 1977; revoked Feb. 12, 2016.)

92-23-40. (Authorized by K.S.A. 2000 Supp. 79-4708; implementing K.S.A. 2000 Supp. 79-4706; effective, E-80-12, Aug. 8, 1979; effective May 1, 1980; amended Feb. 22, 2002; revoked Feb. 12, 2016.)

92-23-41. Definitions; persons conducting games of bingo; restrictions. (a) For purposes of K.A.R. 92-23-41 through K.A.R. 92-23-59, each of the following terms shall have the meaning specified in this subsection:

(1) "Gross bingo receipts" means the revenue received from the sale of bingo faces, reusable bingo cards, instant bingo tickets, and any charges or admission fees imposed on players for participation in games of bingo.

(2) "Licensing period" means the period of time beginning on July 1 and through the following June 30.

(b) A person engaged in the management, operation, or conduct of a game of bingo shall not participate as a player in that game of bingo.

(c) Only one employee of the lessor may assist the licensee with the session if there has been a cancellation by a licensee's volunteer to work. The lessor's employee shall not handle any money.

(d) Volunteers who are members of a licensee's nonprofit organization may assist only one licensee during the same licensing period. (Authorized by K.S.A. 2015 Supp. 75-5181; implementing K.S.A. 2015 Supp. 75-5179 and 75-5181; effective Feb. 12, 2016.)

92-23-42. Bond required for distributors. Each distributor shall post a cash bond of \$1,000 at the time of initial registration. Any distributor may subsequently be required by the director to increase the cash bond to an amount equal to three times the average monthly tax liability based upon the distributor's sales for the pre-

vious 12 months. If the distributor does not have 12 months of tax liability history to use for this calculation, then an estimate of the tax liability may be made by the director based upon the best information available. (Authorized by K.S.A. 2015 Supp. 75-5181; implementing K.S.A. 2015 Supp. 75-5176 and 75-5184; effective Feb. 12, 2016.)

92-23-43. Bingo trust bank accounts.

Each licensee required to establish and use a bingo trust bank account pursuant to K.S.A. 2015 Supp. 75-5179, and amendments thereto, shall comply with all of the following requirements:

(a) The bingo trust bank account name shall include the word “bingo.”

(b) Only revenue received from the conduct of call bingo and instant bingo shall be deposited into the bingo trust bank account. Funds from other sources shall not be deposited in the account.

(c) Cash prizes from call bingo games under \$500 and all prizes from instant bingo games may be paid from the daily gross bingo receipts before depositing these receipts in the bingo trust bank account if the licensee keeps a detailed written record of the gross bingo receipts, cash prizes paid, and net deposit made to the account for the day.

(d) All payments made from the bingo trust bank account shall be made by check.

(e) Any excess funds in the bingo trust bank account that are not needed for the payment of bingo prizes, taxes, and expenses may be removed from the account by writing a check. These excess funds may be used for any lawful purpose of the nonprofit organization pursuant to K.S.A. 2015 Supp. 75-5179, and amendments thereto. (Authorized by K.S.A. 2015 Supp. 75-5181; implementing K.S.A. 2015 Supp. 75-5179; effective Feb. 12, 2016.)

92-23-44. Schedule of games of bingo.

(a) Each applicant or licensee applying for an initial bingo license or for renewal of an existing bingo license shall furnish, at the time of the application, a schedule of the games of bingo that will be conducted. The schedule shall include the date and time of each session. If the games of bingo will be conducted only occasionally or on irregular dates that have not been determined at the time of the application, the applicant or licensee shall state this on the application form and shall furnish a schedule in accordance with subsection (b).

(b) If a licensee intends to conduct games of bingo on a date or at a time different from that

previously furnished in writing to the secretary, the licensee shall submit written notice of the change to the administrator at least three days before the effective date of that change.

(c) Each licensee and lessor shall post information inside the premises and outside the premises providing the following information:

(1) Name of the nonprofit organization conducting the session; and

(2) date and time of each session. (Authorized by K.S.A. 2015 Supp. 75-5181; implementing K.S.A. 2015 Supp. 75-5179; effective Feb. 12, 2016)

92-23-45. Handling of reusable bingo cards.

(a) No person shall select or set aside any reusable bingo cards for playing by the person or another person before the time that the reusable bingo cards are made accessible to all of the players before the start of a session.

(b) No person shall set aside or reserve reusable bingo cards between games of bingo. All reusable bingo cards to be used for a particular session shall be shuffled before being sold or rented to the players so as to ensure that reusable bingo cards returned from the previous session do not remain in the order in which they were returned.

(c) At the end of each session, all reusable bingo cards used during the session shall be returned to one common area. (Authorized by and implementing K.S.A. 2015 Supp. 75-5181; effective Feb. 12, 2016.)

92-23-46. Bingo; house rules. Any licensee may impose restrictions on player eligibility and game procedures through the use of “house rules” if these house rules meet all of the following conditions:

(a) The house rules do not conflict with state laws and regulations and local ordinances.

(b) The house rules are conspicuously posted at the location where games of bingo are conducted.

(c) The house rules are uniformly and consistently enforced by the licensee. (Authorized by and implementing K.S.A. 2015 Supp. 75-5181; effective Feb. 12, 2016.)

92-23-47. Display of numbered objects used in conducting games of bingo.

As each number is called during each game of bingo, the selected object upon which the number appears shall be displayed to the players present so that each player who desires to see the number can do so. (Authorized by and implementing K.S.A. 2015 Supp. 75-5181; effective Feb. 12, 2016.)

92-23-48. Bingo; procedure for correction if wrong number called. (a) If a caller calls a number different from what is on the ball or other object selected by chance and this fact is brought to the caller's attention before the prize is awarded for that game of bingo, then the mistake shall be corrected by announcing that the correct number will be used rather than the incorrect number.

(1) If this correction results in one or more immediate winners, then the game of bingo shall be deemed complete at that point. If the caller can determine who would have won first if the mistake had not been made, then the prize or prizes shall be awarded to that winner or those winners. If the caller cannot determine which winner would have won first, then the prize or prizes shall be split as equally as possible among the winners.

(2) If this correction does not result in at least one winner, then the game of bingo shall be continued until there is a winner.

(b) If a caller calls a number different from what is on the ball or other object selected by chance and this fact is brought to the caller's attention after the prize or prizes have been awarded for that game of bingo, then no correction shall be made and the winner or winners shall retain the prize or prizes. (Authorized by and implementing K.S.A. 2015 Supp. 75-5181; effective Feb. 12, 2016.)

92-23-49. Bingo; persons selling refreshments or performing janitorial work. A person who is only selling refreshments or providing janitorial services for games of bingo shall not be deemed to be participating in the management, conduct, or operation of games of bingo. (Authorized by and implementing K.S.A. 2015 Supp. 75-5181; effective Feb. 12, 2016.)

92-23-50. Communication of numbers needed to win prohibited. Each licensee shall ensure that no person communicates verbally or in any other manner the number or numbers needed by any player to win a game of bingo to any person involved in the conduct of that game of bingo. (Authorized by and implementing K.S.A. 2015 Supp. 75-5181; effective Feb. 12, 2016.)

92-23-51. Disputed game of bingo. (a) "Disputed game of bingo" shall mean a game of bingo at which a participant or observer registers a complaint with a licensee's employee or volunteer who is operating, conducting, or managing games of bingo for the licensee. If the participant or ob-

server is not satisfied with the manner in which the complaint is handled, then that individual may file a written complaint with the administrator.

(b) Each licensee shall, on the premises, post in plain view of the participants the address where bingo complaints may be filed. The address shall be provided to each licensee by the department. (Authorized by K.S.A. 2015 Supp. 75-5181; implementing K.S.A. 2015 Supp. 75-5179 and 75-5181; effective Feb. 12, 2016.)

92-23-52. Bingo; multiple winners. (a) Before the beginning of the first call bingo game of a session, the licensee shall notify the players of how the licensee intends to pay out the prize for each game of bingo during that session if there are multiple winners.

(b) If a bingo player has a winning pattern simultaneously on two or more bingo faces or reusable bingo cards, then that player shall be treated as a separate winner for each such winning bingo face or reusable bingo card when determining the awarding of the prize or prizes for that game of bingo.

(c) If a bingo player has two or more winning patterns simultaneously on the same bingo face or reusable bingo card, then the licensee may treat the player as a separate winner for each winning pattern when determining the awarding of the prize or prizes for that game only if the licensee has published a house rule to that effect. (Authorized by K.S.A. 2015 Supp. 75-5181; implementing K.S.A. 2015 Supp. 75-5179; effective Feb. 12, 2016.)

92-23-53. Verification of winners. The winning numbers on the bingo face or reusable bingo card of each announced winner of each call bingo game shall be verified by the following individuals:

(a) At least one other call bingo player unrelated by blood or marriage to either the winning player or the caller of that game of bingo; and

(b) one or more of the bingo workers, using one of the following methods:

(1) The bingo worker shall call back the winning numbers while the other call bingo player looks at the bingo face or reusable bingo card and verifies that the correct numbers are being called back. The winning numbers shall be called out loud so that the other players present can hear the numbers. The caller shall announce whether the bingo face or reusable bingo card is a winner. For a

blackout game, the numbers not selected may be called by the bingo worker and other call bingo player to verify the winners; or

(2) the bingo worker shall call out the unique identifying number on the bingo face while the other call bingo player verifies that the correct identifying number was called. The caller shall type the identifying number into the bingo machine with an electronic verifier and announce the bingo machine's response as to whether the bingo face is a winner. (Authorized by and implementing K.S.A. 2015 Supp. 75-5181; effective Feb. 12, 2016.)

92-23-54. Bingo; reduction in value of prizes. Any licensee may make the value of the prize awarded to the winner of call bingo contingent upon the number of players participating, if the exact terms of the contingency are posted or announced to all of the players before their purchase of any bingo faces or reusable bingo cards for the game. (Authorized by and implementing K.S.A. 2015 Supp. 75-5181; effective Feb. 12, 2016.)

92-23-55. Cashing of prize checks. Checks written by licensees for call bingo prizes of \$500 or more shall not be cashed by any licensee or member of the licensee's nonprofit organization, any lessor, any employee or agent of the lessor, or any other person located upon the premises where the licensee is conducting games of bingo. (Authorized by K.S.A. 2015 Supp. 75-5181; implementing K.S.A. 2015 Supp. 75-5179; effective Feb. 12, 2016.)

92-23-56. Bingo; instant bingo. (a) Each licensee shall maintain and enforce written procedures to ensure that the licensee's instant bingo tickets are sold only at the times and places permitted by law.

(b) Instant bingo tickets shall be sold only by the licensee.

(c) Each prize for a winning instant bingo ticket shall be paid out to the winner only within the premises designated by the licensee for the conduct of games of bingo.

(d) Once sold, instant bingo tickets shall remain within the premises designated by the licensee for the conduct of games of bingo and shall be disposed of by placing them in receptacles provided by the licensee. The licensee shall be responsible for arranging for the removal and disposal of the instant bingo tickets. However, the licensee shall retain all winning tickets.

(e) An instant bingo game in which the prize is awarded by matching the winning number in a call bingo game shall not be carried over from one session to another. If not all of the tickets from a game have been sold before awarding a prize, then the amount of the prize may be reduced based upon a formula or schedule that has been made known to the players before the commencement of the instant bingo game. (Authorized by K.S.A. 2015 Supp. 75-5181; implementing K.S.A. 2015 Supp. 75-5179; effective Feb. 12, 2016.)

92-23-57. Bingo; records; inspection; preservation. (a) Each licensee shall maintain records that are necessary to determine the amount of tax due and to determine that the games of bingo operated or conducted by the licensee are operated or conducted in compliance with the Kansas charitable gaming act, K.S.A. 2015 Supp. 75-5171 through 75-5188, and amendments thereto. The records shall show the following:

(1) The date and location of each call bingo game conducted;

(2) the name of the operator or manager who conducted or operated each game of bingo;

(3) the number of call bingo games played daily;

(4) the value of all prizes awarded for each call bingo game played;

(5) the value of all other prizes awarded in connection with games of bingo;

(6) the date on which each call bingo prize was awarded;

(7) the name and address of each winner of a call bingo game in which the prize awarded was more than \$100 in value and of all winners of prizes in disputed games of bingo as defined in K.A.R. 92-23-51. A prize shall not be awarded to any individual who refuses to give the individual's name and address to a licensee in compliance with this regulation;

(8) the daily gross bingo receipts received by the licensee for admission, charges for participation, and any other charges in connection with games of bingo, with separate totals for call bingo and instant bingo;

(9) the number of players present during each session on which games of bingo are conducted;

(10) for each progressive bingo game, the winning and consolation prizes offered and the number of bingo balls required to win each of these prizes; and

(11) the occurrence of any drawing conducted during each session and, if any drawing occurred,

a description of the prize awarded and its fair market value.

(b) All records required by subsection (a) shall be preserved for at least three years following the date on which the game of bingo to which the records pertain was managed, operated, or conducted.

(c) All records required by this regulation shall be available for, and subject to, inspection by the director of taxation or the director's authorized agents and employees at a location previously designated by the licensee. The records shall be subject to inspection at any reasonable time. The records for the preceding four months shall be available for inspection without advance notice at all times that the licensee is operating or conducting games of bingo.

(d) Each licensee shall provide all information, tax returns, and records regarding or related to the operation, management, or conduct of games of bingo that are requested by the department. Failure to provide all requested information shall constitute grounds for revocation of a bingo license. (Authorized by K.S.A. 2015 Supp. 75-5181; implementing K.S.A. 2015 Supp. 75-5179; effective Feb. 12, 2016.)

92-23-58. Bingo; filing of returns; notice; hearings. (a) On or before the last day of each calendar month, each licensee that was licensed during the preceding calendar month shall submit a return and remit all enforcement taxes due for the preceding month to the department. The return shall be submitted upon a form furnished by the department.

(b) If a licensee does not operate or conduct any games of bingo during a calendar month, the licensee shall still submit a return for that month. (Authorized by K.S.A. 2015 Supp. 75-5181; implementing K.S.A. 2015 Supp. 75-5176 and 75-5180; effective Feb. 12, 2016.)

92-23-59. Due date of tax return by distributors. Each distributor shall submit a return and remit the tax due for each month's sale of bingo faces and instant bingo tickets by the 25th day of the month following the month in which the sales were made. (Authorized by K.S.A. 2015 Supp. 75-5181; implementing K.S.A. 2015 Supp. 75-5176 and 75-5177; effective Feb. 12, 2016.)

92-23-70. Charitable raffles; definitions. As used in K.A.R. 92-23-70 through K.A.R. 92-23-75, each of the following terms shall have the meaning specified in this regulation:

(a) "Gross receipts" means the total number of raffle tickets sold and given away multiplied by the selling price of a single raffle ticket. For the purpose of determining potential gross receipts, each raffle ticket shall be calculated at its individual selling price before the application of any discount for the purchase of two or more raffle tickets.

All charitable raffles conducted within the same licensing period shall be included when determining gross receipts.

(b) "Licensing period" means the period of time beginning on July 1 and through the following June 30. (Authorized by and implementing K.S.A. 2015 Supp. 75-5188; effective Feb. 12, 2016.)

92-23-71. Licensing requirements; renewals. (a) Each applicant expecting to conduct charitable raffles with annual gross receipts exceeding \$25,000 shall apply to the department for a charitable raffle license at least 30 days before any raffle tickets may be sold.

(b) Each application for a charitable raffle license or the renewal of a charitable raffle license shall be submitted on a form prescribed by the department and be accompanied by the applicable fees prescribed in K.S.A. 2015 Supp. 75-5175, and amendments thereto.

(c) In addition to information requested on the application, any applicant or licensee may be required to provide any of the following with an application or renewal:

(1) A copy of the applicant's or licensee's articles of incorporation or bylaws or, if the applicant or licensee is not a corporation, a copy of any bylaws or other documents that specify the nonprofit organization's structure and purpose;

(2) a copy of the ruling or determination letter from the internal revenue service recognizing the applicant or licensee as a nonprofit organization; and

(3) a current roster of all active members of the nonprofit organization.

(d) Each licensee shall maintain current information on its license. The licensee shall inform the department within 30 days of any changes in the information supplied in its most recent application filed with the department.

(e) Any licensee may request a hearing in accordance with the Kansas administrative procedure act before a charitable raffle license may be suspended or revoked by the secretary. The licensee shall surrender the raffle license to the depart-

ment upon receipt of the final order of suspension or revocation.

(1) For each suspension, the license shall be returned to the licensee at the end of the suspension period.

(2) For each revocation, the former licensee may reapply for a charitable raffle license no earlier than six months following the date of revocation.

(f) Charitable raffle licenses shall not be transferred or assigned to another nonprofit religious organization, nonprofit charitable organization, nonprofit fraternal organization, nonprofit educational organization, or nonprofit veterans' organization.

(g) Only one nonprofit organization may be licensed for each charitable raffle.

(h) Each licensee wanting to renew its license shall submit an application for renewal at least 30 days before the date the licensee intends to begin selling charitable raffle tickets in the new licensing period. (Authorized by and implementing K.S.A. 2015 Supp. 75-5175; effective Feb. 12, 2016.)

92-23-72. Charitable raffle ticket requirements. (a) Except as specified in subsection (f), each raffle ticket shall contain all of the following information printed in a clear and legible manner:

(1) The name of the licensee as it appears on the raffle license;

(2) the licensee's Kansas charitable raffle license number;

(3) the word "raffle";

(4) the date, time, and location of the raffle drawing;

(5) the price of the raffle ticket;

(6) a statement specifying whether a participant must be present to win;

(7) a unique sequential identification number on the raffle ticket and ticket stub that is different from any other number found on a ticket sold for that particular raffle activity; and

(8) any other information that the administrator requests.

(b) The ticket stub portion of the raffle ticket that is given to the purchaser shall contain a sequential number corresponding to the number printed on the raffle ticket from which the stub is detached. The raffle ticket portion of the ticket that is retained by the licensee shall contain a space for the purchaser's name, address, and telephone number if a participant's presence is not required when a winner is determined.

(c) A sample raffle ticket may be requested by the department for each raffle conducted by the licensee.

(d) Each raffle ticket shall be offered for the same price as that for every other raffle ticket being sold for the same charitable raffle. Any licensee may offer a discount for the purchase of two or more raffle tickets if the discount is offered to all persons wanting to participate in the charitable raffle.

(e) Each raffle ticket to participate in a charitable raffle shall be paid for in advance by cash, check, or credit card. The extension of credit shall be prohibited. The issuance of free raffle tickets shall not be prohibited; however, the value of all free raffle tickets shall be included in the gross receipts derived from the charitable raffle.

(f) If all raffle ticket purchases and the subsequent raffle are conducted during the same event, it shall be permissible to clearly display the following information at the event in lieu of printing the information on each raffle ticket:

(1) The name of the licensee as it appears on the raffle license;

(2) the licensee's Kansas charitable raffle license number;

(3) the word "raffle";

(4) the date, time, and location of the raffle drawing;

(5) the price of the raffle ticket;

(6) a statement specifying whether a participant must be present to win;

(7) a unique sequential identification number on the raffle ticket and ticket stub that is different from any other number found on a ticket sold for that particular raffle activity; and

(8) any other information that the administrator requests. (Authorized by and implementing K.S.A. 2015 Supp. 75-5188; effective Feb. 12, 2016.)

92-23-73. Conduct of charitable raffle.

(a) Each licensee shall be responsible for the following:

(1) The conduct and management of the charitable raffle;

(2) the publishing of a promotional plan and advertising for each charitable raffle; and

(3) the accountability of raffle ticket sales, which shall include all of the following:

(A) Tracking raffle tickets provided to each raffle ticket seller;

(B) collecting all receipts from each raffle ticket seller;

(C) collecting the portion of all raffle tickets sold that shall be retained by the licensee; and

(D) collecting all unsold raffle tickets.

(b) All raffle tickets sold or given away shall be placed in the pool of raffle tickets from which the winners shall be drawn.

(c) Each raffle ticket placed in the raffle container shall have an equal opportunity to win.

(d) The order in which the winners will be determined shall be announced before the start of the drawing.

(e) Only one raffle ticket shall be drawn at a time.

(f) If a participant's presence is required when a winner is to be determined, statements specifying this condition shall be printed on each raffle ticket and all promotional material concerning the charitable raffle. If a participant's presence is not required when a winner is to be determined, each participant shall complete the portion of the raffle ticket providing the participant's name, address, and telephone number.

(g) Only raffle tickets that have been sold or given to a participant shall be included in the raffle container when determining the winner.

(h) If more than one prize or opportunity to win has been offered in a particular charitable raffle and a series of drawings must be made to determine all of the winners, any raffle ticket that has been drawn may be returned to the raffle container.

(i) Prizes awarded in a charitable raffle may include cash, merchandise, and anything of value that may be legally owned. If any prize other than cash is awarded, the prize shall be valued at fair market value.

(j) Each licensee conducting a charitable raffle in which prizes of real or personal property are to be awarded shall have paid for in full or otherwise become the owner without lien or interest of others of all the real or personal property to be awarded as prizes, before the date on which the winners will be determined.

(k) The licensee shall not participate in a charitable raffle as a player. Raffle tickets shall not be purchased in the name of the licensee. Individual members of the licensee may purchase raffle tickets.

(l) If a charitable raffle is canceled, the decision to cancel the charitable raffle shall be announced publicly and shall be posted at the licensee's principal office and web site. All receipts from raffle ticket sales shall be returned to each purchaser within 30 days of cancellation of the charitable raffle.

(m) If a charitable raffle is postponed, the postponement shall be announced publicly and shall be posted at the licensee's principal office and web site. The postponed charitable raffle shall be conducted within 30 days of the original date scheduled.

Any participant may request a refund on the purchase price of a raffle ticket if that participant is not able to be present on the date of the postponed charitable raffle and the participant's presence is required. (Authorized by and implementing K.S.A. 2015 Supp. 75-5188; effective Feb. 12, 2016.)

92-23-74. Awarding charitable raffle prizes. (a) All charitable raffle prizes shall be awarded.

(b) Each licensee shall make a diligent effort to locate the winners of all prizes.

(c) A prize shall not be forfeited to the licensee.

(d) Each prize that is not claimed or for which the winner cannot be located within 30 days from the date of the drawing shall be awarded by conducting another drawing using the original pool of raffle tickets. (Authorized by and implementing K.S.A. 2015 Supp. 75-5188; effective Feb. 12, 2016.)

92-23-75. Reporting requirements; recordkeeping. (a) Each licensee shall annually report all charitable raffle winners of any prize for which the retail value is at least \$1,199. The report shall be submitted on a reconciliation form prescribed by the department.

(b) Each licensee shall annually reconcile the charitable raffle license fee paid based on the gross receipts from the previous licensing period. The licensee shall submit the reconciliation on a form prescribed by the department.

(c) Each licensee shall maintain the following information for each charitable raffle, for three years after the date the charitable raffle was conducted:

- (1) Date of charitable raffle;
- (2) total gross receipts;
- (3) total number of raffle tickets available for sale;
- (4) number of raffle tickets sold;
- (5) number of raffle tickets given away;
- (6) number of raffle tickets returned unsold to the licensee;
- (7) raffle ticket price;
- (8) value of all raffle tickets sold and given away;
- (9) name and address of all charitable raffle winners of any prize;

(10) receipts for the purchase of prizes awarded or a statement indicating the fair market value of the prizes donated for each charitable raffle; and

(11) deposit records indicating that the proceeds from the charitable raffle have been deposited into the licensee's bank account. (Authorized by and implementing K.S.A. 2015 Supp. 75-5188; effective Feb. 12, 2016.)

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 alcohol 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 forward 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, gas-ohol, 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 confer-

ence 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

92-51-21. Staggered registration system.

(a) All motorized bicycles, motor vehicles, and recreational vehicles, other than apportioned registered vehicles, mobile homes, trailers, antique vehicles, trucks or truck tractors registered for a gross weight of greater than 12,000 pounds, and commercial motor vehicles as described in K.S.A. 8-143m and amendments thereto, shall be registered annually under a staggered registration system during one of 11 registration periods. The month of expiration of the registration shall be embossed upon the number plate issued at the time of registration or shall be represented by a decal attached to the number plate in a location designated by the director.

(b) At the time of registration, the owner shall pay a prorated registration fee equal to $\frac{1}{12}$ of the annual registration fee multiplied by the number of months remaining in the registration period, including the month of expiration. Each registration period shall expire on the last day of the month as prescribed for the alpha letter designation on the plate or decal affixed to the plate, as determined by the first letter of the owner's surname in accordance with the following table:

ALPHABETICAL DESIGNATION FOR MONTHLY STAGGERED REGISTRATION

Alpha Letter Designation	Month	First Letter of Surname
A	February	A
B	March	B
C	April	C, D
E	May	E, F, G
H	June	H, I
J	July	J, K, L
M	August	M, N, O
R	September	P, Q, R
S	October	S
V	November	T, V, W
X	December	U, X, Y, Z

(Authorized by and implementing K.S.A. 2013 Supp. 8-134, K.S.A. 8-134a; effective, E-82-26, Dec. 16, 1981; effective May 1, 1982; amended Jan. 3, 2003; amended Nov. 22, 2013.)

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.)

92-51-34a. License plates; new issuance.

(a) During calendar year 2017, one decal shall be furnished for the license plate issued for each new registration of a vehicle, as provided in K.S.A. 8-134 and amendments thereto, and for each renewal registration of a vehicle. New license plates shall be issued during calendar year 2018 and during every fifth calendar year after 2018, for each new registration of a vehicle and for each renewal registration of a vehicle.

(b) During each of the four years following 2018 and during each of the four years following any year in which new license plates are issued, one decal shall be furnished for the license plate issued for each new registration of a vehicle and for each renewal registration of a vehicle. (Authorized by and implementing K.S.A. 2016 Supp. 8-132; effective Jan. 23, 2004; amended April 22, 2005; amended Nov. 13, 2017.)

Article 56.—IGNITION INTERLOCK DEVICES

92-56-1. Ignition interlock device; definitions. As used in this article, each of the following terms shall have the meaning specified in this regulation: (a) “Device” means “ignition interlock device,” as defined in K.S.A. 8-1013 and amendments thereto. This device uses microcomputer logic and internal memory and has a breath alcohol analyzer as a major component that interconnects with the ignition and other control systems of a motor vehicle. This device measures the breath alcohol concentration (BrAC) of an intended driver to prevent the motor vehicle from being started if the BrAC exceeds a preset limit and to deter and record any instances of circumvention or tampering.

(b) "Alcohol setpoint" means the breath alcohol concentration at which the ignition interlock device is set to lock the ignition. The alcohol setpoint is the normal lockpoint at which the ignition interlock device is set at the time of calibration. The alcohol setpoint shall be .03. The alcohol setpoint for retests shall be .03.

(c) "BrAC" means the breath alcohol concentration expressed as weight divided by volume, based upon grams of alcohol per 210 liters of breath.

(d) "BrAC fail" means the condition in which the ignition interlock device registers a BrAC value equal to or greater than the alcohol setpoint when the intended driver conducts an initial test or retest. This condition is recorded as a violation.

(e) "Breath sample" means the sample of alveolar or end-expiratory breath that is analyzed for the analysis of alcohol content after the expiration of at least 1.2 liters of air.

(f) "Circumvention" means an overt, conscious attempt to bypass the ignition interlock device by any of the following:

(1) Providing samples other than the natural, unfiltered breath of the driver;

(2) starting the vehicle without using the ignition switch; or

(3) performing any other act intended to start the vehicle without first taking and passing a breath test.

(g) "Director" means director of vehicles, division of vehicles of the department of revenue.

(h) "Emergency bypass procedure" means the procedure that allows the driver to travel to a service provider and avoid a lockout. If used, the event shall be recorded in the event log, and the device shall be put into early service status. The emergency bypass procedure shall require the driver to provide a breath sample with a test result below the alcohol setpoint.

(i) "Fail-safe" means a condition in which the ignition interlock device cannot operate properly due to a problem, including improper voltage and a dead sensor. In fail-safe, the ignition interlock device will not permit the vehicle to be started.

(j) "Fixed site" means the building in which a service provider operates. The building shall have a separate waiting room, a bathroom, and a work area. The work area shall be accessible to only the service provider and the service provider's employees while performing services.

(k) "High BrAC" means a BrAC fail result for an initial test or retest that registers an alcohol setpoint of .08 or greater.

(l) "Lockout" means an instance in which the ignition interlock device will prevent the vehicle from starting. The vehicle cannot be operated until serviced by the service provider. A lockout occurs if any of the following events occurs:

(1) A driver incurs five or more violations between scheduled inspections with the service provider.

(2) A driver fails to submit to calibration and inspection as required by K.A.R. 92-56-4(b)(5), and the seven-day grace period has expired.

(3) A driver engages in circumvention or tampering.

(m) "Manufacturer" means the person, company, or corporation that produces an ignition interlock device and certifies to the division that the manufacturer's representative and the manufacturer's service providers are qualified to service and provide information on the manufacturer's state-approved ignition interlock device. To be a manufacturer, the division shall approve and certify the manufacturer's device for use in the state, and the approval and certification shall remain in effect.

(n) "Manufacturer's representative" means a single individual based in Kansas and designated by a manufacturer to act on behalf of or represent the manufacturer in matters relating to this article and K.S.A. 8-1001 et seq., and amendments thereto.

(o) "Rolling retest" means a breath test that is required after the initial engine start-up breath test and while the engine is running. This term is also known as a retest or a running retest. The device shall require the driver of the vehicle to submit to a retest within 10 minutes of starting the vehicle. A rolling retest shall continue at randomized, variable intervals ranging from 10 to 45 minutes after the previous retest for the duration of the travel.

(p) "Service provider" means an ignition interlock device technician that is authorized by a manufacturer to service a certified device on behalf of the manufacturer or the manufacturer's representative. The ignition interlock device technician shall have a written agreement or authorization from a division-approved manufacturer or its manufacturer's representative to service the manufacturer's devices within Kansas.

(q) "Services" means the installation, inspection, monitoring, calibration, maintenance, removal, replacement, and repair of division-approved ignition interlock devices within Kansas.

(r) "Tampering" means an overt, conscious attempt to physically disable, bypass, adjust, or otherwise disconnect an ignition interlock device from its power source.

(s) "Violation" means any of the following:

(1) The driver has blown a BrAC fail when attempting to start the vehicle.

(2) The driver has blown a BrAC fail when attempting a required rolling retest.

(3) The driver fails to execute a valid rolling retest after a five-minute period.

(4) The driver fails to submit to a requested rolling retest by turning the vehicle off to avoid submitting to the rolling retest.

(5) The driver has blown a high BrAC during an initial breath test or rolling retest. (Authorized by and implementing K.S.A. 8-1016; effective Oct. 23, 1989; amended July 5, 2002; amended May 2, 2014; amended Nov. 6, 2015.)

92-56-2. Ignition interlock device; certification and standards. (a) Each manufacturer of an ignition interlock device wanting to market the device in Kansas shall apply to the division of vehicles for certification of the device and submit the following information and equipment:

(1) The name and address of the manufacturer;

(2) the name and model number of the device;

(3) certification that the device meets the following criteria:

(A) Offers safe operation of the vehicle in which installed, works reliably and accurately in an unsupervised environment, and, when in fail-safe, prevents the vehicle from starting;

(B) offers protection against tampering and is able to detect and be resistant to circumvention;

(C) allows for a free restart of the vehicle's ignition within two minutes after the ignition has been turned off without requiring another breath test if the driver has not registered a BrAC fail or is not in the process of completing a retest;

(D) allows for a rolling retest of a subsequent breath test after the vehicle has been in operation;

(E) disables the ignition system if the BrAC of the person using the device equals or exceeds the alcohol setpoint of .03;

(F) incorporates an emergency bypass procedure;

(G) records each time the vehicle is started, the duration of the vehicle's operation, and any instances of tampering;

(H) encodes the corresponding time and date the breath sample was provided, a digital image

of the individual who provided the sample, and BrAC of the individual who provided the breath sample into the device;

(I) displays to the driver all of the following:

(i) When the device is on;

(ii) when the device has enabled the ignition system; and

(iii) the date on which a lockout will occur; and

(J) alerts the driver with a five-minute warning light or tone that a rolling retest is required;

(4) a map and list of service providers and the address where the device can be obtained, repaired, replaced, or serviced 24 hours a day by calling a toll-free phone number;

(5) the name of any insurance carrier authorized to do business in this state that has committed to issue a liability insurance policy for the manufacturer;

(6) the name and address of the manufacturer's representative designated by the manufacturer to manage the manufacturer's statewide operations;

(7) not more than two ignition interlock devices for testing and review to the division upon the director's request; and

(8) a declaration on a form prescribed by the division that requires the following:

(A) The manufacturer, manufacturer's representative, and the manufacturer's service providers shall cooperate with the division, law enforcement, and court staff at all times, including the inspection of the manufacturer's installation, service, repair, calibration, use, removal, or performance of each ignition interlock device;

(B) all digital images and the associated data shall be retained in the device until the digital images and associated data are downloaded and stored by a manufacturer. The manufacturer shall store the downloaded digital images and associated data for three years after capture by the device;

(C) the manufacturer shall provide all downloaded ignition interlock device data, reports, and information related to the ignition interlock device to the division, upon the director's request, in a division-approved electronic format;

(D) the manufacturer shall provide the alcohol reference value and type of calibration device used to check the ignition interlock device;

(E) the manufacturer shall provide the division with inquiry access to the manufacturer's ignition interlock device system management software for the management of state drivers; and

(F) the manufacturer or the manufacturer's representative shall provide a map of Kansas

showing the area covered by each service provider's fixed site.

(b) Each certification issued by the division shall continue in effect for three years unless either of the following occurs:

(1) The manufacturer requests in writing that the certification be discontinued.

(2) The division informs the manufacturer and the manufacturer's representative in writing that the certification is suspended or revoked.

(c) If a manufacturer modifies a certified device, the manufacturer shall notify the division of the exact nature of the modification. A device may be required by the division to be recertified at any time. A modification shall mean a material change affecting the functionality, installation, communication, precision, or accuracy of a certified device.

(d) Each manufacturer of a certified device shall notify the division of the failure of any device to function as designed. The manufacturer and the manufacturer's representative shall provide an explanation for the failure and shall identify the actions taken by the manufacturer or the manufacturer's representative to correct the malfunctions.

(e) The manufacturer's device shall meet or exceed the model specifications for ignition interlock devices, as specified by the national highway traffic safety administration. The provisions of 78 fed. reg. 26862-26867 (2013), beginning with the text titled "B. Terms" on page 26862, are hereby adopted by reference for purposes of this subsection. If state specifications vary from the federal specifications, the state specifications shall control.

(f) Each manufacturer of a certified device shall accumulate a credit of at least two percent of the gross revenues attributed to services provided in Kansas or to out-of-state services provided to Kansas residents. All existing credit shall be made available to drivers who are restricted to operating a vehicle with a device and who are indigent as evidenced by eligibility for the federal food stamp program. The amount of the credit available shall be limited to the amount of the existing credit balance. The manufacturer and its service providers shall notify the manufacturer's customers of the existence of this indigent program by utilizing division notices and forms.

(g) Each manufacturer of a certified device shall submit a report to the division on or before January 31 of each year with the following information for the previous calendar year's activities:

(1) The number of ignition interlock devices initially installed on vehicles for Kansas drivers who were restricted to driving only with an ignition interlock device;

(2) the number of vehicles that had devices removed due to a failure in the device, a malfunction of the device, or a defect in the device and, for each vehicle, the driver's name, the driver's license number, the specific failure or operational problem that occurred during the period installed, and the resolution of each situation;

(3) the total number of devices in operation in Kansas on December 31 of the previous calendar year;

(4) the total number of devices removed;

(5) the total number of instances of circumvention;

(6) the total number of instances of tampering; and

(7) a summary of the following information:

(A) The number of indigent drivers that qualified for reduced fees;

(B) the number of drivers that applied for indigent classification and reduced fees but were denied;

(C) amounts credited to indigent drivers; and

(D) the ending credit balance.

(h) Each manufacturer and manufacturer's representative of a certified device shall make sales brochures and other informational materials available at no cost to the state's community corrections and court services officers, the district courts, magistrate courts, municipal courts, and the division for distribution to potential drivers. These brochures and informational materials may be provided through electronic means if approved by the director.

(i) Each manufacturer shall provide to the division, on or before January 31 of each year for that calendar year, documentation indicating the normal prices and fees charged to a driver that are associated with the manufacturer's Kansas installation of devices. If the documentation regarding normal prices and fees charged changes during the course of that calendar year, the manufacturer and manufacturer's representative shall provide amended documentation to the division within seven days of the change.

(j) Each manufacturer shall have a service provider with a fixed site within each state judicial district, unless the following conditions are met:

(1) At least two manufacturers have a service provider located in the same judicial district.

(2) The director determines that a competitive market exists for ignition interlock services in the state judicial district and the absence of a manufacturer's service provider in the state judicial district specified in paragraph (j)(1) does not create a competitive advantage for that manufacturer.

(3) The director approves the manufacturer to be absent from that state judicial district.

(k) Each device shall be capable of uniquely identifying and recording all of the following:

(1) Each time the vehicle is attempted to be started;

(2) each time the vehicle is started;

(3) a digital image in accordance with the following:

(A) The digital image can identify the individual providing the breath sample in all lighting conditions;

(B) the capture of the digital image does not distract or impede the driver in any manner from the safe and legal operation of the vehicle; and

(C) the digital image is associated with the date, the time, and the individual's BrAC for each attempted use;

(4) the results of all tests, retests, or failures as being a malfunction of the device or a result of the driver not meeting the requirements;

(5) the length of time the vehicle was operated; and

(6) any indication of tampering.

The features required of the manufacturer's installed device shall be enabled to capture the information required by this subsection.

(l) The requirements of this regulation shall take effect for all device installations beginning 90 days after publication of this regulation in the Kansas register. Each manufacturer shall replace any currently installed device that does not meet the requirements of this regulation with a device that is compliant upon the first calibration following the date this regulation takes effect. (Authorized by and implementing K.S.A. 8-1016; effective Oct. 23, 1989; amended July 5, 2002; amended May 2, 2014; amended Nov. 6, 2015; amended Jan. 8, 2020.)

92-56-4. Installation, inspection, and calibration standards. (a) Each ignition interlock device installed at the direction of the division shall be done at the driver's own expense, except as allowed by K.A.R. 92-56-2.

(b) A manufacturer shall ensure that each service provider meets the following requirements:

(1) Install each device in accordance with the manufacturer's instructions. Each service provider shall, within two weeks of installation, inform the division each time a device has been installed;

(2) install each device so that the device will be deactivated if the driver has a BrAC of .03 or higher until a successful retest occurs;

(3) set each device so that if the driver fails the initial ignition interlock device test, a retest cannot be done for 15 minutes;

(4) set each device so that a rolling retest will be required of the driver of the vehicle within 10 minutes of starting the vehicle. Subsequent rolling retests shall occur as described in K.A.R. 92-56-1. The driver shall have five minutes to complete the retest. The free restart shall not be operative when the device is waiting for a rolling retest sample;

(5) calibrate each device at least every 30 days at the driver's own expense and maintain an inspection and calibration record with the following information:

(A) The name of the person performing the calibration;

(B) the date of the inspection and calibration;

(C) the method by which the calibration was performed;

(D) the name and model number of the device calibrated;

(E) a description of the vehicle in which the device is installed, including the license plate number, make, model, year, and color; and

(F) a statement by the service provider indicating whether there is any evidence of circumvention or tampering; and

(6) set each device so that a lockout will occur no later than seven days after any of the following events occurs:

(A) The 30-day calibration and service requirement has been reached;

(B) five or more violations are recorded;

(C) the emergency bypass procedure has been used;

(D) a hardware failure or evidence of tampering is recorded; or

(E) the events log has exceeded 90 percent of capacity.

(c) Each driver restricted to driving a vehicle equipped with an ignition interlock device shall keep a copy of the inspection and calibration records in the vehicle at all times. The manufacturer shall retain the original record for each current driver for one year after the device is removed.

The manufacturer shall notify the division within seven days after a device has been serviced due to a lockout that occurred for any of the reasons specified in paragraph (b)(6)(D).

(d) The service provider shall enable each device's anticircumvention features when installing a device and keep the features enabled during the ignition interlock device period. Within two business days, a service provider shall notify the division of any evidence of tampering or circumvention. The evidence shall be preserved by the manufacturer or the manufacturer's representative until otherwise notified by the division.

(e) The division may conduct or have conducted independent checks on any of the approved ignition interlock devices to determine whether the devices are operating in a manner consistent with the manufacturer's specifications, manufacturer's certifications, or these regulations. The director may require the manufacturer or the manufacturer's representative to correct any abnormality found in the installation, calibration, maintenance checks, or usage records of the device. The manufacturer and the manufacturer's representative shall report in writing to the division within 30 days after receiving notification of any abnormality. In conducting these checks, the manufacturer shall install the device in a vehicle chosen by the division, and the manufacturer shall waive any costs to the division for the installation, calibration, or testing of the device.

(f) Each manufacturer shall ensure that its service providers meet all of the following requirements:

(1) Follow certified manufacturer's standards and specifications for service associated with the manufacturer's state-approved ignition interlock device;

(2) have the skills, equipment, and facilities necessary to comply with all of the certification and operational requirements specified in this article;

(3) comply with any division reporting requirements; and

(4) have a fixed site to provide each driver with access to an enclosed building that is open for business and has a separate waiting area.

(g) Each manufacturer shall provide the division with written evidence of that manufacturer's statewide network of service providers within seven days of a request by the division. Written evidence shall include lease and ownership documents associated with each manufacturer's service providers in the required state judicial districts.

(h) A manufacturer, manufacturer's representative, or service provider shall not compel any driver to travel out of Kansas to receive services.

(i) A manufacturer shall not permit its service provider to install any device in that service provider's vehicle for the purpose of satisfying K.S.A. 8-1014, and amendments thereto. (Authorized by and implementing K.S.A. 8-1016; effective Oct. 23, 1989; amended July 5, 2002; amended May 2, 2014; amended Jan. 15, 2016.)

92-56-5. Revocation of certification; penalties. (a) A certification for any ignition interlock device may be revoked for any of the following reasons:

(1) The device fails to comply with specifications or requirements provided by the division.

(2) The manufacturer, the manufacturer's representative, or the manufacturer's service provider has failed to make adequate provisions for the service of the device, as required by K.A.R. 92-56-2, K.A.R. 92-56-4, and K.A.R. 92-56-6.

(3) The manufacturer has failed to provide statewide service network coverage or 24-hour, seven-day service support, as required by K.S.A. 8-1016(a)(3) and amendments thereto and K.A.R. 92-56-2(a)(4) and (j).

(4) The manufacturer is no longer in the business of manufacturing ignition interlock devices.

(5) The manufacturer or the manufacturer's representative fails to comply with the reporting and testing requirements of K.A.R. 92-56-4.

(6) The manufacturer, the manufacturer's representative, or the manufacturer's service provider fails to comply with K.A.R. 92-56-7.

(7) The manufacturer, the manufacturer's representative, or the manufacturer's service provider fails to promote, implement, and sustain the indigent program required by K.A.R. 92-56-2(f).

(8) The manufacturer, the manufacturer's representative, or the manufacturer's service provider fails to have a fixed location in every state judicial district on and after January 1, 2015, as required by K.A.R. 92-56-2(j).

(9) The manufacturer, the manufacturer's representative, or the manufacturer's service provider compels a driver to travel out of state to receive services, in violation of K.A.R. 92-56-4(h).

(b) Each manufacturer's device certification shall be subject to suspension, revocation, nonrenewal, or cancellation if the division determines that the manufacturer or its representatives have violated any requirement in this article.

(c) In lieu of revoking a manufacturer's device certification, the director may require a manufacturer to terminate its relationship with a service provider. (Authorized by and implementing K.S.A. 8-1016; effective Oct. 23, 1989; amended July 5, 2002; amended May 2, 2014.)

92-56-6. Service provider; relocation and replacement. (a) Each manufacturer and manufacturer's representative shall be responsible for providing uninterrupted service of the manufacturer's installed devices if one of the manufacturer's service providers moves out of the manufacturer's judicial district or goes out of business. If a service provider is moving or going out of business, the manufacturer or the manufacturer's representative shall indicate to the division whether or not the manufacturer will replace the service provider. The manufacturer and the manufacturer's representative shall notify the division electronically or in writing of all changes in the status of any service provider and any additions, deletions, or other changes to the manufacturer's complete listing of service providers, which shall include for each service provider the name, location, phone number, contact name, and hours of operation. Notification shall occur on a quarterly basis or more frequently if required by the division.

(b) If the manufacturer or manufacturer's representative replaces a service provider, the manufacturer and manufacturer's representative shall make all reasonable efforts to obtain driver records and data from the original service provider and provide the records and data to the new service provider. If the manufacturer or manufacturer's representative does not replace the service provider, the manufacturer and manufacturer's representative shall make all reasonable efforts to obtain driver records and data from the original service provider, maintain the records and data at the main business office of the manufacturer's representative, and provide the records and data to the division as required by this regulation.

(c) Each manufacturer and manufacturer's representative shall notify all affected drivers of the change of service provider or replacement of the device as soon as possible but not later than 30 days before the change of service provider or replacement will occur. (Authorized by and implementing K.S.A. 8-1016; effective May 2, 2014.)

92-56-7. Security; tampering prohibitions; conflict of interest. (a) Each manufactur-

er and each manufacturer's representative shall be responsible for ensuring that the manufacturer's service providers comply with all of the following security requirements:

(1) Only authorized employees of a service provider may observe the installation of a device.

(2) Reasonable security measures shall be taken to prevent the driver from observing the installation of a device and from obtaining access to installation materials.

(3) Service providers shall be prohibited from assisting with, in any manner, tampering or circumvention.

(4) Manufacturer's representatives and service providers shall not install or service a device on a vehicle owned or operated by the manufacturer's representative or service provider, or any of the service provider's employees, for division-required installations.

(b) Nothing in this regulation shall prohibit a manufacturer, manufacturer's representative, or service provider from installing a device in that entity's vehicles for demonstration and testing purposes. (Authorized by and implementing K.S.A. 8-1016; effective May 2, 2014.)

92-56-8. Device removal. Whenever a service provider removes a device, the following requirements shall apply:

(a) The only persons allowed to remove or observe the removal of the device shall be service providers or a manufacturer's representative associated with the manufacturer of that device.

(b) Adequate security measures shall be taken to ensure that unauthorized personnel cannot gain access to proprietary materials and to the files of drivers.

(c) Upon removal of the device, the service provider shall ensure that both of the following occur:

(1) The driver is provided with a report showing the removal of the device.

(2) The division is notified, in the form and format designated by the division.

(d) The service provider and the manufacturer shall restore the driver's vehicle to its original condition after removal of the device. (Authorized by and implementing K.S.A. 8-1016; effective May 2, 2014.)

92-56-9. Proof of installation. (a) If a driver is unable to provide proof of installation of the device to the division for the full restriction period required by K.S.A. 8-1014 and amendments

thereto, the director shall extend the ignition interlock device restriction period until the driver provides the division with proof that the driver has had a device installed in a vehicle for a period that is equal to or greater than the initial ignition interlock device restriction period required by K.S.A. 8-1014 and K.S.A. 8-1015(d), and amendments thereto.

(b) Any device may deviate from the breath sample requirement by accepting a breath sample of less than 1.2 liters of air if the deviation is approved in advance by the division to address valid accommodation requests under the Americans with disabilities act of 1990. Each request for accommodation shall be submitted on a form provided by the division. Each form shall require a certification by a licensed pulmonologist that the driver has a lung condition that will render the driver incapable of blowing a normal breath sample, 1.2 liters of air or more, into an ignition interlock device.

(c) If an accommodation that is requested pursuant to subsection (b) cannot be made for a driver that is a qualified individual with a disability as defined by 42 U.S.C. 12131(2), and amendments thereto, the director, upon the driver's request, may reinstate the driver's license after the initial ignition interlock device restriction period if the records maintained by the division have no indication of the occurrence of any of the following offenses during the entire initial ignition interlock device restriction period:

(1) Conviction pursuant to K.S.A. 8-1599, and amendments thereto;

(2) conviction pursuant to K.S.A. 41-727, and amendments thereto;

(3) conviction of any violation listed in K.S.A. 8-285(a), and amendments thereto;

(4) conviction of three or more moving traffic violations committed on separate occasions within a 12-month period; or

(5) revocation, suspension, cancellation, or withdrawal of the person's driving privileges due to an unrelated event.

If the driver that is requesting accommodation has any offenses during the initial ignition interlock device restriction period, the director shall not reinstate the driver's full driving privileges until the driver has no such offenses for the year before the driver's request for reinstatement of full driving privileges. This subsection shall not serve as a defense to allegations that the driver has violated K.S.A. 8-1017, and amendments thereto,

during any required ignition interlock device restriction period.

(d) The director may waive the requirement for proof of ignition interlock device installation, upon a driver's request, if the director determines that all of the following conditions are met:

(1) The driver's ignition interlock device restriction period has been extended at least two years beyond the initial ignition interlock device restriction period due to the driver's failure to provide the division with proof of installation as required by subsection (a).

(2) The driver has not had an "alcohol or drug-related conviction" or "occurrence," as those terms are defined by K.S.A. 8-1013 and amendments thereto, a conviction pursuant to K.S.A. 8-1017 and amendments thereto, or a conviction of a violation of a law of another state that would constitute a violation similar to any violation specified in K.S.A. 8-1017 and amendments thereto, during the ignition interlock device restriction period.

(3) The driver has not had any violations specified in paragraphs (c)(1) through (c)(5) during the ignition interlock device restriction period.

(4) The driver has never held a driver's license issued by the state of Kansas.

(5) The driver provides the director with clear and compelling evidence that the driver does not reside in Kansas and did not reside in Kansas during the ignition interlock device restriction period. (Authorized by K.S.A. 8-1016; implementing K.S.A. 2013 Supp. 8-1015 and K.S.A. 8-1016; effective May 2, 2014.)

Article 57.—TAX ON CONSUMABLE MATERIAL

92-57-1. Definitions. For purposes of K.S.A. 79-3399 and amendments thereto and this article of the department's regulations, each of the following terms shall have the meaning specified in this regulation:

(a) "Consumer" means a person purchasing or receiving consumable material for final use.

(b) "Dealing" means engaging in the sale or manufacture of consumable material in Kansas.

(c) "Director" means director of taxation in the Kansas department of revenue.

(d) "Distributor" means any of the following:

(1) Any person in Kansas engaged in the business of selling or dealing in consumable material who brings, or causes to be brought, into Kansas

consumable material for sale, unless that person is a retail dealer who has purchased the consumable material on a tax-paid basis from a distributor;

(2) any person who makes, manufactures, or fabricates consumable material for sale in Kansas;

(3) any person outside of Kansas engaged in the business of selling or dealing in consumable material who ships or transports consumable material to any person in the business of selling or dealing in electronic cigarettes or consumable material in Kansas; or

(4) any person who has one or more retail dealer establishments that do either of the following:

(A) Bring or cause to be brought into Kansas consumable material for sale by any of those retail dealer establishments; or

(B) make, manufacture, or fabricate consumable material in Kansas for sale in Kansas. However, each person who has a retail dealer establishment from which the consumable material is sold to the consumer shall be deemed a retail dealer.

(e) "Electronic cigarette" means a battery-powered device, whether or not the device is shaped like a cigarette, that can provide inhaled doses of nicotine by delivering a vaporized solution by means of cartridges or other chemical delivery systems.

(f) "Person" means any individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity whether appointed by a court or otherwise, and any combination of these individuals.

(g) "Retail dealer" means a person engaged in the business of selling or dealing in consumable material to the consumer in Kansas.

(h) "Sale" means any transfer of title or possession or both, exchange, barter, or distribution of consumable material, with or without consideration.

(i) "Secretary" means secretary of the Kansas department of revenue or the secretary's designee. (Authorized by and implementing K.S.A. 2016 Supp. 79-3399, as amended by 2017 Sub for HB 2230, sec. 25; effective July 21, 2017.)

92-57-2. Certificate of registration. Each distributor shall obtain a certificate of registration issued by the director before engaging in the business of selling consumable material in Kansas. The distributor shall submit an application to the department on a form provided by the department.

The certificate of registration shall be displayed in a conspicuous location at the registered location. (Authorized by and implementing K.S.A. 2016 Supp. 79-3399; effective July 21, 2017.)

92-57-3. Imposition of tax. (a) Each distributor who first performs any of the following shall pay the tax imposed by K.S.A. 79-3399, and amendments thereto:

(1) Brings or causes to be brought into Kansas consumable material for sale in Kansas;

(2) makes, manufactures, or fabricates consumable material in Kansas for sale in Kansas;

(3) ships or transports consumable material to retail dealers in Kansas to be sold by those retail dealers; or

(4) causes consumable material for which the tax has not been paid to be brought into Kansas.

(b) Liability for the tax on consumable material shall accrue when either of the following conditions is met:

(1) The consumable material is first brought into the Kansas for sale within Kansas.

(2) The consumable material is first made, manufactured, or fabricated in Kansas for sale within Kansas.

(c) A transfer of consumable material from one distributor to another distributor shall not relieve the distributor who first brought or caused the consumable material to be brought into Kansas from the tax liability.

(d) Each retail dealer shall purchase consumable material only from a registered distributor. (Authorized by and implementing K.S.A. 2016 Supp. 79-3399; effective July 21, 2017.)

92-57-4. Books, records, and other documents required of distributor or retail dealer; access to premises. (a) Each distributor and each retail dealer shall keep in each place of business complete and accurate books, records, and other documents for that place of business, including itemized invoices of the following:

(1) All consumable material held, purchased, made, manufactured, fabricated, or brought or caused to be brought into Kansas or shipped or transported to retail dealers in Kansas; and

(2) all sales of consumable material.

Each distributor shall show the name and address of each purchaser, registration number if applicable, and any other documents relating to the purchase and the sale of or dealing in consumable material. Itemized invoices shall be made

for all consumable material transferred to other retail dealer establishments owned or controlled by that distributor. All books, records, and other documents required shall be retained and maintained for at least three years after the date of the entries appearing in the books, records, and other documents, unless the director, in writing, authorizes the destruction or disposal of these books, records, and other documents at an earlier date. These books, records, and other documents may be maintained in an electronic format.

(b) At any time during regular business hours, any authorized agents or employees of the director may enter any place of business of a distributor or retail dealer and inspect the premises, the books, records, or other documents and the consumable material contained there, to determine whether the distributor or retail dealer is in compliance with all the provisions of the act and this article of the department's regulations. Refusal to permit an inspection by an authorized agent or employee of the director shall be grounds for revocation of any registration held by the distributor or retail dealer.

(c) Each person who sells consumable material to any person other than a consumer shall create with each sale an itemized invoice showing the seller's name and address, the purchaser's name and address, the purchaser's registration number if applicable, the date of the sale, the number of milliliters of consumable material, and all prices and discounts. The person selling or dealing in the consumable material shall retain and maintain a legible copy of each invoice for three years after the date of sale. These records may be maintained in an electronic format.

(d) Each distributor and each retail dealer shall obtain and maintain itemized invoices of all consumable material purchased. The distributor or retail dealer shall retain and maintain a legible

copy of each invoice for three years after the date of purchase. Invoices shall be available for inspection by authorized agents or employees of the director at the distributor's or retail dealer's place of business. These records may be maintained in an electronic format. (Authorized by and implementing K.S.A. 2016 Supp. 79-3399; effective July 21, 2017.)

92-57-5. Monthly tax returns; remittance of tax; deficiencies. (a) On or before the twentieth day of each month, each distributor shall file a tax return with the director, showing the following:

(1) The number of milliliters of consumable material brought, or caused to be brought, into Kansas for sale; and

(2) the number of milliliters of consumable material made, manufactured, or fabricated in Kansas for sale in Kansas during the preceding month.

(b) Each registered distributor outside Kansas shall file a tax return showing the number of milliliters of consumable material shipped or transported to retail dealers in Kansas to be sold by those retail dealers, during the preceding month.

(c) Each tax return shall be submitted upon forms prescribed by the director. Each tax return shall be accompanied by a remittance for the distributor's full tax liability.

(d) As soon as practicable after any tax return is filed, the director shall examine the return. If the director finds that the tax return is incorrect and any amount of tax due from the distributor is unpaid, the director shall notify the distributor of the deficiency. If a deficiency disclosed by the director's examination cannot be allocated to a particular month or months, the director may notify the distributor that a deficiency exists and state the amount of tax due. (Authorized by and implementing K.S.A. 2016 Supp. 79-3399; effective July 21, 2017.)

