Agency 4

Kansas Department of Agriculture

Articles

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Article 1.—AGRICULTURAL CHEMICALS

4-1-2. Definitions. In addition to the terms defined in K.S.A. 2-2202 and amendments thereto, the following terms shall have the meanings specified in this regulation: (a) "Abstracted," as used in K.S.A. 2-2202(x)(3) and amendments thereto, means omitted.

(b) "The act," and "the agricultural chemical act" mean K.S.A. 2-2201 et seq., and amendments thereto.

(c) "Authorized representative" and "designee" mean any person authorized by the secretary to enforce the act.

(d) "Pesticide" shall include insecticides, fungicides, rodenticides, herbicides, nematocides, defoliants, desiccants, and antimicrobials.

(e) "Plant-incorporated protectant" means any pesticidal substance produced by any plant and the genetic material necessary for the plant to produce the substance.

(f) "Plant regulator" shall not include any substance labeled or otherwise represented solely for use as a plant nutrient, fertilizer, or soil amendment.

(g) "Product" means one or more pesticides formulated, packaged, and labeled for distribution or sale.

(h) "Valuable constituent" means any active ingredient or inert ingredient. (Authorized by K.S.A. 2009 Supp. 2-2205; implementing K.S.A. 2009 Supp. 2-2202; effective Jan. 1, 1966; amended May 1, 1982; amended June 10, 2011.)

4-1-5. Label. The label of each product shall show clearly and prominently the following items: (a) The complete name of the product under which the product is registered under the act;

(b) the name and address of the manufacturer, registrant, or person for whom the product was manufactured. Unless otherwise stated, any name and address on the label shall be considered as the name and address of the manufacturer. If the registrant's name appears on the label and the registrant is not the manufacturer or if the name of the person for whom the product was manufactured appears on the label, the name that appears on the label shall be qualified by appropriate wording that may include "packed for," "distributed by," or "sold by," to indicate that the name is not that of the manufacturer. If the product is manufactured in more than one location or at a location separate from the manufacturer's principal office, then the product label shall state either one of the addresses where the product is manufactured or the address of the manufacturer's principal office;

(c) the EPA registration number, if required under the provisions of FIFRA;

(d) the net contents;

(e) an ingredient statement, which shall meet the following requirements:

(1) The ingredient statement shall appear on

the front panel of the label unless the secretary or designee determines that, due to the size or form of the container, a statement on that portion of the label is impractical and permits this statement to appear on another side or panel of the label. If so permitted, the ingredient statement shall be in larger type and more prominent than the surrounding text. The ingredient statement shall run parallel with other printed matter on the panel of the label on which the ingredient statement appears and shall be on a clear, contrasting background and not obscured or crowded;

(2) the acceptable common name of each active ingredient as specified in FIFRA shall appear on the ingredient statement or, if the active ingredient has no common name, the correct chemical name shall be stated. A trademark or trade name shall not be used as the name of an active ingredient unless the trademark or trade name has become a common name;

(3) active ingredients and inert ingredients shall be so designated. The term "inert ingredient" shall appear in the same size type and be as prominent as the term "active ingredient"; and

(4) the percentages of all ingredients shall be determined by weight, and the sum of the percentages of all ingredients shall be 100. Sliding-scale forms of ingredient statements shall not be used;

(f) a first aid statement; and

(g) a warning or caution statement. The warning or caution statement shall appear on the label in a place sufficiently prominent to warn the user and shall state clearly and in nontechnical language the particular hazards involved in the use of the product and the precautions to be taken to avoid accident, injury, or damage to humans and other nontarget organisms. (Authorized by K.S.A. 2010 Supp. 2-2205; implementing K.S.A. 2010 Supp. 2-2202; effective Jan. 1, 1966; amended May 1, 1982; amended June 10, 2011.)

4-1-6. (Authorized by K.S.A. 2-2205; implementing K.S.A. 2-2203; effective Jan. 1, 1966; amended May 1, 1982; revoked June 10, 2011.)

4-1-8. (Authorized by K.S.A. 2-2205; implementing K.S.A. 2-2203; effective Jan. 1, 1966; amended May 1, 1982; revoked June 10, 2011.)

4-1-9. Registration. (a) Pursuant to K.S.A. 2-2204 and amendments thereto, a product may be registered by one of the following: any manufacturer, authorized agent of the manufacturer, packer, seller, distributor, or shipper of that product.

(b) The registrant shall be responsible for the accuracy and completeness of all information submitted in connection with the application for registration of a product.

(c) Each registrant shall submit the product labeling to the secretary or designee when initially registering the product and whenever changing or modifying the labeling. When a registrant submits a product's labeling due to a change or modification in the labeling, the labeling shall be accompanied with a written statement that clearly and specifically describes the changes from the previous labeling and the proposed date of implementation of the new labeling. After the effective date of a change in labeling, the product shall be marketed only under the new labeling. Any registrant may request from the secretary or designee that a reasonable time be permitted to relabel or dispose of any products with the old labeling. After the initial registration of a product, any registrant may register that product no more than four consecutive years without the submission of the product label if there is no change to the product label.

(d) Claims or representations made for a product by the registrant or registrant's agent shall not differ from claims or representations made in connection with registration. These claims or representations shall include the following:

(1) Publications or advertising literature that accompanies the product or is distributed separately from the product;

(2) advertising by radio, television, internet sites, or other electronic media; and

(3) verbal and written communication.

(e) If the secretary requires additional information in support of the registration and the registrant believes that the requirement for additional data is unreasonable, the registrant may request a conference with the secretary or designee to discuss the requirement and consider alternatives. Each request for a conference shall be made no later than 20 days after the date on which the request for additional data is sent to the registrant.

(f) Each registration shall be valid through the last day of the calendar year in which the product was registered, unless the registration has been canceled or suspended before that day. (Authorized by K.S.A. 2010 Supp. 2-2205; implementing

K.S.A. 2010 Supp. 2-2204; effective Jan. 1, 1966; amended May 1, 1982; amended June 10, 2011.)

4-1-9a. Registration for special local need. (a) Each person registering a product for additional uses and methods of application not stated on the product's labeling under section three of FIFRA, but not inconsistent with federal law, for the purpose of meeting a special local need shall submit an application for the special local need to the secretary or designee. Each application shall include the following:

(1) A statement explaining why a special local need registration is necessary;

(2) efficacy and residue data;

(3) a letter from a subject matter expert, as recognized by the secretary or designee, detailing support for the special local need registration;

(4) EPA form 8570-25, "application for/notification of state registration of a pesticide to meet a special local need"; and

(5) a proposed label for the product.

(b) A product shall not be eligible for special local need registration if at least one of the following conditions is met:

(1) There is insufficient evidence to support a special local need for the additional use or method of application within the state.

(2) The registrant and product do not meet all requirements under the act and the Kansas pesticide law.

(3) For a food or feed use, the additional use or method of application does not have an established residue tolerance, or an exemption from tolerance, under FIFRA.

(4) The same use or method of application has previously been denied, disapproved, suspended, or cancelled by EPA.

(5) The same use or method of application has been voluntarily cancelled by the registrant.

(c) A special local need registration shall be issued to the applicant upon referral of the application to EPA by the secretary.

(d) A special local need registration shall be immediately cancelled by the secretary or designee if the application is disapproved by EPA.

(e) Each special local need registration of a product shall be renewed annually, but may be renewed no more than four times without resubmission of a special local need request pursuant to K.A.R. 4-1-9a. (Authorized by K.S.A. 2009 Supp. 2-2205 and K.S.A. 2009 Supp. 2-2214; implementing K.S.A. 2009 Supp. 2-2207; effective June 10, 2011.)

4-1-9b. Emergency situation exemptions. (a) Any person may submit a request for a registration exemption under section 18 of FIFRA to the secretary or designee if an emergency situation exists.

(b) "Emergency situation" shall include the following: a specific emergency, a public health emergency, a quarantine emergency, and a crisis emergency that is urgent and nonroutine.

(c) Each request for registration exemption under section 18 of FIFRA shall include documentation of each of the following:

(1) No effective registered products are available.

(2) No feasible alternative control practices are available.

(3) The emergency situation involves the introduction of a new pest, will present significant risks to human health or the environment, or will cause significant economic loss.

(d) Each person seeking an emergency situation exemption shall compile and present to the secretary or designee any additional information required by EPA to support the request.

(e) Each person distributing a product under the emergency situation exemption shall provide the end user with the product labeling that was approved for the emergency situation exemption.

(f) Each person distributing or using products under an emergency situation exemption shall meet the following requirements:

(1) Comply with all reporting requirements contained within the emergency situation exemption; and

(2) notify the secretary or designee of any adverse effects resulting from the use of the product. (Authorized by K.S.A. 2009 Supp. 2-2205; implementing K.S.A. 2009 Supp. 2-2207; effective June 10, 2011.)

4-1-11. (Authorized by K.S.A. 2-2205; implementing K.S.A. 2-2202; effective Jan. 1, 1966; amended May 1, 1982; revoked June 10, 2011.)

4-1-13. Enforcement; product sampling. Collection of samples of products for analysis shall be performed by the secretary or designee. A sample may be taken as either an unopened original package or a portion from the unopened original package. (Authorized by K.S.A. 2009 Supp. 2-2205; implementing K.S.A. 2009 Supp. 2-2206, as

amended by L. 2010, ch. 17, §10; effective Jan. 1, 1966; amended May 1, 1982; amended June 10, 2011.)

4-1-14. Experimental use. (a) A product, including a plant or seed modified genetically to include a plant-incorporated protectant, may be distributed for experimental use without registration under K.S.A. 2-2204, and amendments thereto, if either of the following conditions is met:

(1) A permit for the product has been obtained from the secretary or designee.

(2) The experimental use of the product is limited to one of the following:

(A) Laboratory or greenhouse tests; or

(B) a small-scale test conducted on a cumulative total of no more than one acre of land per pest.

(b) An experimental use permit may be issued if the secretary or designee determines that the applicant needs the permit to accumulate information necessary to register a pesticide under K.S.A. 2-2204, and amendments thereto. Issuance of an experimental use permit may be denied by the secretary or designee if it is determined that the proposed use of the pesticide could cause unreasonable adverse effects on the environment. Terms, conditions, and a limited time period of the experimental use permit may be prescribed by the secretary or designee.

(c) Each application for experimental use shall include the following:

(1) The name and address of the applicant;

(2) the purpose or objectives of the experimental use and the experimental protocols to be followed;

(3) the name, address, and telephone number of all participants in the experimental use in Kansas;

(4) the amount of the product, including a plant or seed modified genetically to include a plant-incorporated protectant, to be shipped into or used in Kansas;

(5) the applicant's signature;

(6) documentation of EPA approval;

(7) a copy of the experimental use product labeling approved by EPA; and

(8) any other relevant information requested by the secretary or designee. If the secretary requires additional information in support of the application and the applicant believes that the requirement for additional data is unreasonable, the applicant may request a conference with the secretary or designee to discuss the requirement and consider alternatives. Each request for a conference shall be made no later than 20 days after the date the request for additional data is sent to the applicant.

(d) After the permit is issued, the permittee shall meet the following requirements:

(1) Coordinate the dates and locations of the proposed use of the product with the secretary or designee; and

(2) notify the secretary or designee of any adverse effects resulting from the experimental use within 24 hours of discovery.

(e) An experimental use permit may be modified, revoked, suspended, or modified by the secretary or designee at any time if either of the following conditions is met:

(1) The secretary or designee finds that the terms or conditions of the permit are being violated.

(2) The secretary or designee, after taking into account the economic, social, and environmental costs and benefits of the use of the product under the existing permit, determines the risk to the environment to be unacceptable.

(f) At the conclusion of the experimental use, the permittee shall submit a final report to the secretary or designee summarizing the results. (Authorized by K.S.A. 2009 Supp. 2-2205; implementing K.S.A. 2009 Supp. 2-2207; effective Jan. 1, 1966; amended May 1, 1982; amended June 10, 2011.)

4-1-17. Registration fee. The annual registration fee for each registered product shall be $150.00. (Authorized by K.S.A. 2009 Supp. 2-2204 and K.S.A. 2009 Supp. 2-2205; implementing K.S.A. 2009 Supp. 2-2204; effective, T-83-35, Nov. 10, 1982; effective May 1, 1983; amended, T-88-46, Nov. 10, 1987; amended May 1, 1988; amended, T-4-6-22-89, June 22, 1989; amended Aug. 14, 1989; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended June 10, 2011.)

Article 3.—COMMERCIAL FEEDING STUFFS

4-3-47. Adoption by reference. (a) The following portions of the "2010 official publication" copyrighted in 2010 by the association of American feed control officials incorporated are hereby adopted by reference and shall apply to commercial feeding stuffs in this state:

(1) Regulations 1 through 13 of the "AAFCO model good manufacturing practice regulations for feed and feed ingredients" on pages 128 through 132, with the following changes:

(A)(i) In the first sentence of regulation 1, "section 3 of the model bill" shall be replaced with "K.S.A. 2-1001, and amendments thereto"; and

(ii) in the definition of "adulteration" in regulation 1, "section 7(a) of the model bill" shall be replaced with "K.S.A. 65-664, and amendments thereto"; and

(B) in the second sentence of regulation 11(b), the blank line following "agents of the" shall be replaced with "Kansas department of agriculture";

(2) the text titled "official feed terms" on pages 314 through 323; and

(3) the text titled "official names and definitions of feed ingredients as established by the association of American feed control officials" on pages 324 through 415.

(b) Copies of the material adopted by reference in this regulation may be obtained from the office of the agricultural commodity assurance program, Kansas department of agriculture, Topeka, Kansas. (Authorized by K.S.A. 2-1011 and K.S.A. 2009 Supp. 2-1013; implementing K.S.A. 2009 Supp. 2-1002 and K.S.A. 2009 Supp. 2-1013; effective May 1, 1981; amended May 1, 1982; amended May 1, 1984; amended May 1, 1988; amended Oct. 21, 1991; amended Dec. 12, 1994; amended June 15, 2001; amended Jan. 18, 2008; amended, T-4-1-5-11, Jan. 5, 2011; amended April 29, 2011.)

4-3-48. (Authorized by K.S.A. 2-1013 as amended by L. 1987, Ch. 7, Sec. 1; implementing K.S.A. 2-1002 and 2-1013 as amended by L. 1987, Ch. 7, Sec. 1; effective May 1, 1981; amended May 1, 1982; amended May 1, 1984; amended May 1, 1988; revoked April 29, 2011.)

4-3-49. Good manufacturing practices; adoption by reference. (a) Except for those portions excluded by this subsection, 21 CFR Parts 225 and 226, as revised on April 1, 2010, are hereby adopted by reference and shall apply to good manufacturing practices for the production of commercial feeding stuffs in Kansas:

(1) Subpart (c) of section 225.1 is not adopted by reference.

(2) In section 225.115(b)(2), the following language shall be deleted: ", under §510.301 of this chapter."

(3) Subpart (b) of section 226.1 is not adopted by reference.

(b) Copies of the regulations, or pertinent portions of the regulations, shall be available from the office of the agricultural commodity assurance program, Kansas department of agriculture, Topeka, Kansas. (Authorized by and implementing K.S.A. 2010 Supp. 2-1013; effective, T-88-46, Nov. 10, 1987; effective May 1, 1988; amended Oct. 21, 1991; amended Dec. 12, 1994; amended, T-4-2-13-01, Feb. 13, 2001; amended June 15, 2001; amended Jan. 18, 2008; amended Sept. 9, 2011.)

4-3-50. Good manufacturing practices; definitions. The following terms as used in 21 C.F.R. Parts 225 and 226, which are adopted by reference in K.A.R. 4-3-49, shall have the following meanings: (a) The term "form," referred to either by number or by any other designation, shall mean a form supplied by the agricultural commodity assurance program, Kansas department of agriculture.

(b) The term "state feed control officials" shall mean the secretary of the Kansas department of agriculture or the secretary's authorized representative.

(c) The term "center for veterinary medicine" shall mean the agricultural commodity assurance program, Kansas department of agriculture unless the context requires otherwise.

(d) The term "type A medicated article" shall mean a feeding stuff or ingredient for a feeding stuff that is intended solely for use in the manufacture of either another type A medicated article or a type B or type C medicated feed.

(e) The term "type B medicated feed" shall mean a feeding stuff or an ingredient for a feeding stuff that contains a substantial quantity of nutrients including vitamins or minerals or other nutritional ingredients in an amount not less than 25% of the weight of the type A medicated article and that is intended solely for the manufacture of other medicated feeds, either type B or type C.

(f) The term "type C medicated feed" shall mean a feeding stuff or an ingredient for a feeding stuff that contains a substantial quantity of nutrients including vitamins, minerals, or other nutritional ingredients and that is intended as the complete feed for the animal. (Authorized by and implementing K.S.A. 2009 Supp. 2-1013; effective, T-88-46, Nov. 10, 1987; effective May 1, 1988; amended April 29, 2011.)

4-3-51. Prohibited feeding stuffs; adoption by reference. (a) The following portions of 21 CFR Part 589, revised on April 1, 2010, with the changes specified in this subsection, are hereby adopted by reference and shall apply to the production of all commercial feeding stuffs and custom-mixed feed in Kansas:

(1) The second sentence of section 589.1000 shall be replaced with the following sentence: "Use of gentian violet in animal feed causes the feed to be adulterated under K.S.A. 65-664."

(2) The second sentence of section 589.1001 shall be replaced with the following sentence: "Use of propylene glycol in or on cat food causes the feed to be adulterated under K.S.A. 65-664."

(3) In section 589.2000(d)(5), "Food and Drug Administration" shall be replaced with "Kansas department of agriculture."

(4) In section 589.2000(f), "Food and Drug Administration" shall be replaced with "Kansas department of agriculture."

(5) In section 589.2000(g)(1), "section 402(a)(2)(C) or 402(a)(4) of the act" shall be replaced with "K.S.A. 65-664."

(6) In section 589.2000(g)(2), "section 403(a)(1) or 403(f) of the act" shall be replaced with "K.S.A. 65-665."

(7) In section 589.2000(h)(2), "Food and Drug Administration" shall be replaced with "Kansas department of agriculture."

(8) In section 589.2001(c)(2)(vi), "Food and Drug Administration" shall be replaced with "Kansas department of agriculture."

(9) In section 589.2001(c)(3)(i), "Food and Drug Administration" shall be replaced with "Kansas department of agriculture."

(10) In section 589.2001(d)(1), "section 402(a)(4) of the Federal Food, Drug, and Cosmetic Act (the act)" shall be replaced with "K.S.A. 65-664 and K.S.A. 2-1011."

(11) In section 589.2001(d)(2), "section 402(a)(2), 402(a)(3), or 402(a)(5) of the act" shall be replaced with "K.S.A. 65-664 and K.S.A. 2-1011."

(12) In section 589.2001(d)(3), "section 403(a)(1) or 403(f) of the act" shall be replaced with "K.S.A. 65-665 and K.S.A. 2-1011."

(13) In section 589.2001(d)(4), "section 402(a)(4) of the act" shall be replaced with "K.S.A. 65-664 and K.S.A. 2-1011."

(14) In section 589.2001(e), "Food and Drug Administration" shall be replaced with "Kansas department of agriculture."

(b) Copies of the regulations, or pertinent portions of the regulations, shall be available from the office of the agricultural commodity assurance program, Kansas department of agriculture, Topeka, Kansas. (Authorized by and implementing K.S.A. 2010 Supp. 2-1013; effective, T-4-2-13-01, Feb. 13, 2001; effective June 15, 2001; amended Jan. 18, 2008; amended Sept. 9, 2011.)

Article 6.—CERTIFICATE OF FREE SALE

4-6-1. Certificate of free sale; definitions. (a)(1) "Certificate of free sale" and "certificate" shall mean a written document in English that states that the product described in the document was manufactured in Kansas by a business whose owner or operator meets the following requirements:

(A) Holds a license, registration, permit, or other authority issued by the Kansas department of agriculture for that business; and

(B) complies with the requirements of the Kansas laws for distribution of the product in Kansas and, where applicable, the United States.

(2) "Person" shall mean any individual, partnership, association of persons, corporation, or governmental agency.

(3) "Secretary" shall mean the secretary of agriculture or a designee of the secretary.

(b) When used in a certificate of free sale, "U.S. regulations" shall mean those regulations promulgated by agencies of the federal government as follows:

(1) Regulations that have been adopted by reference in regulations of the Kansas department of agriculture; or

(2) regulations administered by the Kansas department of agriculture pursuant to a cooperative agreement with a federal agency. (Authorized by and implementing K.S.A. 2008 Supp. 74-5,100; effective Jan. 1, 2009; amended Nov. 20, 2009.)

4-6-2. Certificate of free sale. Any person may request one or more certificates of free sale by providing the following information to the secretary on a form provided by the Kansas department of agriculture:

(a) The name, address, and telephone number of the person requesting each certificate;

(b) the name of the licensed, registered, or permitted establishment where the product was manufactured;

(c) the name and type of product for which each certificate is requested;

(d) either an original label or an exact and unaltered photocopy of the label in English for the product;

(e) the country or countries to which the product is to be shipped;

(f) the number of certificates requested;

(g) if more than one product is included in the request, specification of which products are to be listed on each certificate; and

(h) the address to which each certificate is to be sent. (Authorized by and implementing K.S.A. 2008 Supp. 74-5,100; effective Jan. 1, 2009; amended Nov. 20, 2009.)

Article 7.—MILK AND DAIRY PRODUCTS

4-7-213. Adoption by reference. The United States department of agriculture's recommended requirements titled "milk for manufacturing purposes and its production and processing," effective September 1, 2005, are hereby adopted by reference, except for the following: (a) Subpart A;

(b) subpart B, section B2, paragraphs (a), (b), (c), (d), (e), (f), (h), (i), (k), (m), (r), (s), (t), and (u);

(c) subpart D, section D9; and

(d) subpart F.

Copies of the pertinent portions of these requirements may be obtained from the Kansas department of agriculture. (Authorized by K.S.A. 2009 Supp. 65-772 and K.S.A. 65-775; implementing K.S.A. 65-773 and 65-775; effective, E-81-24, Aug. 27, 1981; effective May 1, 1981; amended May 1, 1986; amended, T-87-21, Aug. 21, 1986; amended May 1, 1987; amended Jan. 14, 1991; amended Feb. 27, 1998; amended Feb. 11, 2000; amended Dec. 20, 2002; amended Sept. 1, 2006; amended July 9, 2010.)

4-7-716. Adoption by reference. (a) The following documents are hereby adopted by reference:

(1) Except for sections 1 (JJ), 2, 9, 15, 16, 17, and 18, the "grade 'A' pasteurized milk ordinance," 2009 revision, including appendices, as published by the U.S. department of health and human services, public health service, and food and drug administration;

(2) the "methods of making sanitation ratings of milk shippers," including appendices, published by the U.S. department of health and human services, public health service, and food and drug administration, 2009 revision;

(3) the 2009 revision of the "procedures governing the cooperative state-public health service/food and drug administration program of the national conference on interstate milk shipments," including pages 49 through 68;

(4) the 17th edition of the "standard methods for the examination of dairy products," dated 2004 and published by the American public health association;

(5) the 17th edition of the "official methods of analysis of AOAC international," volumes I and II, revision 1, including appendices, dated 2002 and published by the association of official analytical chemists; and

(6) the 2007 revision of the "evaluation of milk laboratories," published by the U.S. department of health and human services, public health service, and food and drug administration.

(b) Copies of the pertinent portions of the material adopted by reference shall be available from the Kansas department of agriculture. (Authorized by K.S.A. 2009 Supp. 65-772 and K.S.A. 65-775; implementing K.S.A. 65-775; effective May 1, 1980; amended May 1, 1983; amended May 1, 1986; amended Dec. 26, 1988; amended Jan. 14, 1991; amended Oct. 21, 1991; amended July 1, 1992; amended Aug. 22, 1994; amended Dec. 20, 2002; amended Sept. 1, 2006; amended July 9, 2010.)

Article 10.—ANHYDROUS AMMONIA

4-10-1. Definitions. (a) "Appurtenances" means all devices that are used in connection with a container, including safety devices, liquid-level gauging devices, valves, pressure gauges, fittings, and metering or dispensing devices.

(b) "ASME" means American society of mechanical engineers.

(c) "ASME schedule 80" and "ASME schedule 40" mean pipe specifications contained in the 2007 edition of the ASME boiler and pressure vessel code, section II, part A, SA-53/SA-53M, titled "specification for pipe, steel, black and hot-dipped, zinc-coated, welded and seamless," and the appendices, which are hereby adopted by reference.

(d) "Backflow check valve" means a device designed to prevent ammonia from flowing in the wrong direction within a pipe or tube.

(e) "Capacity" means the total volume of a container as measured in standard U.S. gallons of 231 cubic inches, unless otherwise specified.

(f) "Chemical-splash goggles" and "Splashproof goggles" mean flexible-fitting chemical-protective goggles, with a hooded, indirect ventilation system that provides protection to the eyes and eye sockets from the splash of hazardous liquids. This term shall not include direct vented goggles.

(g) "Code" means the "introduction," the relevant parts of UG-1 through UG-137 titled "part UG: general requirements for all methods of construction and all materials," and parts UF-1 through UF-125 titled "part UF: requirements for pressure vessels fabricated by forging" of section VIII, division 1, of the ASME boiler and pressure vessel code, 2007 edition, which are hereby adopted by reference.

(h) "Container" means any vessel designed to hold anhydrous ammonia that is used for the storage, transportation, or application of anhydrous ammonia. This definition shall not apply to any refrigerated vessel with a design pressure of less than 15 psig.

(i) "Data plate" means a piece of noncorroding metal permanently attached by the manufacturer to the surface of a container that has been designed and constructed in accordance with paragraph UG-116 of section VIII, division 1 of the ASME code, 2007 edition, which is adopted by reference in subsection (g).

(j) "Densely populated area" means any location with either one or more multifamily housing units or eight or more single-family dwellings located within a quarter section.

(k) "Designed pressure" means maximum allowable working pressure.

(l) "Emergency shutoff valve" means a valve that stops the flow of product by spring closure, gravity, or pressure and can be activated by an outside means including a cable pull, hose pull, air assists, electrical closure, or back pressure. The emergency shutoff valve shall be placed in the liquid line internally or externally to the container. If an external valve is used, the valve shall be after the manual shutoff valve but as close to the opening of the container as possible. The emergency shutoff valve shall work properly from a remote location or when activated at the valve.

(m) "Excess-flow valve" means a device placed in a line that is designed to close when the flow of vapor or liquid flowing through the line exceeds the amount for which the valve is rated.

(n) "Filling density" means the percent ratio of the weight of gas in a container to the weight of water that the container will hold at 60° F.

(o) "Implement of husbandry" means a farm wagon-type vehicle or application unit that has an anhydrous ammonia container mounted on it and that is used for transporting anhydrous ammonia from a source of supply to farms or fields or from one farm or field to another.

(p) "Mobile container" means any container that is not installed as a permanent storage container.

(q) "National board inspector" is a person who holds a valid national board commission from the national board of boiler and pressure vessel inspectors and has fulfilled the national board commission requirements as specified in section VIII of the ASME code, 2007 edition.

(r) "NIOSH" means the national institute for occupational safety and health.

(s) "Non-code welding" means welding that does not comply with parts UW-1 through UW-65 of the ASME boiler and pressure vessel code, section VIII, division 1, titled "part UW: requirements for pressure vessels fabricated by welding," 2007 edition, which is hereby adopted by reference.

(t) "PSIG" means pounds per square inch gauge pressure.

(u) "Permanent storage container" means a stationary container having a volume of at least 3,000 water gallons.

(v) "Permanent storage facility" means a site that includes one or more permanent storage containers and their connections and appurtenances.

(w) "Pressure-relief valve" means a device designed to open to relieve pressure above a specified value to prevent an increase in internal fluid or vapor and to close once acceptable pressure conditions have been restored.

(x) "Proof-of-inspection seal" and "current KDA-issued proof-of-inspection seal" mean the decal applied to a permanent system following a successful KDA inspection, which shall occur once per calendar year. The seal is current until it expires on December 31 of the year following the inspection.

(y) "Public assembly area" means any building or structure established to accommodate groups of people for commercial, civic, political, religious, recreational, educational, or similar purposes. This term shall include buildings or structures used for medical care, including hospitals, assisted care facilities, and prisons.

(z) "Reactor unit" means equipment that util-

izes anhydrous ammonia to manufacture liquid fertilizer.

(aa) "Respirator" means an air-purifying device with a full face-piece that has been approved by NIOSH under the provisions of 30 CFR Part II, Subpart I [13], dated July 1, 2009, for use in an ammonia-contaminated atmosphere, in compliance with 29 CFR 1910.134, dated July 1, 2009.

(bb) "System" means an assembly of one or more containers, pipes, pumps, and appurtenances used for the storage, transfer, transportation, or application of anhydrous ammonia, which may be permanent or mobile. This definition shall not apply to interstate anhydrous ammonia pipelines.

(cc) "USDOT" and "D.O.T." mean United States department of transportation. (Authorized by and implementing K.S.A. 2-1212; effective Jan. 1, 1966; amended Jan. 1, 1971; amended Jan. 1, 1973; amended May 1, 1986; amended, T-87-9, May 1, 1986; amended May 1, 1987; amended May 1, 1988; amended Jan. 25, 1993; amended March 12, 2010.)

4-10-1a. Prohibited acts. It shall be a violation to perform any of the following: (a) Install, relocate, modify, repair, or use any system or equipment for storing, reacting, transferring, transporting, applying, or dispersing by any other means anhydrous ammonia unless the system, permanent storage facility, or equipment is in compliance with this article 10;

(b) except as provided under K.A.R. 4-10-4b(b), transfer anhydrous ammonia into a mobile container unless the container bears a legible manufacturer's data plate or equivalent stamp;

(c) deface the manufacturer's data plate or equivalent stamp;

(d) transfer any anhydrous ammonia into a container or system having structural damage or any other defect that would prevent the containment of anhydrous ammonia;

(e) transfer anhydrous ammonia into or out of any container without the consent of the owner of each container;

(f) transfer, or permit the transfer of, anhydrous ammonia into a permanent storage container unless the permanent storage container has a current KDA-issued proof-of-inspection seal attached to the respective system;

(g) conduct non-code welding directly on a container or any parts subject to pressure;

(h) fail to report any release of 100 pounds or more of anhydrous ammonia within 48 hours of the release;

(i) conduct a transfer without an attendant present at the transfer site;

(j) transfer anhydrous ammonia into any vessel that does not comply with K.A.R. 4-10-1 through 4-10-16; or

(k) maintain anhydrous ammonia in any vessel that does not meet the requirements of K.A.R. 4-10-1 through 4-10-16. (Authorized by and implementing K.S.A. 2-1212; effective March 12, 2010.)

4-10-1b. Reportable events. The owner or operator of each anhydrous ammonia storage facility or any equipment shall report, to the secretary or the secretary's authorized representative, each accidental or unauthorized release of 100 pounds or more of anhydrous ammonia within 48 hours after the release. Nothing in this regulation shall require the reporting of an intentional release of anhydrous ammonia into the soil during the normal course of application. (Authorized by and implementing K.S.A. 2-1212; effective March 12, 2010.)

4-10-2a through 4-10-2c. (Authorized by and implementing K.S.A. 2-1212; effective May 1, 1987; revoked March 12, 2010.)

4-10-2d. (Authorized by and implementing K.S.A. 2-1212; effective May 1, 1987; amended May 1, 1988; amended Dec. 26, 1988; revoked March 12, 2010.)

4-10-2e. Container valves and appurtenances. (a) Connections to containers shall be limited to liquid-level gauges, emergency shutoff valves, pressure gauges, vapor-relief valves, liquid lines, vapor lines, and thermometers.

(b) Each vapor line and liquid line shall have a manually operated shutoff valve located as close to the container as practical.

(c) On or before July 1, 2012, each permanent storage container shall be equipped with an emergency shutoff valve that meets the requirements of K.A.R. 4-10-1 (l).

(d) No metal part or component of a system that is normally in contact with anhydrous ammonia shall be made of a metal that is incompatible with anhydrous ammonia, including galvanized metal, cast iron, zinc, copper, and brass.

(e) Openings from the container or through fittings that are not larger than a no. 54 drill size opening shall not be required to be equipped with an excess flow valve.

(f) Each valve and appurtenance shall be suitable for use with anhydrous ammonia and designed for not less than the maximum pressure to which the valve and appurtenance will be subjected. Each valve that could be subjected to container pressures shall have a rated working pressure of at least 250 psig.

(g) (1) Each vapor or liquid line greater than a no. 54 drill size opening shall be equipped with an excess flow valve that closes automatically at the rated flows of vapor or liquid specified by the manufacturer.

(2) The connections, lines, valves, and fittings protected by one or more excess flow valves shall have a greater capacity than the rated flow of the excess flow valves so that the valves will close in case of failure at any point in the lines or fittings.

(h) Each liquid connection used to fill a permanent storage container shall be fitted with a backflow check valve.

(i) (1) All piping, tubing, and fittings subjected to container pressure shall be made of materials specified for use with anhydrous ammonia and shall be designed for a minimum working pressure of 250 psig.

(2) All piping, tubing, and metering or dispensing devices shall be securely mounted and protected against damage.

(3) Threaded joints may be used only with seamless black steel pipe that meets or exceeds ASME schedule 80 specifications. Black steel pipe that meets or exceeds ASME schedule 40 specifications with at least 800 psig minimum bursting pressure may be used if pipe joints are welded or joined by means of welding type flanges. Pipe joint compounds used shall be resistant to ammonia.

(4) Each flexible connection shall have a bursting pressure of at least 1,000 psig. (Authorized by and implementing K.S.A. 2-1212; effective May 1, 1987; amended March 12, 2010.)

4-10-2f through 4-10-2h. (Authorized by and implementing K.S.A. 2-1212; effective May 1, 1987; revoked March 12, 2010.)

4-10-2i. (Authorized by and implementing K.S.A. 2-1212; effective May 1, 1987; amended May 1, 1988; revoked March 12, 2010.)

4-10-2j. (Authorized by and implementing K.S.A. 2-1212; effective May 1, 1987; amended April 13, 2001; revoked March 12, 2010.)

4-10-2k. (Authorized by and implementing K.S.A. 2-1212; effective May 1, 1987; amended May 1, 1988; amended Jan. 1, 1989; revoked March 12, 2010.)

4-10-4. (Authorized by and implementing K.S.A. 2-1212; effective Jan. 1, 1966; amended Jan. 1, 1966; amended Jan. 1, 1971; amended Jan. 1, 1973; amended May 1, 1986; amended, T-87-9, May 1, 1986; amended May 1, 1987; amended May 1, 1988; revoked March 12, 2010.)

4-10-4a. Containers. (a) Each container shall be constructed and tested in accordance with the code and shall have a minimum design pressure of 250 psig.

(b) Subsection (a) shall not prohibit the continued use of permanent storage containers that were constructed and maintained in accordance with Kansas statutes and regulations in effect before the effective date of this regulation.

(c) Each permanent storage container shall be inspected according to K.S.A. 44-913 et seq., and amendments thereto, by the Kansas department of labor, division of industrial safety and health upon initial installation and relocation.

(d) (1) Each permanent storage container that has sustained structural damage shall be inspected and approved for use by the Kansas department of labor, division of industrial safety and health.

(2) Each mobile container that has sustained any structural damage shall be inspected and approved for use by a national board inspector.

(3) Structural damage shall include evidence of any of the following:

(A) Corrosion;

(B) any indentation or abrasion that meets any of the following conditions:

(i) Is over one-half inch deep and includes a weld;

(ii) is deeper than 1/10th of the greatest length of the dent but does not include a weld; or

(iii) is deeper than one inch;

(C) stretching;

(D) cracking;

(E) faulty welds;

(F) non-code welding;

(G) faulty couplings; or

(H) any other similar condition.

(e) All repairs and alterations of permanent and mobile containers shall meet the requirements of the code and shall be performed by a person or company that has a current certificate of authorization from the national board of boiler and pressure vessel inspections.

(f) Non-code welding shall be performed only on saddles or brackets that are not within the pressure-retaining boundaries of the container.

(g) All records of inspections and welding on the container shall meet the following requirements:

(1) Be maintained by the owner of the container;

(2) be made available to the secretary upon request; and

(3) be transferred with change of ownership of the container. (Authorized by and implementing K.S.A. 2-1212; effective March 12, 2010.)

4-10-4b. Markings on containers and systems. (a) Except as provided by K.A.R. 4-10-4a(b) and 4-10-4b(b), each container shall have a data plate, or manufacturer's equivalent stamping, that is permanently attached to the container in a location that is both legible and readily accessible for inspection.

(b) A mobile container that does not have a legible data plate or equivalent stamping may be allowed for ammonia use only if the container is properly tested, registered, and marked under USDOT exemption # DOT-SP13554.

(c) Each shutoff valve within a system shall be identified to show whether the valve is in liquid or vapor service. The method of identification may be by color code or by use of the word "vapor" or "liquid" placed within 12 inches of the valve by means of a stencil, tag, or decal.

(d) All container surfaces shall be maintained to avoid deterioration. Surfaces that require paint shall be painted white.

(e) Each permanent storage container or group of permanent storage containers shall be marked with the following:

(1) Letters at least four inches high, on at least two sides, with the words "CAUTION AMMONIA" or "ANHYDROUS AMMONIA," in a color that contrasts with the color of the container; and

(2) a national fire protection association diamond for anhydrous ammonia placed in a location that would be readily visible to emergency responders.

(f) Each mobile container shall be marked with the following, using a color that contrasts with the color of the container and letters at least two inches high:

(1) The words "ANHYDROUS AMMONIA" or "Anhydrous Ammonia" on both sides and on the rear of the container; and

(2) the words "INHALATION HAZARD" or "Inhalation Hazard" on two opposing sides of the container.

(g) In addition to the markings required in subsection (f), the following information shall appear on each implement of husbandry:

(1) The owner's name;

(2) the address of the owner's place of business;

(3) a telephone number to be contacted in case of an emergency;

(4) an alphabetical or numerical identification symbol; and

(5) a decal containing the following information:

(A) "CAUTION ANHYDROUS AMMONIA (UNDER PRESSURE) READ CAREFULLY";

(B) "Keep away from pop-off valve marked ↑. This is a safety device and shall not be tampered with or adjusted";

(C) "Stand upwind when working around equipment";

(D) "Wear goggles and rubber gloves when transferring product and bleeding hoses";

(E) "Do not fill tank in excess of 85% full";

(F) "Never place any part of body in line with valve or hose openings. Use extreme care in handling hoses. Never lift a hose by the valve wheel";

(G) "Slowly bleed hoses after transferring product";

(H) "Close valves firmly but do not wrench";

(I) "Do not permit children near this equipment";

(J) "Park equipment away from buildings or any possible fire hazards. Never allow tanks to be subjected to extreme heat";

(K) "Do not attempt any repairs of this equipment. In event of any failure, call your dealer immediately"; and

(L) "Do not operate this equipment until you have received instructions from your dealer." (Authorized by and implementing K.S.A. 2-1212; effective March 12, 2010.)

4-10-4c. Permanent storage facility design and permanent storage container location. (a) Before installing or relocating a permanent storage container or permanent storage facility, the owner may submit to the secretary a detailed diagram of the permanent storage facility for review or request a preliminary site survey to ensure that the proposed site meets the requirements in subsections (c), (d), (e), and (f).

(b) The name of the permanent storage facility

and the telephone number to be contacted in case of an emergency shall be posted and be legible from each facility entrance using letters at least two inches high.

(c) No permanent storage container shall be located inside an enclosed structure unless the structure is specifically constructed for this purpose.

(d) The nearest edge of the nearest permanent storage container shall be located at a distance meeting the following conditions:

(1) At least 50 feet from the edge of any property not owned or leased by the permanent storage facility;

(2) at least 50 feet from a well or other point of diversion used as a source of drinking water;

(3) at least 50 feet from storage locations of flammables or explosives;

(4) at least 1,000 feet from the area accessible to the public of any public assembly area, as defined in K.A.R. 4-10-1; and

(5) not on or less than 100 feet from the surface of a public roadway.

(e) The site of the permanent storage facility shall be located on property of sufficient size to permit traffic in and out of the area and allow adequate access for emergency personnel.

(f) Each new permanent storage container or permanent storage facility shall be located outside of a municipality or other densely populated areas, unless the location has been approved in writing by the appropriate local governing body. The owner or operator of each permanent storage container located in a municipality or densely populated area shall obtain written approval from the appropriate local governing body before relocating the permanent storage facility or installing additional permanent storage containers within the municipality or densely populated area.

(g) (1) Each permanent storage container shall be mounted on either of the following:

(A) A skid assembly with sufficient surface area to properly support the skid-mounted container; or

(B) either reinforced concrete footings and foundations or structural steel supports mounted on reinforced concrete foundations. The reinforced concrete foundations or footings shall extend below the established frost line and shall be constructed to support the total weight of the containers and their contents. If the container is equipped with bottom withdrawal, the container's foundation shall maintain the lowest point of the container at not less than 18 inches above ground level.

(2) Each container shall be mounted on its foundation in a manner that permits expansion and contraction. Each container shall be adequately supported so as to prevent the concentration of excessive loads on the supporting portion of the shell. Corrosion prevention measures shall be utilized on any portion of the container that is in contact with either the foundation or saddles.

(3) Each container shall be securely anchored.

(h) All appurtances to any permanent storage container shall be protected from tampering and mechanical damage, including damage from vehicles. Each manually controlled valve that, if open, would allow ammonia to be transferred or released, shall be kept locked when unattended and during nonbusiness hours. (Authorized by and implementing K.S.A. 2-1212; effective March 12, 2010.)

4-10-4d. Pressure-relief valves. (a) Each container or system of containers shall have liquid and vapor pressure-relief valves to prevent pressure build-up in any portion of the system. Each pressure-relief valve shall be manufactured for use with anhydrous ammonia and be installed, maintained, and replaced according to the manufacturer's instructions.

(b) Each vapor-relief valve shall be set to indicate discharge at a pressure of not less than 95 percent, and not more than 100 percent, of the design pressure of the container to which the vapor-relief valve is attached. Each vapor-relief valve shall be constructed to completely discharge before the pressure exceeds 120 percent of the design pressure of the container to which the vapor-relief valve is attached.

(c) Pressure-relief valves shall not exhaust within or beneath any building or other confined area.

(d) Each pressure-relief valve discharge opening shall have a suitable rain cap or other device that allows free discharge of the vapor and prevents the entrance of water.

(e) Each pressure-relief valve shall be replaced if the valve meets any of the following conditions:

(1) Fails to meet applicable requirements;

(2) shows evidence of damage, corrosion, or foreign matter; and

(3) does not have functional weep holes that permit moisture to escape.

(f) The discharge from each pressure-relief

valve shall be vented according to one of the following:

(1) For vapor-relief valves, upward and away from where people could be located. The discharge shall flow in an unobstructed manner into the open air from a height of at least seven feet above the working area;

(2) for liquid-relief valves, downward with the opening positioned between six and 18 inches from the ground; or

(3) in any other manner that has been approved by the secretary or an authorized representative of the secretary.

(g) (1) Vent pipes or tubing used to channel releases from pressure-relief valves shall not be restricted or smaller in size than the pressure-relief valve outlet connection.

(2) Vent pipes may be connected and channeled into a common header if the cross-sectional area of the header is at least equal to the sum of the cross-sectional areas of each of the individual vent pipes.

(3) Unless a vent is directed toward the ground and rain will not be able to enter, each pressure-relief valve discharge opening shall have a rain cap.

(4) If moisture accumulation could occur in a vent, suitable provision shall be made to drain the moisture from the vent. (Authorized by and implementing K.S.A. 2-1212; effective March 12, 2010.)

4-10-4e. Hose specifications. (a) Each hose with a diameter of at least ½ inch used in ammonia service and subject to container pressure shall withstand at least 350 psig and shall have the following information etched, cast, or impressed in a legible format at intervals not to exceed five feet along the hose surface:

(1) The phrase "Anhydrous Ammonia";

(2) the maximum working pressure of the hose; and

(3) the date the hose is to be removed from service.

(b) Each hose shall meet or exceed ASME schedule 80 specifications and have factory-installed ends designed for use with anhydrous ammonia.

(c) Each hose shall be replaced before or upon the expiration of the manufacturer's removal date.

(d) A hose shall be removed from service if a visual examination reveals any of the following:

(1) Illegibility of any of the markings required in subsection (a);

(2) cuts exposing reinforcing fabric;

(3) soft spots or bulges in the hose;

(4) a blistering or loose outer covering;

(5) kinking or flattening;

(6) stretch marks;

(7) slippage at any coupling; or

(8) any other damage that could compromise the integrity of the safe use of the hose. (Authorized by and implementing K.S.A. 2-1212; effective March 12, 2010.)

4-10-4f. Gauging devices. (a) Each container, except any container filled by weight, shall be equipped with a liquid-level gauging device designed for use with anhydrous ammonia and installed according to the manufacturer's instructions.

(b) Each gauging device shall be arranged so that the maximum liquid level to which the container may be filled is readily determinable.

(c) Each container shall be equipped with a fully operational pressure-indicating gauge with a dial graduated from 0-400 psig.

(d) Each gauging device shall have a design pressure at least equal to the design pressure of the container on which the device is used.

(e) Each device used to weigh or measure anhydrous ammonia shall meet all of the requirements of weighing and measuring devices in K.S.A. 83-201 et seq., and amendments thereto, and any implementing regulations adopted by the secretary. (Authorized by and implementing K.S.A. 2-1212; effective March 12, 2010.)

4-10-5a. Tank trucks and semitrailers used for transport for infield delivery. Tank trucks and semitrailers used to transport anhydrous ammonia may be used to fill an implement of husbandry with a capacity of 20,000 pounds or more. These trucks and semitrailers shall be exempt from the requirements in K.A.R. 4-10-6b if the following requirements are met: (a) The tank truck or the semitrailer transferring the anhydrous ammonia or the implement of husbandry shall carry at least 100 gallons of water for whole-person rinsing if exposure to anhydrous ammonia occurs.

(1) The water shall be clearly identified for safety use and be readily accessible.

(2) The water shall be visibly clean, free of debris, and maintained in a liquid state.

(b) When an implement of husbandry is being

loaded, at least 100 gallons of water shall be present at the delivery site for the venting of anhydrous ammonia and shall be used in accordance with K.A.R. 4-10-6a(k). This water shall be separate from the water specified in subsection (a) and shall be maintained in a liquid state.

(c) Any tank truck, semitrailer, and implement of husbandry subject to this regulation may be inspected by the department of agriculture.

(d) Each tank truck, semitrailer, and implement of husbandry subject to this regulation shall meet all requirements of this regulation before loading, transporting, or off-loading anhydrous ammonia.

(e) During the transfer of anhydrous ammonia, the nearest edge of the nearest vehicle, tank, and hose involved with the transfer shall be located according to the following:

(1) At least 50 feet from the edge of any property not owned or leased by the owner or operator of the permanent storage facility;

(2) at least 50 feet from any well or other point of diversion used as a source of drinking water;

(3) at least 50 feet from storage locations of flammables or explosives;

(4) at least 500 feet from the area accessible to the public within any public assembly area as defined in K.A.R. 4-10-1; and

(5) at least 50 feet from the surface of a public roadway. (Authorized by and implementing K.S.A. 2-1212; effective April 13, 2001; amended March 12, 2010.)

4-10-6. (Authorized by and implementing K.S.A. 2-1212; effective Jan. 1, 1966; amended Jan. 1, 1971; amended Jan. 1, 1973; amended May 1, 1986; revoked March 12, 2010.)

4-10-6a. Transfers. (a) Transfer to a permanent storage container shall be made only to a system displaying a current KDA-issued proof-of-inspection seal.

(b) Each container filled according to liquid level by any gauging method, other than a 85 percent fixed-length dip tube gauge, shall have a thermometer well and functional thermometer so that the internal liquid temperature can be easily determined and the amount of liquid in the container can be easily corrected to the volume the liquid would occupy at 60° F.

(c) A transfer shall not exceed one of the following:

(1) 85 percent of the container's capacity by volume; or

(2) 56 percent filling density for permanent storage containers or 54 percent filling density for implements of husbandry.

(d) The amount of anhydrous ammonia transferred shall be measured by one of the following:

(1) Weight;

(2) a liquid-level gauging device; or

(3) a flowmeter.

(e) Flammable gases, or gases that will react with anhydrous ammonia including air, shall not be used to transfer anhydrous ammonia.

(f) At least one attendant shall be present to monitor and control each transfer of anhydrous ammonia.

(g) Loading and unloading systems shall be protected to prevent a release if the transfer hose is severed.

(h) Each transfer shall occur only in the open air unless the transfer occurs within a structure specifically constructed for that purpose.

(i) (1) Only pumps and compressors designed for use with anhydrous ammonia shall be used.

(2) Liquid pumps and vapor compressors shall be designed for 250 psig working pressure.

(3) The pressure-actuated bypass valve and return piping shall be installed in accordance with the pump manufacturer's instructions.

(4) Each vapor compressor and liquid pump shall have an operational pressure gauge graduated from 0-400 psig at the inlet and at the outlet.

(5) Shutoff valves shall be installed within three feet of the inlet of a liquid pump and within two feet of the discharge. With vapor compressors, the shutoff valves shall be located as close as is practical to the compressor connections.

(j) The piping used to transfer anhydrous ammonia from a tractor trailer or railroad tank car into a permanent storage container shall be equipped with an excess flow valve and backflow pressure valve, which shall be located as close as practical to where the piping connects with the transfer hose.

(k) (1) During the removal of anhydrous ammonia from a transfer hose, the anhydrous ammonia shall be vented into an adequate supply of water.

(2) For purposes of this regulation, an adequate supply of water shall mean at least five gallons of nonammoniated water for each gallon of liquid ammonia or fraction of a gallon that could be contained in the hose. (Authorized by and implementing K.S.A. 2-1212; effective March 12, 2010.)

4-10-6b. Transfers; tank cars and trans-

port trucks; additional requirements. In addition to the transfer requirements in K.A.R. 4-10-6a, each transfer from a tank car or transport truck shall meet the following requirements:

(a) Except when loading into implements of husbandry or reactor units, tank cars and transport trucks shall be unloaded only through a permanently installed loading point and into a permanent storage container.

(b) A sign reading "Stop—Tank Car Connected" shall be displayed at the active end or ends of the siding while the tank car is connected for unloading.

(c) While tank cars are on a side track for unloading, the wheels at both ends shall be blocked on the rails. (Authorized by and implementing K.S.A. 2-1212; effective March 12, 2010.)

4-10-7. Implements of husbandry. In addition to the container requirements in K.A.R. 4-10-2e, 4-10-4a, 4-10-4b, 4-10-4d through 4-10-4f, and 4-10-6a, each system that is mounted on an implement of husbandry and is used for the transport of anhydrous ammonia shall meet the following requirements:

(a)(1) A stop or stops shall be attached to either the vehicle or the container to prevent the container from being dislodged from its mounting if the vehicle stops suddenly.

(2) A hold-down device shall anchor the container to the vehicle at one or more places on each side of the container.

(3) Each container mounted on a four-wheel trailer shall have the container's weight distributed evenly over both axles.

(4) If the cradle and the tank are not welded together, material shall be used between the cradle and the tank to eliminate metal-to-metal friction.

(b)(1) Each connection and appurtenance shall be protected from physical damage.

(2) A hose and connection installed in the bottom of a container shall not be lower than the lowest horizontal edge of the vehicle axle.

(3) The entire length of each hose shall be secured during transit in a manner that prevents damage to any portion of the hose or to the connections.

(4) When each hose is removed, the fittings shall be capped to prevent the accidental discharge of ammonia.

(c) Each implement of husbandry used for transportation shall meet the following requirements:

(1) Be securely attached to the pulling vehicle by use of a hitch pin or ball of proper size for the weight pulled. The hitch pin or ball shall be supplemented by two welded safety chains. Links of the safety chains shall be made of steel and shall have a breaking strength that exceeds the gross weight of the implement to which the chains are attached;

(2) be constructed, maintained, and utilized so as to follow in the path of the pulling vehicle and not swerve from side to side while being towed;

(3) be pulled at a speed not faster than is reasonable and safe under existing conditions;

(4) not be parked on any public street or other thoroughfare except in an emergency; and

(5) be equipped with at least five gallons of unfrozen and readily accessible water during the transport, transfer, or use of anhydrous ammonia, for use if exposure to anhydrous ammonia occurs.

(d) When any implement of husbandry is pulled on a public roadway, the following requirements shall be met:

(1) Each implement of husbandry with a capacity greater than 1,000 gallons shall be pulled as a single unit.

(2) When two implements of husbandry are pulled, the total capacity pulled shall be limited to not more than 2,000 gallons.

(3) No more than two implements of husbandry shall be pulled at the same time by the pulling vehicle. (Authorized by and implementing K.S.A. 2-1212; effective Jan. 1, 1966; amended Jan. 1, 1971; amended Jan. 1, 1973; amended May 1, 1986; amended March 12, 2010.)

4-10-10. Safety. (a) The following personal safety equipment shall be available for use at each permanent storage facility and reactor unit when anhydrous ammonia is being transferred and when maintenance is being conducted on a system:

(1) A NIOSH-approved respirator that covers the entire face and has current ammonia canisters with intact seals;

(2) one pair of protective gloves made of rubber or any other material impervious to anhydrous ammonia;

(3) one pair of protective boots made of rubber or any other material impervious to anhydrous ammonia;

(4) one protective suit made of rubber or any other material impervious to anhydrous ammonia;

(5) a shower or at least 100 gallons of clean water to be used as safety water; and

(6) a pair of chemical-splash goggles.

(b) During each transfer, the attendant shall wear the personal protective equipment specified in paragraphs (a)(2) and (a)(6), at a minimum.

(c) An area of at least 10 feet around any container or system shall be kept free of combustibles. (Authorized by and implementing K.S.A. 2-1212; effective March 12, 2010.)

4-10-15. (Authorized by and implementing K.S.A. 2-1212; effective May 1, 1987; amended May 1, 1988; revoked March 12, 2010.)

4-10-16. Reactor units. (a) Each reactor unit shall operate only at a site that meets the following requirements:

(1) The nearest edge of the reactor unit shall be located at a distance in accordance with the following requirements:

(A) At least 50 feet from the edge of any property not owned or leased by the owner or operator of the permanent storage facility;

(B) at least 50 feet from any well or other point of diversion used as a source of drinking water;

(C) at least 50 feet from storage locations of flammables or explosives;

(D) at least 500 feet from any area accessible to the public as defined in K.A.R. 4-10-1; and

(E) not on or less than 50 feet from the surface of a public roadway.

(2) Each reactor unit shall be operated outside of municipalities or other densely populated areas unless the location has been approved in writing by the appropriate local governing body.

(b) During the transfer of anhydrous ammonia from railroad tank cars or transport trucks to a reactor unit for the manufacture of ammoniated solutions, the portable reactor unit shall be equipped with the following safety devices:

(1) Remote-controlled shutoff devices located on the tank car connection immediately preceding the hose attachment and on the discharge side of the pump; and

(2) a backflow check valve in the inlet line to the reactor unit.

(c) When anhydrous ammonia is transported to a stationary reactor unit in an implement of husbandry, the implement of husbandry shall be equipped with the following:

(1) A manually operated remote-controlled shutoff device on the discharge valve immediately preceding any hose attachments; and

(2) a backflow check valve installed in the rigid piping leading to the reactor unit at the point of connection for the transfer hose.

(d) The implement of husbandry shall be monitored at all times during the reacting process.

(e) The transfer hose shall be disconnected from the reactor unit when the reactor unit is not in operation.

(f) The required air-operated or manually operated remote-controlled shutoff device shall be tested before each production run of ammoniated solutions. (Authorized by and implementing K.S.A. 2-1212; effective May 1, 1986; amended May 1, 1988; amended Jan. 1, 1989; amended March 12, 2010.)

4-10-17. (Authorized by and implementing K.S.A. 2-1212; effective May 1, 1988; revoked March 12, 2010.)

Article 13.—PESTICIDES

4-13-2. Pesticide business license application. Each application for issuance or renewal of a business license shall provide the following information in addition to that required by K.S.A. 2-2440 (b) (1) through (3), and amendments thereto: (a) The home address and birth date of each owner, officer, representative, and any resident agent;

(b) the name of any other state in which the applicant holds or has held a pesticide business license within the last five years and a list of any such license that has been denied, modified, revoked, suspended, or surrendered;

(c) for each business location serving Kansas, the business name and street address of the business and the name of the certified applicator or other person responsible for pesticide business activity at that location. "Business location" shall include all locations where records of application are maintained, where application equipment and pesticide materials are stored, and from which customers are served;

(d) the name of each certified commercial applicator serving the applicant, for each business location;

(e) the name, home address, birth date, and driver's license number of each non-certified employee who applies pesticides for the applicant. If the applicant's uncertified commercial applicator does not have a driver's license, then the number

assigned to any federal or state government-issued identification card shall be provided for that employee;

(f) the categories and subcategories in which the applicant business will operate;

(g) the signature and title of the applicant or authorized representative; and

(h) the date of submission of the application. (Authorized by and implementing K.S.A. 2008 Supp. 2-2440, as amended by L. 2009, Ch. 128, §11, and K.S.A. 2-2467a; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended July 18, 2003; amended Feb. 5, 2010.)

4-13-3. Categories and subcategories of qualification for the licensing of pesticide businesses and certification of commercial applicators. (a) The categories and subcategories of qualification for licensing of pesticide businesses and certification of commercial applicators shall include the following:

(1) Category 1: agricultural pest control. This category shall include any commercial application of pesticide in the production of agricultural plants or animals.

(A) Subcategory 1A: agricultural plant pest control. This subcategory shall include any commercial application of pesticide on grasslands and noncrop agricultural lands, and in the production of agricultural crops, including tobacco, peanuts, cotton, feed grains, soybeans and forage, vegetables, small fruits, tree fruits, and nuts.

(B) Subcategory 1B: agricultural animal pest control. This subcategory shall include any commercial application of pesticide to places on, or in which, animals are confined and on animals, including beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock. This subcategory shall include any doctor of veterinary medicine who applies pesticides for hire, engages in the large-scale use of pesticides, or is publicly held out as a pesticide applicator.

(C) Subcategory 1C: wildlife damage control. This subcategory shall include any commercial application of pesticide for the management and control of wildlife in rangeland and agricultural areas. Wildlife shall mean nondomesticated vertebrate species that hinder agricultural and rangeland production.

(D) Subcategory 1D: stump treatment. This subcategory shall be limited to the commercial application of pesticide for the treatment of cut stumps to control resprouting in pastures, rangeland, or lands held in conservation reserve. Nothing in this subcategory shall prohibit stump treatment by pesticide businesses and commercial applicators in other categories and subcategories that include pesticide application to cut stumps.

(2) Category 2: forest pest control. This category shall include any commercial application of pesticide in forests, forest nurseries, and forest seed-producing areas.

(3) Category 3: ornamental and turf pest control. This category shall include any commercial application of pesticide in the maintenance of ornamental trees, shrubs, flowers, and turf.

(A) Subcategory 3A: ornamental pest control. This subcategory shall include any commercial application of pesticide to control pests in the maintenance and production of ornamental trees, shrubs, and flowers. This subcategory shall not include those pests included in subcategory 3C.

(B) Subcategory 3B: turf pest control. This subcategory shall include any commercial application of pesticide to control pests in the maintenance and production of turf.

(C) Subcategory 3C: interior landscape pest control. This subcategory shall include any commercial application of pesticide to control pests in the production and maintenance of houseplants and other indoor ornamental plants kept or located within structures occupied by humans, including houses, apartments, offices, shopping malls, and other places of business and dwelling places.

(4) Category 4: seed treatment. This category shall include any commercial application of pesticide on seeds.

(5) Category 5: aquatic pest control. This category shall include any commercial application of pesticide to standing or running water. Applicators engaged in public health pest control and health-related pest control activities shall be excluded.

Subcategory 5S: sewer root control. This subcategory shall be limited to any commercial application of pesticide for the control of roots in sewer lines and septic systems.

(6) Category 6: right-of-way pest control. This category shall include any commercial application of pesticide to control vegetation in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way, industrial sites, parking lots, or other similar areas.

(A) This category shall include the types of

commercial pesticide application specified in subcategory 7C.

(B) This category shall not include those types of commercial pesticide application specified in paragraph (a)(9).

(7) Category 7: industrial, institutional, structural, and health-related pest control.

(A) This category shall include any commercial application of pesticide for the protection of stored, processed, or manufactured products. This category shall also include any commercial application of pesticide in, on, or around the following:

(i) Food handling establishments, human dwellings, institutions including schools and hospitals, and any other similar structures and the areas immediately adjacent to those structures; and

(ii) industrial establishments including warehouses, grain elevators, food processing plants, and any other related structures and adjacent areas.

(B) Subcategory 7A: wood-destroying pest control. This subcategory shall include any commercial application of pesticide in the control of termites, powder post beetles, wood borers, wood rot fungus, and any other wood-destroying pest.

(C) Subcategory 7B: stored products pest control. This subcategory shall include any commercial application of pesticide for the control of pests in stored grain and food products.

(D) Subcategory 7C: industrial weed control. This subcategory shall include any commercial application of pesticide for the control of pest weeds.

(E) Subcategory 7D: health-related pest control. This subcategory shall include any commercial application of pesticide in health programs for the management and control of terrestrial and aquatic pests having medical or public health significance.

(F) Subcategory 7E: structural pest control. This subcategory shall include any commercial application of pesticide in a structure for the control of any pest not covered in subcategories 7A and 7B.

(G) Subcategory 7F: wood preservation and wood products treatment. This subcategory shall include any commercial application of pesticide made to extend the life of wooden poles, posts, crossties, and other wood products to preserve or protect them from damage by insects, fungi, marine organisms, weather deterioration, or other wood-destroying agents.

(8) Category 8: public health pest control. This category shall apply to qualification for commercial certification of employees of government agencies, including state, federal, and other governmental agencies, who apply or supervise the application of a restricted-use pesticide for the management and control of terrestrial and aquatic pests having medical or public health significance.

(9) Category 9: regulatory pest control. This category shall apply to qualification for commercial certification of employees of government agencies, including state, federal, and other governmental agencies, who apply or supervise the application of a restricted-use pesticide in the control of federally regulated and state-regulated pests.

(A) Subcategory 9A: noxious weed control. This subcategory shall include qualification for commercial certification of employees of state, federal, and other governmental agencies who use or supervise the use of a restricted-use pesticide in the control of weed pests regulated under the Kansas noxious weed law.

(B) Subcategory 9B: regulated pest control. This subcategory shall include qualification for commercial certification of employees of state, federal, and other governmental agencies who use or supervise the use of a restricted-use pesticide in the control of federally regulated or state-regulated pests not covered in subcategory 9A.

(10)(A) Category 10: demonstration and research pest control. This category shall include the following:

(i) Those persons who demonstrate to the public the proper techniques for application and use of restricted-use pesticides or who supervise such a demonstration. These persons shall include extension specialists, county agents, commercial representatives who demonstrate pesticide products, and persons who demonstrate, in public programs, methods of pesticide use;

(ii) those persons who use or supervise the use of restricted-use pesticides in conducting field research that involves the use of pesticides. These persons shall include state, federal, and commercial employees and other persons who conduct field research regarding or utilizing restricted-use pesticides; and

(iii) qualified laboratory personnel using restricted-use pesticides while engaged in pesticide research in areas where environmental factors beyond the control of laboratory personnel, including wind, rain, and similar factors, can affect the

safe use of the pesticide or can cause the pesticide to have an adverse impact on the environment.

(B) The persons listed in paragraphs (a)(10)(A)(ii) and (iii) shall not be considered exempt from certification under the provisions of K.S.A. 2-2441a(d) and amendments thereto.

(b) Each pesticide business shall be licensed in all categories in which the pesticide business makes commercial pesticide applications and shall employ one or more persons who maintain commercial certification in each subcategory in which the pesticide business makes commercial pesticide applications.

(c) Each state, federal, and other governmental agency shall be registered in all categories and subcategories in which the agency makes commercial pesticide applications. (Authorized by K.S.A. 2008 Supp. 2-2440, as amended by L. 2009, Ch. 128, §11, and K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2444a and K.S.A. 2-2467a; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended Feb. 29, 2008; amended Feb. 5, 2010.)

4-13-9. Report of address, name, or personnel change by business. (a) Each pesticide business licensee shall provide the secretary with written notification of any modification or change to the initial application regarding the business address or business name and of any change in service personnel involved in the application of pesticides. Each notification shall be provided within 30 days of the modification or change made by the pesticide business licensee. Notification shall be required for the following:

(1) Hiring or terminating, or both, any employees involved in the application of pesticides;

(2) making any change in certification or technician status, or both; and

(3) making any change in the manager, operator, authorized representative, or resident agent.

(b) The pesticide business licensee shall submit with each such notification the required $15.00 fee for each previously unreported uncertified individual employed to apply pesticides for a total of more than 10 days or for a period of five or more consecutive days during any 30-day period.

(c) Each notification shall include the full name, home address, birth date, and social security number of each applicator of pesticides listed who is a certified applicator or a registered pest control technician.

(d) Each notification shall also include the full name, home address, birth date, and driver's license number of each applicator of pesticides listed who is not a certified commercial applicator of pesticides or a registered pest control technician.

(e) The $15.00 fee shall revert to $10.00 on and after July 1, 2015, unless this date is modified by statute. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2440, as amended by L. 2009, Ch. 128, §11; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended, T-88-46, Nov. 10, 1987; amended May 1, 1988; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended Feb. 29, 2008; amended Feb. 5, 2010.)

4-13-14. Private applicator examination. Initial examinations for certified private applicators shall be taken in the presence of a representative of the Kansas department of agriculture or the Kansas state university extension service. Each applicant for this certification shall be required to answer at least 75% of the questions correctly to pass the examination.

Examinations for private applicator certification shall test the applicant's knowledge in those subject areas specified in K.S.A. 2-2445, and amendments thereto, involving pest control practices associated with the applicant's agricultural operation and the applicant's legal responsibility as a certified applicator of restricted pesticides. Each applicant shall be tested to determine the applicant's ability to meet the following requirements:

(a) Recognize common pests to be controlled and damage caused by them;

(b) read and understand the label and labeling information, including the common name of the pesticide applied, pest or pests to be controlled, timing and methods of application, safety precautions, any preharvest reentry restrictions, and any specific disposal procedures;

(c) apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation;

(d) recognize local environmental situations that must be considered during application to avoid contamination;

(e) recognize poisoning symptoms and procedures to follow in case of a pesticide accident; and

(f) understand federal and state supervisory requirements, including labeling, that must be met by a certified private applicator in supervising the non-certified application of restricted pesticides. These supervisory requirements shall include verifiable instruction of the applicator, availability during application, and any added restrictions that may be imposed for specific pesticides through labeling. These restrictions may include the required physical presence of the supervising applicator during the application. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2445a, as amended by L. 2009, Ch. 128, §18; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended May 1, 1988; amended Feb. 5, 2010.)

4-13-16. Supervision of uncertified applicators. (a) An uncertified commercial applicator of any pesticide and an uncertified private applicator of restricted-use pesticides shall be considered to be under the supervision of a certified applicator if the certified applicator has provided the uncertified applicator with instructions in the handling and application of the pesticide being used.

(b) The certified applicator shall be available to the uncertified applicator by telephone, two-way radio, or other comparable means of communication when the pesticide is being applied.

(c) The certified applicator shall be physically present if that person's presence is required by the pesticide label.

(d) The certified applicator shall verify that the requirements of this regulation were met when requested to do so by the secretary or the secretary's authorized representative.

(e) An uncertified applicator of pesticides, including registered pest control technicians, shall be considered to be under the supervision of a certified commercial applicator only if both individuals are stationed at and work from the same business address. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2441a, as amended by L. 2009, Ch. 128, §16; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended, T-88-46, Nov. 10, 1987; amended May 1, 1988; amended Feb. 5, 2010.)

4-13-17. Report of address change by certified applicators. Each certified commercial applicator shall notify the secretary of any change in that applicator's mailing address within 30 days of the change. (Authorized by and implementing K.S.A. 2-2467a; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended Feb. 5, 2010.)

4-13-18. Disposal of pesticides and containers. Any amount of unused pesticide and each empty pesticide container shall be stored in the same manner as the pesticide involved until the unused pesticide or empty container is disposed of in a manner consistent with technology current at the time of disposal. Questions regarding the latest technology shall be submitted to any of the following: (a) The Kansas department of agriculture;

(b) Kansas state university extension service;

(c) Kansas department of health and environment; or

(d) the United States environmental protection agency. (Authorized by and implementing K.S.A. 2-2467a; effective, E-78-26, Sept. 7, 1977; effective May 1, 1978; amended Feb. 5, 2010.)

4-13-20. Pesticide business license, renewal, and uncertified commercial applicator fees. The application fee for a pesticide business license or for the renewal of a pesticide business license shall be $140.00 for each category in which the applicant applies for a pesticide business license or renewal of that license. An additional fee of $15.00 for each uncertified commercial applicator employed by the applicant to apply pesticides shall also be paid. This regulation shall apply to all pesticide business licenses, or renewals of these licenses, that will be effective through June 30, 2015, regardless of when the application is received by the agency.

The $140.00 pesticide business license fee shall revert to $112.00 on and after July 1, 2015, unless this date is modified by statute. The $15.00 uncertified commercial applicator shall revert to $10.00 on and after July 1, 2015, unless this date is modified by statute. (Authorized by K.S.A. 2008 Supp. 2-2440, as amended by L. 2009, Ch. 128, §11, and K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2440, as amended by L. 2009, Ch. 128, §11; effective, T-83-36, Nov. 10, 1982; effective May 1, 1983; amended, T-88-46, Nov. 10, 1987; amended May 1, 1988; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended Feb. 29, 2008; amended Feb. 5, 2010.)

4-13-21. Government agency registration and renewal fees. The application fee for a

government agency registration shall be $50.00. This regulation shall apply to all government agency registrations, or renewals of these registrations, effective through June 30, 2015, regardless of when the agency receives the application. The $50.00 government agency registration fee shall revert to $35.00 on and after July 1, 2015, unless this date is modified by statute. (Authorized by K.S.A. 2008 Supp. 2-2440, as amended by L. 2009, Ch. 128, §11, and K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2440, as amended by L. 2009, Ch. 128, §11; effective, T-83-36, Nov. 10, 1982; effective May 1, 1983; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended Feb. 29, 2008; amended Feb. 5, 2010.)

4-13-22. (Authorized by K.S.A. 2006 Supp. 2-2441a and K.S.A. 2-2467a; implementing K.S.A. 2006 Supp. 2-2441a; effective, T-83-36, Nov. 10, 1982; effective May 1, 1983; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended Feb. 29, 2008; revoked Feb. 5, 2010.)

4-13-23. Examination fees. The examination fee for a commercial applicator's certificate shall be $45.00 through June 30, 2015, for each category, subcategory, and general core examination taken. The fee shall also apply if the applicant seeks reexamination. The $45.00 examination fee shall revert to $35.00 on and after July 1, 2015, unless this date is modified by statute. (Authorized by K.S.A. 2008 Supp. 2-2443a, as amended by L. 2009, Ch. 128, §17, and K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2443a, as amended by L. 2009, Ch. 128, §17; effective, T-83-36, Nov. 10, 1982; effective May 1, 1983; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended Feb. 29, 2008; amended Feb. 5, 2010.)

4-13-24. Certified private applicator's certificate fee. The certified private applicator's certificate fee shall be $25.00. This regulation shall apply to certified private applicator certificates that will be effective through June 30, 2015, regardless of when the department receives the application. The $25.00 certified private applicator's certificate fee shall revert to $10.00 on and after July 1, 2015, unless this date is modified by statute. (Authorized by K.S.A. 2008 Supp. 2-2445a, as amended by L. 2009, Ch. 128, §18, and K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2445a, as amended by L. 2009, Ch. 128, §18; effective, T-83-36, Nov. 10, 1982; effective May 1, 1983; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended Feb. 29, 2008; amended Feb. 5, 2010.)

4-13-25. Bulk pesticide storage and handling of pesticides; definitions. As used in K.A.R. 4-13-25 through 4-13-25m, the following terms shall be defined as follows:

(a) "Appurtenance" means any valve, pump, fitting, pipe, hose, auger, metering device, and dispensing device connected to a storage container. "Dispensing device" shall include any device that is used to transfer bulk pesticides into or out of a container.

(b) "Bulk pesticide" means any pesticide, whether liquid or solid, that is kept at ambient temperature and pressure and is stored, loaded, or unloaded in an individual container of undivided capacity in quantities identified in K.A.R. 4-13-25b.

(c) "Bulk pesticide container" means any receptacle or device in which a pesticide is stored, mixed, treated, disposed of, or handled in any manner in quantities greater than 55 gallons liquid measure or quantities greater than 100 pounds net dry weight.

(d) "Bulk pesticide storage facility" and "facility" mean any warehouse, loading pad, or other area where a bulk pesticide is stored, mixed, loaded, or unloaded, unless otherwise exempted. Each bulk pesticide storage facility located within 300 feet of another facility owned or operated by the same person shall be considered the same facility for the purpose of finding the number of consecutive days in storage and determining whether the facility is exempt from the requirements of K.A.R. 4-13-25 through K.A.R. 4-13-25m.

(e) "Chemically compatible" means that the material will not react chemically adversely or electrolytically adversely to the bulk pesticide being stored, loaded, unloaded, mixed, or handled.

(f) "Discharge" means any spilling, leaking, depositing, pumping, dumping, or emptying, whether accidental or intentional, resulting in the release of a pesticide or material containing a pesticide at a bulk pesticide storage facility. "Discharge" shall not include the lawful transferring, loading, unloading, repackaging, refilling, distributing, using, disposing, or application of a pesticide. This term shall also exclude the normal washing and rinsing activities on a mixing and loading pad.

(g) "Dry bulk pesticide" means any bulk pesticide that is in solid form before any end-use application or before any mixing for end-use application. This term shall include making formulations including dusts, powders, and granules.

(h) "End-use application" means the application of a pesticide by the owner or lessee of the real property upon which the application is made to control a pest covered by the pesticide label.

(i) "Flood plain" means an area at one percent or greater risk of flood occurrence in any given year.

(j) "Gallon" means the United States standard measure of a gallon.

(k) "Liquid bulk pesticide" means any bulk pesticide in liquid form before dilution for end-use application. This term shall include solutions, emulsions, suspensions, slurries, and gels.

(l) "Mixing and loading pad" and "pad" mean a surface designed to provide containment of a pesticide during the loading, unloading, mixing, or handling of a pesticide, or during the cleaning, rinsing, or refilling of a pesticide container.

(m) "Mobile container" means a bulk pesticide container that is designed and used for transporting bulk pesticides.

(n) "Owner or operator" shall include any agent or employee of an owner or operator and mean any of the following:

(1) A pesticide dealer as defined by K.S.A. 2-2438a(q) and amendments thereto;

(2) a pesticide business licensee as defined by K.S.A. 2-2438a(p) and amendments thereto;

(3) a government agency registrant as addressed in K.S.A. 2-2440(e) and amendments thereto;

(4) a certified private applicator, as defined by K.S.A. 2-2438a(c)(2) and amendments thereto, of a bulk pesticide storage facility; or

(5) any other person, as defined by K.S.A. 2-2438a(l) and amendments thereto, responsible for the storage of bulk pesticides as defined by subsection (b).

(o) "Permanent cessation of operations" means either of the following:

(1) No pesticides have been loaded, unloaded, or stored at the facility for 12 consecutive months.

(2) The facility has gone out of business and is no longer a going concern.

(p) "Reasonably foreseeable" means what the secretary determines would have been foreseeable at the time the decision affecting the facility or its condition was made. "Reasonable foreseeability" shall include consideration of the owner's or operator's knowledge of conditions at the time the condition was created or the decision was made.

(q) "Secondary containment" means any structure, tank, or container, including rigid diking, that is designed, constructed, and maintained to intercept, hold, contain, or confine a discharge from a bulk pesticide container and to contain spills, prevent runoff, and avoid leaching.

(r) "Static pressure" means the pressure exerted by a fluid that is not flowing or moving.

(s) "Sump" means a recessed reservoir or catch basin designed to be a receptacle for the collection of liquids in the floor of secondary containment or in the part of the secondary containment that constitutes the loading pad. (Authorized by and implementing K.S.A. 2-2467a; effective May 1, 1985; amended Dec. 27, 2002; amended Sept. 3, 2010.)

4-13-25b. Quantities of bulk pesticide. A facility shall be subject to the requirements of K.A.R. 4-13-25 through K.A.R. 4-13-25k if any of the following conditions is met:

(a) A cumulative total of 1,000 gallons or more of liquid bulk pesticide is transferred away from the facility during any consecutive 365-day period.

(b) A total of 1,000 gallons or more of liquid bulk pesticide is stored, held, or maintained at the facility at any time.

(c) A cumulative total of 3,000 pounds or more of dry bulk pesticide is transferred away from the facility during any consecutive 365-day period.

(d) A total of 3,000 pounds or more of dry bulk pesticide is stored, held, or maintained at the facility at any time. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

4-13-25c. Location, design, and construction requirements of a bulk pesticide storage facility. Each owner or operator shall meet the following requirements: (a)(1) Each bulk pesticide storage facility shall be designed, constructed, and maintained according to the pesticide manufacturers' directions, instructions, or recommendations. The facility shall be constructed of materials that contain spills, prevent runoff, and avoid leaching of the pesticide being mixed, loaded, or unloaded. Construction materials shall be chemically compatible with the pesticides that come in contact with the material.

(2) Each bulk pesticide storage facility shall be designed, constructed, and maintained to accommodate all reasonably foreseeable loading and unloading conditions, including the anticipated wheel load of a vehicle, and to protect appurtenances and bulk pesticide containers against damage from operating personnel and moving equipment through the use of flexible connections, guard rails, barriers, and protective cages, where necessary.

(3) Asphalt shall not be used as a material in the construction of a bulk pesticide storage facility.

(b) No bulk pesticide storage facility shall be constructed or maintained in a flood plain unless the bulk pesticide is stored above the base flood elevation.

(c) The floor of each bulk pesticide storage facility shall be constructed of material that prevents the movement of pesticide materials and moisture through the floor and shall be designed, constructed, and maintained in a manner that allows discharges to be collected, contained, and recovered.

(d) All electrical equipment and wiring shall be elevated to prevent the equipment and wiring from becoming submerged and shall be grounded to dissipate static electricity.

(e) Both private and public water supplies shall be protected from contamination from the bulk pesticide storage facility.

(f) Each bulk pesticide storage facility shall contain a mixing and loading pad.

(g) Each bulk pesticide storage facility shall be secured to protect against reasonably foreseeable unauthorized access that could result in a discharge.

(h) Each bulk pesticide storage facility shall be designed, constructed, and maintained to prevent contact of any dry bulk pesticide with precipitation. Contact with precipitation shall be prevented by the following:

(1) Using a permanent cover; and

(2) placing dry bulk pesticide on pallets or a raised concrete platform enclosed by a curb that is at least six inches high and extends at least two feet beyond the perimeter of the dry bulk pesticide storage area.

(i) Each bulk pesticide storage facility shall be designed, constructed, and maintained to avoid the creation of pesticide waste and to prevent cross-contamination of pesticides.

(j) Bulk pesticides shall not be stored or mixed in underground containers. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

4-13-25d. Secondary containment for bulk pesticide storage. Each owner or operator shall meet the following requirements: (a) All bulk pesticide shall be stored within secondary containment. The secondary containment capacity shall be at least 110 percent of the capacity of the largest single bulk pesticide container in addition to the displacement of tanks, appurtenances, fixtures, equipment, and material located within the secondary containment.

(b) The secondary containment, including the floor or bottom of the secondary containment, shall meet the following requirements:

(1) Be constructed of steel, reinforced concrete, or any other material of sufficient thickness, density, and composition to contain any discharged pesticide material;

(2) be leakproof with cracks, seams, and joints sealed; and

(3) for liquids, be capable of withstanding the static pressure resulting from the secondary containment being completely filled with a liquid having a density greater than or equal to the density of the most dense liquid bulk pesticide to be stored within the containment.

(c) A soil liner shall not be considered adequate for the secondary containment of pesticides. Masonry block, asphalt, earthen materials, unfired or fired clay, clay, natural soil-clay mixtures, clay-bentonite mixtures, and prefabricated bentonite liners shall not be deemed to be of appropriate density and compostion to contain discharged pesticide material and shall not be used as secondary containment. Sealant-coated concrete blocks may be used if the facility owner's or operator's use of the blocks is approved in writing by the manufacturer of the pesticide.

(d) The floor of the secondary containment shall drain to a sump or other specific point of recovery.

(e) The sump or other specific point of recovery shall be emptied daily in accordance with K.A.R. 4-13-25g(a) by an on-site operator, who shall continuously monitor this process. The on-site operator may use an automatically activated pump to empty the sump if an automatic overflow switch is installed for the receiving container.

(f) No outlet, drain, or other means of penetra-

tion shall be located through the floor, bottom, or walls of the secondary containment.

(g) Secondary containment shall be constructed to allow the interior and exterior of the walls to be viewed.

(h) A synthetic liner used to line the secondary containment shall be installed and maintained according to the liner manufacturer's specifications, directions, and recommendations. The specifications, directions, and recommendations about liners from the manufacturers of the pesticides stored in the facility shall also be followed. All seams shall be tested, maintained, and repaired according to the manufacturer's specifications, directions, and recommendations. The liner shall be replaced if it cannot be repaired to meet the liner manufacturer's requirements. In no event shall a liner that is incapable of containing bulk pesticides independent of the support of another container be used in lieu of secondary containment. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

4-13-25e. Requirements for mixing and loading pads for bulk pesticides. Each owner or operator shall meet the following requirements: (a) Each mixing and loading pad not connected to a storage area shall be of adequate size and design to contain at least 110 percent of the capacity of the container or tank on the pad and the displacement of tanks, equipment, appurtenances, fixtures, and material located on the pad.

(b) Each mixing and loading pad shall be constructed to contain any discharge and shall be leakproof with all cracks, seams, and joints sealed. The pad shall be impervious to spills and capable of supporting the weight of the heaviest vehicle plus all loading, unloading, and mixing operations. The floor of the mixing and loading pad shall slope to a single point or to a sump, for the recovery of liquid spills.

(c) The sump shall be emptied daily by an on-site operator, who shall continuously monitor this process. The on-site operator may use an automatically activated pump to empty the sump if an automatic overflow switch is installed for the receiving container. The owner or operator may use the recovered pesticide for its intended purpose if it can be used according to the recovered pesticide's label. The owner or operator shall dispose of, in accordance with the label, any recovered pesticide that cannot be used.

(d) The following activities conducted at the facility shall be performed on the mixing and loading pad or within secondary containment:

(1) Filling pesticide containers;

(2) washing application equipment;

(3) rinsing pesticide containers or application equipment;

(4) mixing operations; and

(5) loading application equipment. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

4-13-25f. Requirements for bulk pesticide containers and appurtenances. Each owner or operator shall meet the following requirements: (a) Each bulk pesticide container shall be designed to handle all operating stresses, including static pressure, pressure buildup from pumps and compressors, and any other mechanical stresses to which the storage container could be subject during operations. Each bulk pesticide container shall be chemically compatible with the pesticide it holds and shall meet all specifications, directions, and recommendations of the manufacturers of the pesticide and bulk pesticide container.

(b) Each bulk pesticide container connection, except for safety relief connections, shall be equipped with a shutoff valve accessible and located within the secondary containment.

(c) Except while the stored pesticide is being removed from the container, shutoff valves shall be left either closed and locked or otherwise secured from access. The transfer of pesticide from one bulk pesticide container to another and between a bulk pesticide container and a transport vehicle shall be attended at all times by an on-site operator.

(d) Bulk pesticide containers and appurtenances shall be supported to prevent sagging.

(e) Sight gauges shall not be used on bulk pesticide containers.

(f) Each bulk pesticide container that is not located within a structure with a roof and walls shall be designed, installed, and maintained to prevent flotation and to withstand winds of 90 miles per hour or less.

(g) Each bulk pesticide container shall be designed to protect against excessive internal pressure or vacuum.

(h) Each bulk pesticide container used for storage shall be marked clearly to identify the pesticide stored in the container. (Authorized by and

implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

4-13-25g. Discharge, recovery, and reporting requirements. (a) Each owner or operator shall recover promptly any discharge. The owner or operator may use the recovered pesticide for its intended purpose if it can be used according to the recovered pesticide's label or labeling. The owner or operator shall dispose of, in accordance with the label, any recovered pesticide that cannot be used.

(b) The owner or operator shall notify the secretary within 48 hours of any discharge not contained by secondary containment. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

4-13-25h. Submission of diagrams, plans, and specifications. (a) The owner or operator of each bulk pesticide storage facility shall maintain diagrams, plans, and specifications of the facility on site and with the secretary. The copy maintained at the facility shall be made available to a representative of the secretary upon request.

(b)(1) Each owner or operator of a bulk pesticide storage facility that is to be remodeled, an existing structure that is to be converted to use as a bulk pesticide storage facility, or a proposed bulk pesticide storage facility shall submit diagrams, plans, and specifications to the secretary before commencement of remodeling, conversion, or construction. Remodeling, conversion, or construction shall not commence until the owner or operator receives written notice from the secretary that no further information is required.

(2) The owner or operator of each facility under this subsection shall complete remodeling, conversion, or construction within two years after the secretary's written notice that no additional information is required. Upon completion of the remodel, conversion, or construction, the owner or operator of a facility under this subsection shall certify on a form prescribed by the secretary that the facility meets or exceeds all the requirements of K.A.R. 4-13-25 through K.A.R. 4-13-25k and is constructed in accordance with the diagrams, plans, and specifications submitted to the secretary.

(c) The diagrams, plans, and specifications shall include the facility layout, mechanical and electrical diagrams, construction materials, and the type of equipment that is located in the facility or that is to be fixed or installed in the facility. The diagrams shall be drawn to scale and shall be legible without magnification. The diagrams, plans, and specifications shall contain all information required in subsection (d).

(d) The diagrams, plans, and specifications of the bulk pesticide storage facility shall be submitted with the form prescribed by the secretary. The required documentation shall include, at a minimum, the following information:

(1) The location of the facility relative to the flood plain;

(2) the location of the facility relative to any surface water within 1,320 feet of the facility and the distance between the facility and the surface water;

(3) the distance from both the facility and the area within 100 feet of the facility to groundwater, and the location of the groundwater relative to the facility;

(4) the location of any plumbing and access to private and public water supplies and the distance from the plumbing and access to the private and public water supplies;

(5) the drainage pattern of the facility;

(6) certification that the facility is not located on any abandoned or active oil, gas, or water well;

(7) certification that the facility is not located on a utility easement;

(8) the size and location of the proposed walls and flooring to be located within the facility;

(9) the location and size of each bulk pesticide storage container;

(10) the location and size of each loading and mixing pad;

(11) the location of each appurtenance used in the storage or transfer of bulk pesticide within the facility;

(12) the location of electrical equipment, wiring, and static grounding wires;

(13) the location and size of dry bulk pesticide storage; and

(14) any other relevant information required by the secretary.

(e) Each owner or operator of a bulk pesticide storage facility shall submit the diagrams, plans, and specifications required in this regulation to the secretary at least 30 days before the date the owner or operator proposes that the construction will commence.

(f) Additional time to comply with any deadline in this regulation may be granted by the secretary upon receipt of a written request and upon a showing of good cause for the additional time re-

quested. Each request shall state the reason for the additional time requested and the amount of additional time needed.

(g) The construction, remodeling, conversion, and maintenance of a facility shall conform with the diagrams, plans, and specifications submitted and required by K.A.R. 4-13-25a through K.A.R. 4-13-25k. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

4-13-25i. (Authorized by and implementing K.S.A. 2-2467a and 2-2471; effective Dec. 27, 2002; revoked Sept. 3, 2010.)

4-13-25j. Bulk pesticide storage facility inspection and maintenance requirements. (a) Each owner or operator shall inspect the bulk pesticide storage facility and secondary containment, including all appurtenances, at least monthly for any defects, including the following:

(1) Corrosion;

(2) leaks;

(3) cracks;

(4) spills;

(5) gaps;

(6) tears;

(7) unsealed joints;

(8) cross-contamination of pesticides;

(9) structural defects;

(10) equipment defects; and

(11) any other defect in the facility or potential violation of K.A.R. 4-13-25 through K.A.R. 4-13-25k.

The owner or operator shall promptly correct any defect.

(b) Upon the discovery of each defect or potential violation specified in subsection (a) that compromises the facility's ability to contain the pesticide, the owner or operator shall, within 24 hours after the discovery, either initiate repairs to correct the defect or take the appurtenance or secondary containment out of service. If the appurtenance or secondary containment is left in service, the defect or potential violation shall be corrected within 14 days following the discovery. If the defect or potential violation is not corrected within 14 days following the discovery, the appurtenance or secondary containment shall be removed from service.

(c) The owner or operator shall make a record of the following:

(1) Each inspection performed pursuant to subsection (a);

(2) each discharge within the facility in excess of 55 gallons; and

(3) more than one discharge within the facility in a 24-hour period totaling or exceeding 55 gallons.

(d) Each record made pursuant to subsection (c) shall include the following:

(1) The name of the person making the record;

(2) the date the record was made;

(3) if any inspection is performed, the following:

(A) The date of the inspection;

(B) a description of any defect found; and

(C) a description of any repairs made to remedy the defect;

(4) if a discharge occurred, the following:

(A) The date of the discharge;

(B) the amount of the discharge;

(C) the cause of the discharge;

(D) a description of any repairs made; and

(E) the date and time the secretary was notified pursuant to K.A.R. 5-13-25g;

(5) the date any defective equipment at the facility is taken out of service; and

(6) the date any defective equipment is placed back into service.

(e) All records maintained at the facility shall be retained for three years from the date of the record and shall be made available to the secretary or an authorized representative of the secretary upon request. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

4-13-25k. Site closure and discontinuation of operation. (a) The owner or operator shall notify the secretary within 30 calendar days following the permanent cessation of operations of a bulk pesticide storage facility.

(b) Whenever a bulk pesticide storage facility permanently ceases operations, the owner or operator shall provide the secretary with written verification of both of the following, on a form prescribed by the secretary:

(1) All pesticides, solutions containing a pesticide, wash waters, and other materials that may contain pesticides have been removed from the facility and have been used or disposed of according to the pesticide's label or labeling and according to all federal, state, and local requirements.

(2) All bulk pesticide containers, appurtenances, mixing and loading pads, and sumps have been thoroughly cleaned according to each pesticide manufacturer's requirements, instructions,

directions, or recommendations or, if none exist, according to standard industry practice. (Authorized by and implementing K.S.A. 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

4-13-25*l*. Penalty for noncompliance with pesticide containment. (a) The license, certification, or registration of any pesticide business licensee, governmental agency registrant, pesticide dealer, or certified private applicator who is found to have violated a pesticide containment requirement in K.A.R. 4-13-25a through 4-13-25k shall be subject to suspension, revocation, nonrenewal, or cancellation.

(b) Any pesticide business licensee or pesticide dealer who is found to have violated a pesticide containment requirement in K.A.R. 4-13-25 through 4-13-25k may incur a civil penalty in accordance with K.A.R. 4-13-62.

(c) Enforcement of K.A.R. 4-13-25 through K.A.R. 4-13-25k shall be conducted in accordance with the provisions of the Kansas administrative procedures act, K.S.A. 77-501 et seq. and amendments thereto. (Authorized by K.S.A. 2009 Supp. 2-2449 and K.S.A. 2-2467a; implementing K.S.A. 2-2440e, K.S.A. 2009 Supp. 2-2449, K.S.A. 2-2453, 2-2454, and 2-2467a; effective Dec. 27, 2002; amended Sept. 3, 2010.)

4-13-25m. Change in owner or operator of bulk pesticide storage facility; reporting requirements. (a) If the owner or operator of a bulk pesticide storage facility changes, the new owner or operator shall notify the secretary of the change within 30 days after the effective date of the change, on a form prescribed by the secretary.

(b) The new owner or operator shall meet one of the following requirements:

(1) Submit to the secretary the diagram, plans, and specifications of the bulk pesticide storage facility required by K.A.R. 4-13-25h; or

(2)(A) State on the notification form that the owner or operator has reviewed the existing diagrams, plans, and specifications maintained by the secretary;

(B) certify that the bulk pesticide storage facility remains consistent with those existing diagrams, plans, and specifications; and

(C) certify that the bulk pesticide storage facility has been constructed, remodeled, or converted and is maintained and operated in accordance with K.A.R. 4-13-25 through K.A.R. 4-13-25k. (Authorized by and implementing K.S.A. 2-2467a; effective Sept. 3, 2010.)

4-13-30. Dealer recordkeeping requirements. (a) Each pesticide dealer shall maintain records of all restricted-use pesticide products sold or otherwise conveyed. These records shall be made available during reasonable business hours to the secretary or the secretary's authorized representative for purposes of inspection and copying. Each record required by this regulation shall be kept for at least two years after the date of the sale or conveyance.

(b) The records specified in subsection (a) shall contain the following information:

(1) The name of each person to whom the restricted-use pesticide product has been sold or conveyed, as verified by the person's presentation of a federal or state government-issued identification card;

(2) the address of either the residence or principal place of business of each person to whom the restricted-use pesticide product has been sold or conveyed;

(3) the name and address of either the residence or principal place of business of the individual to whom the restricted-use pesticide product has been delivered or conveyed, if different from the purchaser;

(4) the certification number of the applicator's certificate;

(5) the name of the state issuing the certificate;

(6) the expiration date of the certificate;

(7) if the applicator is a certified commercial applicator of pesticides, then, if applicable, the categories and subcategories in which the applicator is certified;

(8) the registered name of the restricted-use pesticide product, the EPA registration number of the restricted-use pesticide product, and, if applicable, the "special local need" state registration number of the restricted-use pesticide product;

(9) the quantity of the restricted-use pesticide product sold or conveyed; and

(10) the date of the transaction.

(c) If the pesticide dealer makes a restricted-use pesticide product available to an uncertified person for use by a certified applicator, then the following records shall be kept in addition to those required in subsection (a):

(1) The name of the uncertified person to whom the restricted-use pesticide product has been made available, as verified by the uncertified person's presentation of a federal or state government-issued identification card;

(2) the address of either the residence or prin-

cipal place of business of the uncertified person to whom the restricted-use pesticide product has been made available;

(3) the name of the certified applicator who will use the restricted-use pesticide product; and

(4) the address of either the residence or principal place of business of the certified applicator who will use the restricted-use pesticide product.

(d) Each pesticide dealer shall submit an annual report for each restricted-use pesticide product that the dealer has sold or otherwise conveyed. The report shall include the following:

(1) The registered name of the restricted-use pesticide product, the EPA registration number of the restricted-use pesticide product, and, if applicable, the "special local need" state registration number of the restricted-use pesticide product; and

(2) the quantity of the restricted-use pesticide product sold or otherwise conveyed. (Authorized by and implementing K.S.A. 2-2467a; effective, T-86-27, Aug. 19, 1985; effective May 1, 1986; amended May 1, 1987; amended Feb. 5, 2010.)

4-13-33. Pest control technician registration and renewal fees. The application fee for a pest control technician registration or for the renewal of a pest control technician registration shall be $40.00. Each fee paid by the applicant pursuant to K.A.R. 4-13-9 shall be applied toward payment of the fee required by this regulation. This regulation shall apply to all pest control technician registrations, or renewals of these registrations, that will be effective through June 30, 2015, regardless of when the department receives the application. The $40.00 pest control technician registration fee shall revert to $25.00 on and after July 1, 2015, unless this date is modified by statute. (Authorized by K.S.A. 2008 Supp. 2-2440b, as amended by L. 2009, Ch. 128, §13, and K.S.A. 2-2467a; implementing K.S.A. 2008 Supp. 2-2440b, as amended by L. 2009, Ch. 128, §13; effective, T-88-46, Nov. 10, 1987; amended May 1, 1988; amended, T-4-6-27-02, July 1, 2002; amended Oct. 25, 2002; amended Feb. 29, 2008; amended Feb. 5, 2010.)

4-13-62. Amount of civil penalty. (a) A separate civil penalty shall be assessed for each violation of the pesticide law that results from each independent act or failure to act by any pesticide business licensee or pesticide dealer, or any agent or employee of a pesticide business licensee or pesticide dealer. In determining whether a given violation is independent of and substantially distinguishable from any other violation for the purpose of assessing separate civil penalties, consideration shall be given to whether each violation requires an element of proof not required by another violation. If several violations require the same elements of proof and are not distinguishable, the assessment of separate civil penalties shall be within the discretion of the secretary or the secretary's authorized representative.

(b) The amount of each civil penalty shall be within the following ranges:

(1) For each violation of K.S.A. 2-2453(a) or (b) and amendments thereto, the civil penalty shall be not less than $100 and not more than $5,000.

(2) For each violation of K.S.A. 2-2454(b), (m), (o), (r), (s), or (t) and amendments thereto, the civil penalty shall be not less than $100 and not more than $5,000.

(3) For each violation of K.S.A. 2-2454, and amendments thereto, not covered in paragraph (b)(2), the civil penalty shall be not less than $100 and not more than $1,000.

(4) For each violation of K.S.A. 2-2453(c), and amendments thereto, not already covered in paragraph (b) (1), (2), or (3), the civil penalty shall be not less than $100 and not more than $1,000.

(c) For each subsequent occurrence of a violation for which a civil penalty has been assessed within a three-year period, the civil penalty assessed for the subsequent violation shall be the maximum amount for the category listed. (Authorized by K.S.A. 2-2467a; implementing K.S.A. 2-2440e, as amended by L. 2009, Ch. 128, §15; effective Jan. 1, 1989; amended Jan. 25, 1993; amended Feb. 5, 2010.)

Article 15.—PLANTS AND PLANT PRODUCTS

4-15-4. Live plant definition: exclusions. The following shall be excluded from the definition of live plant in K.S.A. 2-2113, and amendments thereto: (a) Field and forage crops;

(b) seeds of any kind;

(c) cut flowers and cut greenery not used for propagation; and

(d) fruits and vegetables used for food or feed. (Authorized by K.S.A. 2010 Supp. 2-2126, as amended by L. 2011, ch. 72, sec. 11; implementing K.S.A. 2010 Supp. 2-2113, as amended by L. 2011, ch. 72, sec. 1; effective Oct. 18, 2002; amended May 18, 2012.)

4-15-5. Live plant dealer license fee. The fee for a live plant dealer license shall be $80. (Authorized by K.S.A. 2010 Supp. 2-2126, as amended by L. 2011, ch. 72, sec. 11; implementing K.S.A. 2010 Supp. 2-2120, as amended by L. 2011, ch. 72, sec. 6; effective Oct. 18, 2002; amended June 5, 2009; amended, T-4-11-21-11, Nov. 21, 2011; amended March 23, 2012.)

4-15-6. Plant pest emergency response fund fee. In addition to the license fee specified in K.A.R. 4-15-5, each licensed live plant dealer shall pay a fee of $5, which shall be deposited in the plant pest emergency response fund. (Authorized by K.S.A. 2010 Supp. 2-2126, as amended by L. 2011, ch. 72, sec. 11, and K.S.A. 2010 Supp. 2-2129, as amended by L. 2011, ch. 72, sec. 13; implementing K.S.A. 2010 Supp. 2-2129, as amended by L. 2011, ch. 72, sec. 13; effective Oct. 18, 2002; amended March 23, 2012.)

4-15-7. Live plant dealer licensing exemptions. (a) Any live plant dealer who does not import live plants from outside the state of Kansas, does not export live plants from the state of Kansas, and has annual gross receipts from the distribution of live plants that are less than $10,000 shall be exempt from the licensing requirements.

(b) Each live plant dealer seeking to claim the licensing exemption shall submit annually on a form furnished by the department an application specifying the applicant's basis for claiming exemption from licensing requirements. If the secretary finds that an applicant meets the criteria specified in subsection (a), the applicant shall be exempt from licensing requirements.

(c) Each live plant dealer exempt from licensing requirements shall be subject to all quarantines and the regulated nonquarantine pest freedom standards established in K.A.R. 4-15-10. (Authorized by K.S.A. 2010 Supp. 2-2126, as amended by L. 2011, ch. 72, sec. 11; implementing K.S.A. 2010 Supp. 2-2120, as amended by L. 2011, ch. 72, sec. 6; effective Oct. 18, 2002; amended May 6, 2005; amended May 18, 2012.)

4-15-8. Fees for the inspection of live plants, plant products, bees, beekeeping equipment, and regulated articles. (a) Inspection services may be provided upon request to any person who owns or possesses live plants, plant products, bees, beekeeping equipment, or regulated articles. The person shall pay inspection fees of $30 per hour plus mileage expenses. Inspection fees shall include hourly fees for travel time and time spent on-site.

(b) On-site hourly fees shall be calculated from the inspector's time of arrival until completion of the inspection, excluding breaks, meals, and any time not directly associated with conducting the inspection. A quarter-hour minimum shall be assessed, and the total on-site inspection time shall be rounded to the nearest quarter-hour.

(c) Hourly fees for travel time shall consist of actual driving time, excluding breaks, meals, and any time not directly associated with traveling to and from the inspection site. The total travel time shall be rounded to the nearest quarter-hour. If multiple inspections are completed at different locations, travel time shall be apportioned between inspections using the method for calculating and apportioning mileage fees specified in this regulation. If mileage fees are reduced to reflect a distance less than the distance actually travelled, travel time shall be reduced by a percentage equal to the percentage of reduction in the number of miles actually travelled.

(d) Mileage to the inspection site shall be calculated from one of the following locations as applicable on the date the inspection is conducted, whichever is less:

(1) The inspector's official station;

(2) the last location at which a requested inspection was conducted; or

(3) the last location at which the inspector incurred lodging expenses.

(e) The person for which the last requested inspection is conducted on any day shall pay mileage fees for the return trip to the inspector's official station or the location at which the inspector incurs lodging expenses, whichever is less.

(f) Mileage fees shall be calculated using the actual miles driven by the inspector or the adjusted miles if reduced pursuant to this regulation. The rate per mile shall be the private vehicle mileage reimbursement rate fixed by the secretary of administration.

(g) Any inspection, certification, diagnostic, or identification fee may be waived if the fee would be assessed against a state or local government agency. (Authorized by K.S.A. 2010 Supp. 2-2126, as amended by L. 2011, ch. 72, sec. 11; implementing K.S.A. 2010 Supp. 2-2118, as amended by L. 2011, ch. 72, sec. 5; effective Oct. 18, 2002; amended May 6, 2005; amended May 18, 2012.)

4-15-9. Fees for the certification of live plants, plant products, bees, beekeeping equipment, and regulated articles. (a) If a state certificate is required for the entry of an inspected article into another state or a foreign country, the person needing certification shall pay one or more of the following, as applicable:

(1) $20 for a certificate for a commodity or article certified for domestic shipment;

(2) $50 for a certificate for a commodity or article certified for international shipment; or

(3) 20 cents for each bale tag provided to satisfy a weed-free forage requirement.

(b) If a federal certificate is also required for the entry of an inspected article into another state or a foreign country, the associated fee shall be added to the amount specified in subsection (a). (Authorized by K.S.A. 2010 Supp. 2-2126, as amended by L. 2011, ch. 72, sec. 11; implementing K.S.A. 2010 Supp. 2-2118, as amended by L. 2011, ch. 72, sec. 5; effective Oct. 18, 2002; amended Feb. 2, 2007; amended May 18, 2012.)

4-15-9a. Live plant dealer; certificate of inspection. (a) Any live plant dealer may request a certificate of inspection to establish that the live plant dealer's live plants meet pest freedom standards.

(b) Each inspection pursuant to this regulation shall be conducted at a time chosen by the secretary to permit adequate inspection for the presence of plant pests giving consideration to the type of live plants inspected. If necessary due to the diversity of the live plants or for other reasons, multiple inspections may be conducted by the secretary.

(c) If the live plants inspected meet pest freedom standards, a certificate of inspection may be issued by the secretary.

(d) Each certificate of inspection shall be valid for one of the following:

(1) A period beginning on October 1 of the year the inspection was conducted through September 30 of the following calendar year; or

(2) a lesser period that the secretary may determine based upon the request of the live plant dealer due to the growing season and distribution schedule for the live plants.

(e) Any request for a certificate of inspection may be denied and any certificate of inspection may be revoked by the secretary upon finding any of the following:

(1) An adequate inspection cannot be conducted.

(2) The live plant dealer's live plants do not meet pest freedom standards.

(3) Denial of the request for a certificate of inspection or revocation of the certificate of inspection is necessary to prevent or retard the spread of a plant pest that could cause economic or environmental harm. (Authorized by K.S.A. 2010 Supp. 2-2126, as amended by L. 2011, ch. 72, sec. 11; implementing K.S.A. 2010 Supp. 2-2118, as amended by L. 2011, ch. 72, sec. 5; effective May 18, 2012.)

4-15-10. Pest freedom standards. (a) The pest freedom standards specified in this regulation shall apply to all live plants grown, sold, distributed, planted, transported, moved, or given away by a live plant dealer or the live plant dealer's designated agent. As used in this regulation, "possessed" shall include being grown, sold, distributed, planted, transported, moved, or given away.

(b) Live plants on which quarantine pests are present shall be prohibited from entering the state or being possessed within the state by live plant dealers or any live plant dealer's designated agent.

(c) Live plants on which regulated nonquarantine pests are present shall be prohibited from entering the state or being possessed within the state by live plant dealers or any live plant dealer's designated agent unless the live plants are within the limits as specified in this regulation.

(d) Live plants on which plant pests that are neither quarantine pests nor regulated nonquarantine pests are present may enter the state and be possessed by live plant dealers. These live plants shall remain subject to regulatory action if the secretary finds that action is necessary to prevent or retard the spread of a plant pest that could cause economic or environmental harm.

(e) Only live plants free of quarantine pests and within the limits for the presence of regulated nonquarantine pests may be certified as meeting pest freedom standards. When necessary for export, standards more stringent than those specified in this regulation may be utilized by the secretary to ensure compliance with all applicable quarantines and regulated nonquarantine pest freedom standards.

(f) The classes of regulated nonquarantine pests shall be the following, with the limits specified:

(1) For insects and arachnids that bore into live plants, scarab beetles, scale insects, and weevils,

the number of infested plants shall be zero percent of the total number of plants in the lot, cultivar, or group of a single species of plant.

(2) For diseases known as viruses, viroids, phytoplasmas, spiroplasmas, mycoplasmas, the genera or species of diseases caused by Phytophthora (a group of fungal diseases that infect various plants and plant parts), *Bursaphelenchus xylophilus* (pine wilt nematode), *Meloidogyne* (root knot nematodes), *Erwinia amylovora* (fire blight), *Agrobacterium tumefaciens* (crown gall), and bacterial species that can cause wilt disease, the number of infected plants shall be zero percent of the total number of plants in the lot, cultivar, or group of a single species of plant.

(3) For diseases known to cause wilts, galls, cankers, root rot, and crown rot, the number of infected plants shall be less than five percent of the total number of plants in the lot, cultivar, or group of a single species of plant.

(4) For plant parasitic nematodes, the number of infected plants with foliage affected or root systems stunted or underdeveloped shall be less than five percent of the total number of plants in the lot, cultivar, or group of a single species of plant.

(5) For foliar diseases of plants other than evergreens, the number of infected plants with more than 10 percent of the foliage affected shall be less than 15 percent of the total number of plants in the lot, cultivar, or group of a single species of plant.

(6) For foliar diseases of evergreens, the number of infected plants with more than one percent of the foliage affected shall be less than five percent of the total number of plants in the lot, cultivar, or group of a single species of plant. (Authorized by K.S.A. 2010 Supp. 2-2126, as amended by L. 2011, ch. 72, sec. 11; implementing K.S.A. 2010 Supp. 2-2117, as amended by L. 2011, ch. 72, sec. 4; effective Oct. 18, 2002; amended May 18, 2012.)

4-15-13. Criteria to determine dollar amount of civil penalty. (a) A civil penalty of at least $100.00 but not more than $2,000.00 may be assessed by the secretary for each violation of the plant pest and agriculture commodity certification act, K.S.A. 2-2112 et seq., and amendments thereto, and the implementing regulations.

(b) In determining the amount of any civil penalty, the gravity of the violation shall be considered by the secretary. Factors to be considered shall include the following:

(1) The potential of the act to injure, endanger, or harm the health of any consumer, the general public, cultivated or native plant resources, or the environment;

(2) the severity of actual or potential harm or injuries;

(3) the respondent's history of compliance with the plant pest and agriculture commodity certification act, and amendments thereto, and the implementing regulations;

(4) any action taken by respondent to remedy the specific violation or to mitigate any adverse effects of the violation on public health, cultivated or native plant resources, or the environment as a result of the violation; and

(5) any misrepresentation or fraud involved in the violation. (Authorized by K.S.A. 2011 Supp. 2-2126; implementing K.S.A. 2011 Supp. 2-2125; effective Oct. 18, 2002; amended July 18, 2008; amended May 18, 2012.)

Article 16.—MEAT AND MEAT PRODUCTS INSPECTION

4-16-1a. Definitions. (a) Each of the following terms, as used in the act and in the portions of the code of federal regulations adopted by reference in K.A.R. 4-16-1c, shall have the meaning specified in this subsection:

(1) "The act," "act," and "federal meat inspection act" shall mean K.S.A. 65-6a18 et seq. and amendments thereto.

(2) "Administrator," except as used in 9 C.F.R. 303.1(d)(2)(iii)(b), shall mean the secretary of the department of agriculture or the secretary's designee.

(3) "Beef" shall mean the skeletal muscle of any cattle. Beef shall not include any of the following:

(A) The muscles of the tongue, heart, or esophagus;

(B) the muscles found in the lips, muzzle, or ears;

(C) any portions of bone, including hard bone, bone marrow, and related components; or

(D) any amount of brain trigeminal ganglia, spinal cord, or dorsal root ganglia (DRG).

(4) "Cheek meat" shall mean meat that is the trimmed cheeks of the carcass of cattle.

(5) "Commerce" shall mean intrastate commerce.

(6) "Egg products inspection act" shall mean the Kansas egg law, K.S.A. 2-2501 et seq. and amendments thereto.

(7) "Federal food, drug and cosmetic act" shall mean the Kansas food, drug and cosmetic act, K.S.A. 65-655 et seq. and amendments thereto.

(8) "Federal inspection" shall mean inspection by the Kansas department of agriculture.

(9) "Food locker plant" shall mean a "slaughter facility" or "processing facility," as defined in K.S.A. 65-6a18 and amendments thereto.

(10) "Form," either by number or by any other designation, shall mean a form supplied by the Kansas department of agriculture.

(11) "Inspected for wholesomeness by U.S. department of agriculture" shall mean inspected and passed by the Kansas department of agriculture.

(12) "Official establishment" and "establishment" shall mean any building or adjacent premises that are registered pursuant to this act, where livestock, as defined in K.S.A. 65-6a18 and amendments thereto, domestic rabbits, meat food products, poultry, or poultry products capable of use as human food are "prepared," as defined by K.S.A. 65-6a18 and amendments thereto.

(13) "Program," "food safety and inspection service," "inspection service," "service," "department," and "FSIS" shall mean the meat and poultry inspection program of the Kansas department of agriculture.

(14) "Secretary," "national supervisor," "area supervisor," "inspection service supervisor," "inspection program supervisor," "circuit supervisor," and "station supervisor" shall mean the secretary of the department of agriculture or the secretary's designee.

(15) "U.S." and "the United States" shall mean Kansas or the state of Kansas, as appropriate.

(16) "U.S. inspected" and "government inspected" shall mean inspected by the Kansas department of agriculture.

(17) "U.S.D.A." and "USDA" shall mean Kansas department of agriculture or KDA, as appropriate.

(b) The phrase "official review and copying" in 9 C.F.R. 417.5(f), as adopted by reference in K.A.R. 4-16-1c, shall mean review and copying by the secretary of the department of agriculture or the secretary's designee. (Authorized by K.S.A. 2011 Supp. 65-6a20, as amended by L. 2012, ch. 145, sec. 29, K.S.A. 65-6a25, K.S.A. 2011 Supp. 65-6a30, and K.S.A. 2011 Supp. 65-6a44; implementing K.S.A. 2011 Supp. 65-6a20, as amended by L. 2012, ch. 145, sec. 29, K.S.A. 65-6a21, K.S.A. 65-6a22, K.S.A. 65-6a23, K.S.A. 65-6a25, and K.S.A. 2011 Supp. 65-6a30; effective May 1, 1982; amended May 1, 1986; amended Jan. 1, 1989; amended Jan. 21, 1991; amended Jan. 25, 1993; amended Dec. 12, 1994; amended Sept. 5, 1997; amended Sept. 1, 2006; amended Dec. 5, 2008; amended May 10, 2013.)

4-16-1c. Adoption by reference. (a) The following portions of title 9 of the code of federal regulations, as revised on January 1, 2012, except as otherwise specified, are hereby adopted by reference:

(1) Part 301, except the following terms and their definitions in section 301.2: "the act," "adulterated," "animal food manufacturer," "label," "labeling," "livestock," "meat broker," "meat food product," "misbranded," "official import inspection established," "person," "pesticide chemical, food additive, color additive, raw agricultural commodity," "prepared," and "territory";

(2) part 302, except section 302.2;

(3) part 303, except sections 303.1(d)(3) and 303.2;

(4)(A) Sections 304.1 and 304.2; and

(B) section 304.3, as amended by 77 fed. reg. 26936 (2012);

(5) parts 305 and 306, except sections 306.1, 306.2, and 306.3;

(6)(A) Sections 307.1 through 307.3;

(B) section 307.4, as amended by 77 fed. reg. 59294 (2012); and

(C) section 307.7;

(7) part 309;

(8) part 310;

(9) part 311;

(10) part 312, except section 312.8;

(11) parts 313 through 316;

(12) part 317, except sections 317.7 and 317.369;

(13) part 318, except section 318.8;

(14) part 319;

(15) part 320, except section 320.5(a);

(16) part 325, except section 325.3;

(17) part 329;

(18) part 352, except sections 352.1 (e), (f), (g), (j), (k), and (l), 352.4, 352.8, 352.10(a), 352.11(b), 352.17, and 352.18;

(19)(A) Section 354.1, except subparagraphs (a), (n), and (w);

(B) section 354.2;

(C) sections 354.10 through 354.14;

(D) sections 354.23 through 354.24;

(E) sections 354.26 through 354.30;

(F) sections 354.46 through 354.49;

(G) sections 354.53 through 354.92;

(H) sections 354.120 through 354.133; and

(I) sections 354.160 through 354.247;

(20)(A) Section 381.1, except the following terms and their definitions in subsection (b): "act," "adulterated," "animal food manufacturer," "label," "labeling," "misbranded," "pesticide chemical, food additive, color additive, raw agricultural commodity," "poultry products broker," "territory," and "U.S. refused entry";

(B) sections 381.3 through 381.7, except 381.5;

(C) sections 381.10 through 381.21;

(D) section 381.22, as amended by 77 fed. reg. 26936 (2012);

(E) sections 381.23 through 381.36;

(F) section 381.37, as amended by 77 fed. reg. 59294 (2012);

(G) sections 381.65 through 381.103, except 381.96;

(H) sections 381.108 through 381.182;

(I) sections 381.189 through 381.194;

(J) sections 381.210 through 381.217, except section 381.216; and

(K) sections 381.300 through 381.500, except section 381.469;

(21) part 416;

(22)(A) Sections 417.1 through 417.3;

(B) section 417.4, as amended by 77 fed. reg. 26936 (2012); and

(C) sections 417.5 through 417.8;

(23) part 418, as added in 77 fed. reg. 26936 (2012); and

(24) parts 424, 430, 439, 441, 442, and 500.

(b) The "food standards and labeling policy book," as published by the office of policy, program and employee development of the USDA food safety and inspection service and revised for web publication in August 2005, is hereby adopted by reference. This document shall apply to meat and poultry products.

(c) Copies of the adopted material or the pertinent portions shall be available from the meat and poultry inspection program of the department of agriculture, Topeka, Kansas. (Authorized by K.S.A. 2011 Supp. 65-6a20, as amended by L. 2012, ch. 145, sec. 29, K.S.A. 65-6a25, K.S.A. 2011 Supp. 65-6a30, and K.S.A. 2011 Supp. 65-6a44; implementing K.S.A. 2011 Supp. 65-6a20, as amended by L. 2012, ch. 145, sec. 29, K.S.A. 65-6a21, K.S.A. 65-6a22, K.S.A. 65-6a23, K.S.A. 65-6a25, and K.S.A. 2011 Supp. 65-6a30; effective May 1, 1986; amended May 1, 1988; amended Jan. 1, 1989; amended Jan. 21, 1991; amended Jan. 25, 1993; amended Dec. 12, 1994; amended Sept. 5, 1997; amended Sept. 1, 2006; amended Dec. 5, 2008; amended May 10, 2013.)

4-16-7a. Inspection fees. (a) Each establishment that requires inspection services at any time other than the establishment's regularly scheduled inspection periods or requests voluntary inspection services shall be subject to the charges specified in this regulation to defray the department's costs of providing these inspection services. Regularly scheduled inspection periods shall not include any legal holiday or any officially observed holiday as designated in K.A.R. 1-9-2.

(b) Each establishment that requests inspection services on a legal holiday or an officially observed holiday as designated in K.A.R. 1-9-2 shall give the secretary at least two weeks' notice before the holiday. Except for Martin Luther King, Jr. Day, the Fourth of July, and Veterans' Day, if the legal holiday occurs or is observed on a Monday or Friday, the fees shall also apply to inspection services requested during the adjacent weekend.

(c)(1) The hourly fee shall be $28. The hourly fee shall be calculated in quarter-hour units. Unless otherwise specified, a required minimum charge of two hours shall be assessed.

(2) For slaughter with the mark of inspection, the hourly fee shall be assessed for the amount of time needed to conduct the inspection. The inspection shall include the inspector's drive time to and from the establishment. If the establishment processes with the mark of inspection that day, then the amount of time to inspect the processing operations shall be included in the total inspection time.

(3) For processing with the mark of inspection, a fee of $40 shall be assessed per day if the establishment is processing with the mark of inspection and not slaughtering with the mark of inspection.

(d) Each establishment that requests inspection services over eight hours in one day shall be assessed fees as follows, if the secretary can accommodate the extra time:

(1) If the request is made before the inspector's arrival at the establishment or while the inspector is at the establishment, the hourly fee shall be assessed for the actual time of the additional inspection. The two-hour minimum charge shall be waived, and the inspector's drive time shall not be charged.

(2) If the request is made after the inspector has left the establishment, the hourly fee shall be

assessed, including the two-hour minimum charge. The inspector's drive time shall not be charged.

(3) If the establishment requests to slaughter with the mark of inspection when the regularly inspected operation is processing, the request may be granted by the secretary without assessing overtime charges if the operations will not exceed the establishment's regularly scheduled hours that day.

(4) Any requests specified in this subsection may be denied by the secretary if the requested additional time at the establishment causes inspections to be missed at other establishments.

(e) Payment of all applicable fees shall be due at or before the end of the month following the date of the requested inspection services. If the fees are not paid, requests for the following may be denied by the secretary:

(1) Inspection services on holidays;

(2) inspection services outside of the establishment's regularly scheduled inspection periods; and

(3) voluntary inspection services.

(f) Any applicable fees may be waived by the secretary under either of the following conditions:

(1) The establishment trades a regularly scheduled day of inspection in the week during which the additional inspection services are provided.

(2) Additional requested inspection services can be provided without causing undue hardship to the program.

(g) For fees associated with 4-H slaughter or processing, each establishment providing slaughter services associated with 4-H shall be assessed fees as follows for each seven-day calendar week, Sunday through Saturday:

(1) The facility shall be provided with not more than eight hours of inspection services without charge for 4-H slaughter operations in a 24-hour period.

(2) Inspection services for 4-H slaughter for more than eight hours in a calendar week shall be subject to the hourly fee specified in subsection (c) for slaughter.

(3) The fee may be waived if the facility cancels a day of inspection in the same seven-day calendar week in which 4-H slaughter is conducted.

(4) The fee shall be assessed for actual inspection time and shall not include the inspector's drive time to and from the facility. (Authorized by K.S.A. 2011 Supp. 65-6a26 and K.S.A. 2011 Supp. 65-6a44; implementing K.S.A. 2011 Supp. 65-6a26; effective May 1, 1986; amended Jan. 1, 1989; amended July 1, 1993; amended Jan. 17, 2003; amended July 18, 2008; amended May 10, 2013.)

4-16-306. Retail exemption; establishments selling food other than meat and poultry. (a) Any person operating an establishment that is registered or required to be registered under the Kansas meat and poultry inspection act may process meat and poultry products for retail sale without the mark of inspection as specified in 9 C.F.R. 303.1, as adopted in K.A.R. 4-16-1c, if both of the following conditions are met:

(1) The establishment is maintained and operated in a sanitary manner.

(2) The establishment meets the applicable requirements of the department's regulations to ensure that any carcasses or parts thereof, meat, meat food products, poultry, and poultry products handled on a retail basis, and any containers or packages containing these products, are separated at all times from both of the following:

(A) Carcasses or parts thereof, meat, meat food products, poultry, and poultry products that bear the mark of inspection; and

(B) carcasses or parts thereof, meat, meat food products, poultry, and poultry products custom-prepared according to K.S.A. 65-6a31(b), and amendments thereto, and 9 C.F.R. 303.1, as adopted in K.A.R. 4-16-1c.

(b) If an establishment at which inspection under the Kansas meat and poultry inspection act is maintained processes or sells food other than meat, meat food products, poultry, or poultry products, the owner or operator of that establishment may be required to obtain a separate license, permit, or registration for those operations at the establishment under the Kansas food, drug, and cosmetic act, K.S.A. 65-619 et seq. and amendments thereto. (Authorized by K.S.A. 2011 Supp. 65-6a30 and 65-6a44; implementing K.S.A. 2011 Supp. 65-6a30, K.S.A. 2011 Supp. 65-6a31, as amended by L. 2012, ch. 145, sec. 30, and K.S.A. 65-6a34, as amended by L. 2012, ch. 145, sec. 31; effective May 10, 2013.)

Article 17.—POULTRY AND POULTRY PRODUCTS INSPECTION

4-17-1a. (Authorized by K.S.A. 2005 Supp. 65-6a44; implementing K.S.A. 2005 Supp. 65-6a20, K.S.A. 65-6a21, K.S.A. 65-6a22, K.S.A. 65-6a23, K.S.A. 65-6a25, and K.S.A. 2005 Supp. 65-

6a30; effective Jan. 1, 1989; amended Jan. 21, 1991; amended Jan. 25, 1993; amended Sept. 5, 1997; amended Sept. 1, 2006; revoked May 10, 2013.)

4-17-1c. (Authorized by K.S.A. 2005 Supp. 65-6a44; implementing K.S.A. 2005 Supp. 65-6a20, K.S.A. 65-6a21, K.S.A. 65-6a22, K.S.A. 65-6a23, K.S.A. 65-6a25, and K.S.A. 2005 Supp. 65-6a30; effective Jan. 1, 1989; amended Jan. 21, 1991; amended Jan. 25, 1993; amended Dec. 12, 1994; amended Sept. 5, 1997; amended Sept. 1, 2006; revoked May 10, 2013.)

4-17-300. (Authorized by K.S.A. 2007 Supp. 65-6a44; implementing K.S.A. 2007 Supp. 65-6a56; effective July 1, 1992; amended Dec. 12, 1994; amended July 18, 2008; revoked May 10, 2013.)

4-17-302 and 4-17-303. (Authorized by K.S.A. 2007 Supp. 65-6a44; implementing K.S.A. 2007 Supp. 65-6a56; effective July 1, 1992; amended July 18, 2008; revoked May 10, 2013.)

4-17-304 and 4-17-305. (Authorized by K.S.A. 2007 Supp. 65-6a44; implementing K.S.A. 2007 Supp. 65-6a56; effective July 1, 1992; amended Dec. 12, 1994; amended July 18, 2008; revoked May 10, 2013.)

Article 27.—LODGING ESTABLISHMENTS

4-27-1. Lodging establishment application fees. The application fee for each lodging establishment doing business in Kansas shall be based on the number of rooms as follows: (a) 1 room through 29 rooms: $100; and

(b) 30 rooms or more: $200. (Authorized by K.S.A. 2010 Supp. 36-506; implementing K.S.A 2010 Supp. 36-502, as amended by 2011 HB 2282, sec. 2; effective June 4, 2010; amended, T-4-6-30-11, July 1, 2011; amended Oct. 28, 2011.)

4-27-2. Definitions. (a) "Bathhouse" shall mean a room provided to guests, including a locker room, shower room, or other similar room, where guests can shower, store personal items, or change into appropriate clothing for use in the spa.

(b) "Bed and breakfast home" shall mean a boarding house that is a private residence where the owner or manager resides and provides lodging and meals for guests. Any licensee operating a bed and breakfast home may serve food only to the licensee's overnight guests, unless the licensee obtains a food service license.

(c) "Egress" shall mean an exit or route leading out of a lodging establishment.

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

(e) "Hot tub" shall mean a pool or container of water designated for recreational use in which one or more people can soak. A hot tub can use hydrojet circulation or an air induction system, or a combination of these, to provide water circulation. A hot tub can use various water temperatures and additives, including minerals and oils, to provide therapy or relaxation.

(f) "Imminent health hazard" shall mean fire, flood, sewage backup, rodent infestation, bed bug or other insect infestation, misuse of poisonous or toxic materials, gross unsanitary occurrence or condition, or any other condition that could endanger the health or safety of guests, employees, or the general public.

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

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

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

(j) "Lodge" shall mean a boarding house or a rooming house that provides seasonal lodging for recreational purposes. If meals are provided for overnight guests, the lodge is operating as a boarding house. If meals are not provided for overnight guests, the lodge is operating as a rooming house.

(k) "Major renovation" shall mean a physical change to a lodging establishment or portion of a lodging establishment, including the following:

(1) Replacing or upgrading any of the following types of major systems:

(A) Electrical;

(B) plumbing;

(C) heating, ventilation, and air-conditioning;

(2) demolition of the interior or exterior of a building or portion of the building; and

(3) replacement, demolition, or installation of

interior walls and partitions, whether fixed or moveable.

Major renovation shall not include replacement of broken, dated, or worn equipment and other items, including individual air-conditioning units, bathroom tiles, shower stalls, and any other items that do not require additional or new plumbing or electrical repairs.

(l) "Person in charge" shall mean the individual or employee who is present in the lodging establishment at the time of the inspection and who is responsible for the operation. If no designated individual or employee is the person in charge, then any employee present is the person in charge.

(m) "Recreational water facility" and "RWF" shall mean a water environment with design and operational features that provides guests with recreational activity and that involves immersion of the body partially or totally in the water. This term shall include water slides, watercourse rides, water activity pools, jetted pools, and wave pools. This term shall not include swimming pools and hot tubs.

(n) "Sanitize" shall mean to apply cumulative heat or chemicals on any clean surface so that, when evaluated for efficacy, the surface yields a reduction of 99.999% of disease-causing microorganisms.

(o) "Single-service articles" shall mean items that are designed, constructed, and intended for one-time use and for one person's use, after which the items are discarded. This term shall include plastic, paper, or foam tableware and utensils, lightweight metal foil, stirrers, straws, toothpicks, and other items including single-use gloves, bags, liners, containers, placemats, and wrappers.

(p) "Spa" shall mean any area of a lodging establishment where a hot tub, swimming pool, fitness equipment, tanning bed, or similar guest amenities are located. (Authorized by K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; implementing K.S.A. 2011 Supp. 36-501, as amended by L. 2012, ch. 145, sec. 3, and K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-3. Licensure; plans and specifications; variances. (a) Each person applying for a license to operate a lodging establishment shall submit the following to the secretary:

(1) A completed application and the required application and license fees; and

(2) if required by subsection (b), the plans and specifications of the lodging establishment.

(b) The plans and specifications shall be submitted before any of the following:

(1) The construction of a lodging establishment;

(2) the conversion of an existing structure for use as a lodging establishment;

(3) the major renovation of a lodging establishment;

(4) the addition or major renovation of a swimming pool, hot tub, recreational water facility, or spa; or

(5) the addition or change of a food service operation within a lodging establishment.

(c) Each plan and specification for a lodging establishment shall demonstrate conformance with the applicable requirements of these regulations and shall include the following:

(1) The proposed layout, mechanical schematics, construction materials, and completion schedules;

(2) the equipment layout, construction materials, and completion schedules for any food preparation and service area; and

(3) the equipment layout and completion schedules for each swimming pool, hot tub, RWF, and spa.

(d) A variance may be granted by the secretary to modify or waive one or more requirements of a regulation if the secretary determines that a health hazard, safety hazard, or nuisance will not result from the variance.

(1) Each person requesting a variance shall submit the following to the department:

(A) A written statement of the proposed variance of the regulatory requirement;

(B) documentation of how the proposed variance addresses public health hazards and guest safety at the same level of protection as that of the original requirement; and

(C) any other relevant information if required by the secretary.

(2) For each variance granted, the licensee shall meet the following requirements:

(A) Follow the plans and procedures approved by the secretary;

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

(C) maintain and provide to the secretary, upon request, records that demonstrate that the variance is being followed. (Authorized by K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; implementing K.S.A. 2011 Supp. 36-

502, as amended by L. 2012, ch. 145, sec. 4; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-4. Food service and food safety. Each person operating a guest house that serves food to the general public, in addition to overnight guests, shall obtain a food establishment license in accordance with K.S.A. 65-688 et seq., and amendments thereto. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-5. Imminent health hazard. (a) Each licensee shall discontinue operations of the affected portions of the lodging establishment on discovery that an imminent health hazard exists.

(b) Each licensee shall notify the secretary within 12 hours of the discovery of an imminent health hazard. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-6. General requirements. (a) Each licensee shall meet all of the following requirements:

(1) Post the license in a location in the lodging establishment that is conspicuous to guests;

(2) comply with the provisions of these regulations, including the conditions of any granted variance;

(3) ensure that no room or any portion of the lodging establishment is rented unless the room or portion of the lodging establishment is safe and sanitary; and

(4) replace any existing items, including equipment, furnishings, fixtures, or items of décor, with items that meet the requirements of these regulations, under any of the following conditions:

(A) The items constitute a public health hazard;

(B) the items affect guest safety; or

(C) the items do not meet the requirements of these regulations.

(b) Each licensee shall ensure that the hot water capacity is sufficient to meet the hot water demands of the lodging establishment.

(c) Each licensee shall ensure that all handwashing sinks meet all of the following requirements:

(1) Hot and cold potable water shall be supplied under pressure to each sink in enough capacity to meet handwashing needs.

(2) A mixing valve or combination faucet shall be used, unless the lodging establishment is listed on the state historical register or a variance that alters this requirement has been granted.

(3) The temperature of the hot water shall be at least 100 degrees Fahrenheit. If a mixing valve or combination faucet is not used, the temperature of the hot water shall not exceed 130 degrees Fahrenheit.

(4) A supply of hand soap and either paper towels or an electric drying device shall be available at all times at the handwashing sink.

(d) In public areas, cloth towels may be provided for one-time use by an individual. A receptacle for the soiled cloth towels shall be provided.

(e) The use of a common cloth towel shall be prohibited, except in guest rooms.

(f) A handwashing reminder sign shall be posted in each handwashing area, except in guest rooms.

(g)(1) A toilet room that is accessible at all times to employees shall be provided. A public toilet room may be used by employees in lieu of a separate employee toilet room.

(2) A public toilet room or rooms shall be provided and accessible to the public if the lodging establishment provides space for guest or public gatherings or functions, including conferences, meetings, seminars, receptions, teas, dances, recitals, weddings, parties, wakes, and other events.

(3) There shall be at least one handwashing sink in or immediately adjacent to each toilet room. Each sink shall meet the requirements specified in subsection (c).

(4) Each toilet and urinal shall be sanitary, maintained in good repair, and operational at all times.

(5) Each toilet and urinal shall be cleaned and sanitized daily or more often if visibly soiled.

(6) The floor in each toilet room shall be constructed of smooth, nonabsorbent, easily cleanable materials and maintained in good repair. Carpeting shall be prohibited as a floor covering in toilet rooms.

(7) Except as specified in this paragraph, the storage of items in any toilet room shall be prohibited. A small amount of commonly used toilet room supplies may be stored, including toilet paper, hand soap, and paper towels. (Authorized by K.S.A. 2008 Supp. 36-506; implementing K.S.A. 2008 Supp. 36-502 and 36-506; effective June 4, 2010.)

4-27-7. Personnel; health, cleanliness,

and clothing. Each licensee shall ensure that all of the following requirements are met: (a) Health of employees. Each employee with any of the following health problems shall be excluded from a lodging establishment:

(1) The employee is infected with a communicable disease, and the disease can be transmitted to other employees or guests in the normal course of employment.

(2) The employee is a carrier of organisms that cause a communicable disease.

(3) The employee has a boil, an infected wound, or an acute respiratory infection.

(b) Cleanliness of employees.

(1) Each employee shall wash that employee's hands in accordance with paragraph (b)(2) before handling clean utensils or dishware, ice, beverages, food, or clean laundry.

(2) Each employee shall wash that employee's hands and any exposed portions of that employee's arms with soap and water in a designated sink by vigorously rubbing together the surfaces of the lathered hands and arms for 15 seconds to 20 seconds and thoroughly rinsing with clean water.

(c) Clothing. Each employee providing services directly to guests or performing housekeeping functions shall wear clean outer clothing that is in good repair. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

4-27-8. Guest and public safety. (a) If the secretary has reason to believe that defects could be present with regard to the integrity of the structure or electrical system of the lodging establishment, the licensee may be required by the secretary to retain the services of a professional engineer or local building code officer to certify the lodging establishment for building safety. Disasters after which the structural integrity may need to be evaluated shall include a heavy snow or ice storm, flood, tornado, straight-line winds, fire, hurricane, and earthquake.

(b) Each licensee shall ensure that all repairs, construction, renovations, and maintenance are conducted in a manner that provides safe conditions for the guests and the public.

(c) The licensee of each lodging establishment using fuel-fired equipment or appliances that pose a potential carbon monoxide risk, including lodging establishments with attached parking garages or wood-burning fireplaces, shall install one or more carbon monoxide detectors according to the manufacturer's specifications.

(1) A carbon monoxide detector shall be required in each non-guest room adjoining or sharing a common ventilation system with an attached parking garage.

(2) Each carbon monoxide detector shall be in working condition.

(A) Each carbon monoxide detector shall be tested at least every six months to ensure that the detector is operating properly. The batteries shall be changed, as needed.

(B) A 12-month history of all test results shall be logged and maintained at the lodging establishment and made available to the secretary upon request.

(C) If a battery-operated detector is not operational for two consecutive tests, the licensee shall install a detector that is hardwired with a battery backup.

(3) A carbon monoxide detector shall not be required to be installed in an attached parking garage area.

(d) The operation and maintenance requirements for each lodging establishment shall include all of the following:

(1) Each lodging establishment shall meet the requirements of all applicable building codes, fire codes, and ordinances.

(2) No freshly cut Christmas trees or boughs shall be used unless the freshly cut trees or boughs are treated with a flame-resistant material. The documentation of the treatment shall be kept on file at the lodging establishment for at least one year.

(3) Textile materials having a napped, tufted, looped, woven, nonwoven, or similar surface shall not be applied to walls or ceilings, unless the textile materials are treated with a flame-resistant material. The documentation of the treatment shall be kept on file at the lodging establishment for as long as the materials are used on the walls or ceilings. This documentation shall be made available to the secretary upon request. Carpeting used as coving that covers the junction between the floor and walls shall be exempt from this requirement.

(4) Foam or plastic materials or other highly flammable or toxic material shall not be used as an interior wall, ceiling, or floor finish unless approved by the secretary.

(5) The doors in any public areas that lead outside the lodging establishment shall not be locked

or blocked, preventing egress when the building is occupied. No exit doors shall be concealed or obscured by hangings, draperies, or any other objects.

(6)(A) Portable fire extinguishers shall be required and located in the hallways, mechanical rooms, laundry areas, and all other hazardous areas and within 75 feet of each guest room door. All portable fire extinguishers shall be easily accessible to the guests and employees.

(B) Each fire extinguisher shall meet the following requirements:

(i) Be maintained in a fully charged and operable condition;

(ii) be rated at least 2A-10BC;

(iii) contain at least five pounds of fire suppressant; and

(iv) be inspected annually by a fire extinguisher company, a fire department representative, or another entity approved by the secretary. The licensee shall retain a record of these inspections at the lodging establishment for at least one year.

(7) Emergency lighting shall be provided where guest room doors open to an interior corridor and where guest room doors open to the outside but not directly at ground level.

(8) A smoke detector shall be installed in each guest sleeping room, cooking area and kitchen, interior stairwell, hallway, laundry area, mechanical room, and any other fire hazard area. Any heat-sensing device designed to detect fire may be installed in a cooking area in lieu of a smoke detector.

(A) All smoke detectors and heat-sensing devices shall be maintained in operating condition.

(B) Each smoke detector and each heat-sensing device shall be tested at least every six months to ensure that the detector or device is operating properly. The batteries shall be replaced as needed.

(C) A 12-month history of test results shall be logged and maintained at the lodging establishment and made available to the secretary upon request.

(D) If a battery-operated detector is not operational for two consecutive tests, the licensee shall install a detector that is hardwired with a battery backup.

(E) Smoke detectors for hearing-impaired individuals shall be available as specified in K.S.A. 36-517, and amendments thereto.

(9) If hardwired, interconnected smoke detectors are used, these detectors shall be tested and approved annually by a fire sprinkler company, fire alarm company, fire department representative, or any other entity approved by the secretary. A 12-month history of test results shall be maintained at the lodging establishment and made available to the secretary upon request.

(10) If fire alarm systems and fire sprinkler systems are used, the systems shall be tested and approved annually by a fire alarm company, fire sprinkler company, fire department representative, or any other entity approved by the secretary. A 12-month history of test results shall be maintained at the lodging establishment and made available to the secretary upon request.

(11)(A) All exit signs shall be clean and legible. At least one exit sign shall be visible from each of the following locations:

(i) The doorway of each guest room that opens to an interior corridor; and

(ii) the doorway of each guest room that opens to the outdoors but not directly at ground level.

(B) Each newly constructed lodging establishment shall have supplemental directional signs indicating the direction and path of egress.

(C) Boarding houses and rooming houses shall not be required to have exit signs if the requirements in paragraphs (d)(5) and (12) are met.

(12) An evacuation route diagram shall be posted in a conspicuous location in each guest room. The diagram shall include the location of the guest room, the layout of the floor, and the location of the nearest available exits. If the door of a guest room opens directly to the outdoors at ground level, the diagram shall not be required to be posted.

(13) A copy of an emergency management plan and employee instructions shall be kept on file in the lodging establishment, made accessible to all employees, and made available to the secretary upon request. A record that each employee has received training on the emergency management plan shall be maintained at the lodging establishment in each employee's file. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-9. Guest rooms. Each licensee shall ensure that each guest room is kept clean, is in good repair, and is maintained with regard to the health and safety of each guest, in accordance with all of the following requirements: (a) The walls, floors, ceilings, doors, and windows shall be con-

structed of materials intended for that purpose, maintained in good repair, and cleaned, painted, or replaced as necessary.

(1) All junctures between floors and walls shall be constructed, covered, or finished with a baseboard and readily cleanable.

(2) All floors and floor coverings shall be cleaned as needed. The methods for cleaning shall be suitable to the finish and material.

(3) All floor maintenance, repair, or replacement shall be done in a manner that prevents slipping or tripping hazards to any guest.

(4) A guest room that has visible mold on the floors, walls, ceiling, or windows shall not be rented until mold cleanup is completed.

(b) All furnishings, including draperies, beds, appliances, furniture, lamps, and decorative items, shall be kept clean and in good repair. The methods for cleaning shall be suitable to the material and finish.

(c) Each guest room shall have a connecting toilet room and bathing facilities, including a bathtub or shower, except for the following:

(1) If the lodging establishment is listed on the state historical register and documentation is provided to the secretary, at least one toilet room with bathing facilities located on the same floor shall be provided for every two guest rooms, unless otherwise specified by the secretary.

(2) If the lodging establishment is a boarding house, including a bed and breakfast home, or a rooming house, at least one toilet room with bathing facilities located on the same floor shall be provided for every two guest rooms.

(3) If the lodging establishment is a lodge with dormitory sleeping areas, at least one toilet and at least one bathtub or one shower shall be provided for every six guests and shall be located within the same building as the dormitory sleeping area or adjacent to the dormitory sleeping area.

(d) Each handwashing sink shall meet the requirements specified in K.A.R. 4-27-6.

(e) Each rented guest room shall be serviced daily in the following manner except as otherwise specified in this subsection:

(1) Clean bathroom linens, including towels and washcloths, shall be provided. If bathmats are provided, the bathmats shall be clean.

(2) Clean bed linens shall be provided, and the bed shall be made.

(3) All floors shall be swept or vacuumed, if visibly soiled. All hard-surface floors shall be wet-cleaned if visibly soiled.

(4) Each toilet, sink, bathtub, and shower area shall be cleaned if visibly soiled.

(5) Each trash container shall be emptied and shall be cleaned if visibly soiled. A trash container liner may be reused during the same guest's stay if the liner is not visibly soiled.

(6) All soap and prepackaged guest toiletry items shall be replenished, as necessary.

(7) All toilet paper shall be replenished, as necessary.

(8) Clean ice bucket liners shall be provided and replaced, as necessary and upon request of the guest.

(9) All glassware and cups, if provided, shall be replaced with clean and sanitized dishware. Single-service cups, if provided, shall be replenished.

(10) If a coffeemaker is present in the guest room, the coffeepot shall be rinsed. If the coffeepot is visibly soiled or contaminated, it shall be washed, rinsed, and sanitized. A fresh supply of coffee, condiments, and any single-service articles shall be replenished, if provided.

(f) Each guest room shall be serviced daily during the guest's stay if the stay is less than five days, unless the guest requests that all or part of the room not be serviced.

(g) If the same guest continuously occupies the same room for five or more days, the room shall be serviced and cleaned at least every five days. For each extended-stay establishment, the guest room shall be serviced and cleaned at least every five days.

(h) Each guest room that is available for rent shall be serviced and cleaned before each new guest. In addition to the required service activities in subsection (e), each guest room cleaning shall include the following:

(1) All floors shall be swept or vacuumed, and all hard-surface floors shall be wet-cleaned.

(2) All furniture, fixtures, and any items of decoration shall be cleaned in a manner that is appropriate to the finish.

(3) The interior of all drawers shall be cleaned.

(4) All toilets, sinks, bathtubs, and shower areas shall be cleaned and sanitized in a manner that is appropriate to the finish.

(5) All sinks, bathtubs, and shower areas shall be kept free of hair, mold, and mildew.

(6) Bed linens and bath linens shall not be used for cleaning or dusting.

(7) All trash containers shall be emptied and cleaned, and new liners shall be provided.

(8) All ice bucket liners shall be replaced with new liners.

(9) All used guest toiletries and soap shall be replenished.

(10) The guest room shall be visually inspected for any evidence of insects, rodents, and other pests.

(i)(1) All bedspreads, top-covering linens, blankets, mattress pads, mattresses, and box springs shall be cleaned and maintained in good repair according to all of the following requirements:

(A) All linens with tears or holes shall be repaired or replaced, and all soiled and stained linen shall be cleaned.

(B) All bedspreads and top-covering linens shall be cleaned at least monthly.

(C) All blankets and mattress pads shall be cleaned at least monthly. All blankets and mattress pads that are visibly soiled or stained shall be removed and replaced with clean linen.

(D) All mattresses and box springs shall be kept clean. Each damaged or soiled mattress and box spring shall be repaired or cleaned.

(E) Each mattress that is not kept in sanitary condition shall be replaced.

(2) The interior and surface of each enclosed mattress platform shall be cleaned if visibly soiled and either maintained in good repair or replaced.

(j) If a coffeepot is not located within a toilet room, the coffeepot shall be rinsed before each new guest. If a coffeepot is located within a toilet room, the coffeepot shall be washed, rinsed, and sanitized before each new guest as specified in K.A.R. 4-27-10.

(k) All single-service drinking glasses and utensils shall be prepackaged.

(l) All food and condiments provided in each guest room shall be individually prepackaged.

(m) If a refrigerator unit is provided in a guest room, the unit shall be cleaned before each new guest.

(n) Each appliance provided for guest use, including microwaves, stoves, dishwashing machines, coffeemakers, hair dryers, clothing irons, radios, televisions, remote controls, and video equipment, shall be operational and in good repair. All cooking appliances, including microwaves and stoves, shall be cleaned before each new guest. All appliances shall be listed with or certified by underwriters' laboratories (UL) and shall bear the UL designation.

(o) Except as specified in this subsection, the use of portable electrical or open-flame cooking devices shall be prohibited in a guest room. These devices shall include hot plates, electric skillets and grills, propane and charcoal grills, camping stoves, and any similar cooking devices. These devices shall not include slow cookers. Microwaves and toasters that are provided in a guest room by the licensee shall be permitted.

(p) Each guest room shall be free of any evidence of insects, rodents, and other pests.

(1) If a guest room has been vacant for at least 30 days, the licensee shall visually inspect that room for any evidence of insects, rodents, and other pests within 24 hours of occupancy by the next guest.

(2) No guest room that is infested by insects, rodents, or other pests shall be rented until the infestation is eliminated.

(3) The presence of bed bugs, which is indicated by observation of a living or dead bed bug, bed bug carapace, eggs or egg casings, or the typical brownish or blood spotting on linens, mattresses, or furniture, shall be considered an infestation.

(4) The presence of bed bugs shall be reported to the secretary within one business day upon discovery or upon receipt of a guest complaint.

(5) All infestations shall be treated by a licensed pest control operator.

(6) All pest control measures, both mechanical and chemical, shall be used in accordance with the manufacturer's recommendations.

(7) No rodenticides, pesticides, or insecticides shall be stored in a guest room or in any area that could contaminate guest supplies, food, condiments, dishware, or utensils.

(q)(1) The licensee of each lodging establishment that allows pets into any guest room shall advise consumers that the establishment is "pet-friendly" by posting a sign in a conspicuous place at the front desk to alert guests that pets are allowed.

(2) The licensee of each lodging establishment where pets or service animals have been in a guest room shall meet one of the following requirements:

(A) The guest room shall be deep cleaned before the next guest. Deep cleaning shall include servicing and cleaning the guest room as specified in subsections (e) and (h), as well as vacuuming and shampooing the carpet and upholstered furnishings and vacuuming the mattress. All bed linens, including sheets, mattress pads, blankets,

bedspreads or top coverings, and pillows, shall be replaced with clean bed linens.

(B) If the room is not deep cleaned, the licensee shall not offer that room to any guest without giving notification to that guest that a pet or service animal was in the room previous to the new guest.

(3) If the previous guest has smoked in a room, the licensee of any lodging establishment shall not offer that room as a non-smoking room until one of the following requirements is met:

(A) The guest room is deep cleaned as specified in paragraph (q)(2)(A).

(B) If the room is not deep cleaned, the licensee shall give notification to the new guest that the previous guest smoked in the room.

(r) Each guest room shall be provided with a means for locking each entrance both from the inside and from the outside, according to all of the following requirements:

(1) The key furnished to each guest shall not unlock the door to any other guest room.

(2) At least one secondary lock, including a dead bolt lock, thumb bolt, chain lock, or a similar device, shall be provided in addition to the primary key lock and shall be installed in accordance with the manufacturer's specifications.

(3) All locks shall be in good repair and fully operational.

(s) Each pair of connecting guest rooms shall have two doors in the connecting doorway. Each connecting door shall be equipped with a lock on only the guest room side of that door.

(t) If cribs are provided upon request, the cribs shall be easily cleanable, safe, and in good repair. Each crib rail, pad, and mattress shall be cleaned and sanitized after each guest. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-10. Dishware and utensils. Each licensee shall ensure that all of the following requirements are met: (a) General.

(1) All dishware and utensils that are designed for repeat use shall be made of safe, durable, and nonabsorbent material and shall be kept in good repair. No cracked or chipped dishware or utensils shall be provided for use by guests or employees.

(2) All single-service articles shall be constructed of safe, durable, and nonabsorbent materials.

(3) All single-service drinking glasses and utensils shall be prepackaged or protected in a dispenser.

(4) No single-service articles may be reused.

(b) Storage.

(1) All clean dishware and utensils and all single-service articles shall be protected from dirt, dust, liquids, insects, vermin, and any other sources of contamination at all times.

(2) Each licensee shall provide storage facilities for dishware and utensils in a clean, dry location at least six inches above the floor.

(3) No dishware and utensils shall be stored under an exposed sewer line or a dripping water line.

(4) No dishware, utensils, single-service articles, ice buckets, and food containers shall be stored within a toilet room.

(c) Cleaning and sanitization. Each licensee shall use either manual cleaning and sanitizing equipment or mechanical cleaning and sanitizing equipment.

(1) All dirty or used glasses, dishware, and utensils that are in areas other than a guest room kitchenette shall be removed from each guest room during the servicing or cleaning of the room and upon vacancy of that room. All items shall be washed, rinsed, and sanitized using one of the approved methods in this regulation.

(2) If the licensee provides repeat service dishware or utensils to the lodging establishment's guests or to the public, the licensee shall install in the lodging establishment, or in a food service area operated in conjunction with the lodging establishment, manual or mechanical cleaning equipment for dishware and utensils that meets the requirement of this regulation.

(3) The manual cleaning and sanitizing of dishware, utensils, and food equipment shall meet all of the following requirements:

(A)(i) A sink with at least three compartments or three adjacent sinks shall be used and shall be large enough to permit the immersion of the largest item of dishware, utensil, or food equipment articles to be cleaned.

(ii) All sinks and dishware drying surfaces shall be cleaned before use.

(B) Each compartment of the sink shall be supplied with hot and cold potable running water.

(C) The wash, rinse, and sanitizing water shall be kept clean.

(D) The steps for manual cleaning and sanitizing shall consist of all of the following:

(i) All dishware, utensils, and food equipment

shall be thoroughly washed in the first compartment with a hot detergent solution.

(ii) All dishware, utensils, and food equipment shall be rinsed free of detergent and abrasives with clean hot water in the second compartment.

(iii) All dishware, utensils, and food equipment shall be sanitized in the third compartment according to one of the methods in paragraph (c)(3)(E).

(E) The food contact surfaces of all dishware, utensils, and food equipment shall be sanitized during manual ware washing by one of the following methods:

(i) Immersion for at least 10 seconds in a clean solution containing 50 to 200 parts per million of available chlorine, with a water temperature of at least 75 degrees Fahrenheit;

(ii) immersion for at least 30 seconds in clean hot water with a temperature of at least 171 degrees Fahrenheit;

(iii) immersion in a clean solution containing a quaternary ammonium compound with a minimum water temperature of 75 degrees Fahrenheit and with the concentration indicated by the manufacturer's directions on the label; or

(iv) immersion in a clean solution containing a sanitization chemical other than those specified in this subsection that meets the applicable requirements specified in K.A.R. 4-28-11.

(F) A chemical test kit, thermometer, or other device that accurately measures the concentration of sanitizing chemicals, in parts per million, and the temperature of the water shall be available and used daily.

(4) The mechanical cleaning and sanitizing of dishware, utensils, and food equipment may be done by spray-type or immersion commercial dishwashing machines. Another type of dishwashing machine or device may be used if the machine or device meets the requirements of this regulation.

(A) Each dishwashing machine and device shall be properly installed and maintained in good repair and shall be operated in accordance with the manufacturer's instructions.

(B) If an automatic detergent dispenser, rinsing agents dispenser, or liquid sanitizer dispenser is used, the dispenser shall be properly installed and maintained.

(C) Each dishwashing machine using hot water to sanitize shall be installed and operated according to the manufacturer's specifications and shall achieve a minimum dishware and utensil surface temperature of 160 degrees Fahrenheit as measured by a dishwasher-safe thermometer. For each dishwashing machine using hot water to sanitize that does not cause the surface temperature of the dishware and utensils to reach a temperature of 160 degrees Fahrenheit, one of the following requirements shall be met:

(i) The licensee shall install a heat booster.

(ii) The licensee shall provide the secretary with documentation of a time and temperature relationship that results in the sanitization of the dishware and utensils.

(D) The final rinse temperature of each dishwashing machine using hot water to sanitize shall be monitored by a dishwasher-safe thermometer.

(E) All dishware, utensils, and food equipment shall be exposed to all dishwashing and drying cycles.

(F) Each dishwashing machine using chemicals for sanitization shall be used as follows:

(i) The temperature of the wash water shall be at least 120 degrees Fahrenheit, and the chemical sanitizing rinse water shall be at least 75 degrees Fahrenheit unless specified differently by the machine's manufacturer.

(ii) The wash water shall be kept clean.

(iii) The chemicals added for sanitization purposes shall be automatically dispensed.

(iv) All dishware, utensils, and food equipment shall be exposed to the final chemical sanitizing rinse in accordance with the manufacturer's specifications for time and concentration.

(v) All chemical sanitizers shall meet the applicable requirements of K.A.R. 4-28-11.

(G) A chemical test kit, thermometer, or other device that accurately measures the concentration of sanitizing chemicals, in parts per million, and the temperature of the water shall be available and used daily.

(H) Each dishwashing machine or device shall be cleaned as often as necessary to be maintained in operating condition according to the manufacturer's specifications.

(d) All dishware, utensils, and food equipment shall be air-dried.

(e) Each licensee that provides dishware, utensils, and food equipment in the guest room shall clean and sanitize the dishware, utensils, and food equipment provided by one of the following methods:

(1) Provide manual dishwashing and sanitizing as specified in paragraph (c)(3);

(2) provide a mechanical dishwashing machine as specified in paragraph (c)(4); or

(3) provide a complete set of clean and sanitized dishware, utensils, and food equipment before each new guest arrives. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-11. Housekeeping and laundry facilities; maintenance supplies and equipment. Each licensee shall ensure that all housekeeping and laundry facilities and equipment are clean and maintained in good repair. Each licensee shall ensure that all of the following requirements are met: (a)(1) Each housekeeping cart shall be maintained and operated to prevent the contamination of clean linens by dirty linens.

(2) Each housekeeping cart shall be designed, maintained, and operated to protect clean glasses, utensils, dishware, single-service articles, food, coffee, and condiments from dirty linens and other sources of contamination, including dirty glasses and dishware, cleaning and sanitizing agents, and poisonous or toxic materials.

(3) Each service or utility cart shall be maintained and operated to prevent the contamination of clean linens by dirty linens or other sources of contamination, according to one of the following methods:

(A) Cleaning and sanitizing the service cart before transporting clean linens;

(B) lining the service cart with a clean liner before transporting clean linens;

(C) placing the clean linens in a clean container before transporting the linens in the service cart; or

(D) using another method as approved by the secretary.

(4) All laundry bags used for dirty linen shall be laundered before being used for clean linen.

(5) Each housekeeping cart and each service cart shall be kept clean and in good repair.

(b)(1) Each licensee shall provide laundry facilities, unless a commercial laundry service is used.

(2) All clean laundry shall be handled in a manner that prevents contact with dirty linen.

(3) Each laundry area shall be designed and arranged in a manner that provides for the functional separation of clean and dirty laundry. A space large enough for sorting and storing soiled linens and for sorting and storing clean linens shall be provided.

(4) The laundry facilities shall be located in areas that are not used by guests or the public and are not used as corridors or passageways.

(5) The laundry area shall be kept clean and free from accumulated lint and dust.

(6) The laundry facilities and areas shall be used for their intended purpose and shall not be used for storage of equipment or supplies not related to the laundering process.

(7) All laundry equipment shall be functional and in good repair. Any laundry equipment that is no longer in use shall be removed from the laundry area.

(8) Each lodging establishment that is newly constructed, undergoes a major renovation, or is licensed under a new ownership shall be required to have a hand sink in the laundry area. Each hand sink shall meet the requirements specified in K.A.R. 4-27-6.

(9) All housekeeping and cleaning supplies and equipment shall be stored in a designated area. The storage area may be in the laundry area if the supplies and equipment are physically separated from the laundry, laundry equipment, and laundry supplies.

(c) All laundry that is cleaned commercially off the premises shall have a segregated storage space for clean and dirty laundry and shall be located and equipped for convenient pick-up and delivery.

(d) Separate laundry facilities may be provided for use by guests if these facilities are located in a room or area of the lodging establishment designated only for guest laundry. The area and equipment shall be kept clean and in good repair.

(e) Single-use gloves shall be available for housekeeping and laundry staff and made available in the laundry and housekeeping areas.

(f) A specific location or area shall be provided for the storage of maintenance supplies and equipment. No other items shall be stored in this location or area. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-12. Poisonous or toxic materials. Each licensee shall ensure that all of the following requirements are met: (a) Only those poisonous or toxic materials that are required for the operation and maintenance of the lodging establish-

ment shall be allowed on the premises, including the following:

(1) Detergents, sanitizers, cleaning or drying agents, caustics, acids, polishes, and similar chemicals;

(2) insecticides and rodenticides;

(3) building maintenance materials, including paint, varnish, stain, glue, and caulking; and

(4) landscaping materials, including herbicides, lubricants, and fuel for equipment.

(b) The storage of poisonous or toxic materials shall meet all of the following requirements:

(1) The substances listed in each of the four categories specified in subsection (a) shall be stored on separate shelves or in separate cabinets. These shelves and cabinets shall be used for no other purpose.

(2) To prevent the possibility of contamination, poisonous or toxic materials shall not be stored above food, ice or ice-making equipment, linens, towels, utensils, single-service articles, or guest toiletry items. This requirement shall not prohibit the availability of cleaning or sanitizing agents in dishwashing or laundry work areas.

(c) Each bulk or original container of a poisonous or toxic material shall bear a legible manufacturer's label. All poisonous or toxic materials taken from a bulk container or an original container and put into another container shall be clearly identified with the common name of the material.

(d) Each poisonous or toxic material shall be used according to the manufacturer's directions. Additional safety requirements regarding the safe use of poisonous or toxic materials may be established by the secretary upon discovery of the unsafe use of these materials.

(e) Each restricted-use pesticide shall be applied only by a certified applicator or a person under the direct supervision of a certified applicator and in accordance with all applicable statutes and regulations. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-13. Public indoor areas. Each licensee shall ensure that all of the following requirements are met: (a) All indoor public areas shall be kept clean and free of debris.

(b)(1) All equipment, appliances, and fixtures shall be maintained in good repair. All equipment, appliances, and fixtures that require repair or maintenance either shall be removed for repair or maintenance or shall be designated as damaged or under repair by using signs, placards, cones, hazard tape, or other visual means to alert guests of any possible hazard.

(2) All unused or damaged equipment, appliances, and fixtures shall be removed.

(c)(1) All floors and floor coverings in public areas, service areas, hallways, walkways, and stairs shall be kept clean by effective means suitable to the finish.

(2) All floor coverings shall be maintained in good repair. All floor maintenance, repair, and replacement shall be done in a manner that prevents slipping or tripping hazards to guests.

(d) All furniture and items of décor shall be in good repair and kept clean by effective means suitable to the material and finish.

(e) All stairs, landings, hallways, and other walkways shall be kept free of debris and in good repair and shall meet the following requirements:

(1) The storage of items shall be prohibited.

(2) A minimum illumination of 10 foot-candles shall be required.

(f) Each fitness room, bathhouse, and spa shall meet the following requirements:

(1) Each area shall be cleaned and sanitized daily or more frequently, if necessary to maintain cleanliness.

(2) All floors shall be maintained in good repair and have a slip-resistant finish or covering that prevents slipping when wet.

(3) All equipment and fixtures that come into contact with guests, including benches, tables, stools, chairs, tanning beds, and fitness equipment, shall be constructed with a covering of a nonabsorbent material suitable for the use of the equipment or fixture. The following requirements shall be met:

(A) All surfaces that come into contact with guests shall be cleaned and sanitized daily or more frequently, if necessary to maintain cleanliness.

(B) Cleaning or sanitizing solutions shall be made available for guest use and shall be kept in clearly labeled bottles.

(C) All showers shall be cleaned and sanitized daily or more frequently, if necessary to maintain cleanliness.

(4)(A) Towels, including bath towels, hand towels, and paper towels, shall be provided in the area and made available upon guest request.

(B) Each cloth towel shall be laundered before being provided to a guest.

(C) A receptacle for wet or soiled towels shall

be provided for guest use in the area. The receptacle shall be emptied at least once daily.

(5) All equipment, fixtures, and recreational items provided for guest use shall be maintained in good repair.

(6) Protective eye equipment shall be provided if tanning equipment is provided for guest use. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

4-27-14. Ice and ice dispensing. Each licensee shall ensure that all of the following requirements are met: (a)(1) If ice is provided in a public area to guests or the general public, the ice shall be provided only through automatic, self-service dispensing machines that are constructed to prevent the direct access to bulk ice storage compartments by guests or the general public.

(2) Ice machines other than the type specified in paragraph (a)(1), including bin-type ice machines that allow direct access to the bulk ice storage compartments, shall not be accessible to guests or the general public. Any lodging employee may provide containers of ice to guests or the general public from this type of ice machine, from an icemaker, or from prepackaged ice.

(b)(1) Only ice that has been made from potable water and handled in a sanitary manner shall be provided by a lodging establishment. All ice shall be free of visible contaminants.

(2) All ice that is not made on the premises of the lodging establishment shall be obtained from a commercial source and shall be protected from contamination during transportation and storage.

(c) Each ice machine shall meet the following requirements:

(1) Be constructed of sanitary, durable, corrosion-resistant material and be easily cleanable;

(2) be constructed, located, installed, and operated to prevent contamination of the ice;

(3) be kept clean, free of any mold, rust, debris, or other contaminants, and maintained in good repair; and

(4) be drained through an air gap.

(d)(1) Each ice container or ice bucket shall meet the following requirements:

(A) Be made of smooth, nonabsorbent, impervious, food-grade materials and be easily cleaned;

(B) be kept clean and stored in a sanitary manner;

(C) be cleaned and sanitized before each new guest; and

(D) be provided with a sanitary, single-service use, food-grade liner that is changed daily.

(2) All canvas or wax-coated buckets or containers shall be prohibited.

(3) No ice container or ice bucket shall be located within the room housing the toilet.

(e) Each icemaker located in a guest room shall be kept clean and sanitary.

(1) No individual ice cube trays shall be used.

(2) All ice shall be removed from the icemaker's storage bin before each new guest. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

4-27-15. Exterior premises. Each licensee shall ensure that all of the following requirements are met: (a) Exterior areas and surfaces.

(1) All exterior areas and surfaces, including alleys and driveways, shall be kept clean, free of debris, and in good repair.

(2) Each walking, driving, and parking surface shall be graded or maintained to prevent the pooling of water.

(3) All lawns and landscaping shall be mowed or pruned as needed to promote guest safety.

(4) All parking areas and walkways shall be illuminated for guest safety and shall be kept free of debris.

(5) All unused or discarded equipment and materials shall be removed from the premises, except when placed in a designated storage area.

(6)(A) All exterior balconies, landings, porches, decks, stairways, and ramps shall be kept in good repair and free of debris and shall be illuminated for guest safety.

(B) Storage on stairs, landings, and ramps shall be prohibited.

(C) All guards and railings shall be attached securely and shall be kept in good repair.

(D) All ramps shall have a slip-resistant surface.

(E) All exterior stairways, ramps, landings, and walkways shall be kept free of ice and snow.

(b) Outside playgrounds and recreational areas.

(1) All equipment shall be kept clean and in good repair at all times. All protruding bolts, screws, and nails and all sharp edges shall be removed or covered.

(2) The ground cover under children's play equipment shall be a soft surface, including turf, rubber chips, bark mulch, clean sand, or any other surface approved by the secretary.

(3) Unused equipment shall be stored in a designated area.

(4) If the area is open for nighttime use, lighting shall be provided for guest safety.

(5) The area shall be kept clean and free of debris.

(6) If fencing is provided, the fencing shall be kept in good repair.

(c) Refuse containers.

(1) The area where refuse containers are located shall be kept free of debris and cleaned as necessary to prevent the attraction and harborage of insects, rodents, and other pests and to minimize odors.

(2) Containers of adequate capacity or number shall be available to store all refuse that accumulates between refuse pickups. All refuse containers shall be emptied at least once each week or more frequently, if necessary to meet the requirements of these regulations. All rotten waste shall be removed daily.

(3) All refuse container lids shall be closed. All refuse containers shall be kept on a solid surface. Solid surfaces shall include concrete, asphalt, and any other hard surface approved by the secretary.

(d) Outdoor vector control.

(1) The premises shall be free of any harborage conditions that can lead to or encourage infestations of rodents, insects, and any other pests.

(2) Control measures shall be taken to protect against the entrance of rodents, insects, and any other pests into the lodging establishment. All buildings shall be verminproofed and kept in a verminproof condition.

All doors leading outside shall be tightfitting to eliminate entrance points for rodents, insects, and any other pests. All windows and doors that can be opened for ventilation shall have screening material that is at least 16 mesh to the inch and shall be tightfitting and kept in good repair.

(3) Identified infestation problems shall be treated by a licensed pest control operator.

(4) All control measures, both mechanical and chemical, shall be used in accordance with each manufacturer's recommendations.

(e) Exterior storage.

(1) A storage area shall be provided for maintenance and recreational equipment, machinery, and any other maintenance items.

(2) Only those items necessary for the operation and maintenance of the lodging establishment shall be kept in a storage area.

(3) All poisonous and toxic materials shall be stored as specified in K.A.R. 4-27-12.

(4) Each storage area shall be kept free of debris, filth, and any harborage conditions.

(5) All articles in need of repair may be stored on a short-term basis, which shall not exceed six months. All articles that are not repaired within six months shall be discarded or moved to an off-site storage facility.

(f) Outdoor space for pets. All pets shall be kept on a leash or controlled in a manner that prevents the pets from running freely about the premises. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-16. Swimming pools, recreational water facilities, and hot tubs. (a) General requirements. Each licensee shall ensure that all swimming pools, recreational water facilities, and hot tubs are kept sanitary and in good repair.

(1) Each swimming pool, RWF, and hot tub shall meet the requirements in these regulations, unless local ordinances pertaining to planning and design, lifesaving and safety equipment, water quality, and sanitation exist and these ordinances are as restrictive or more restrictive than these regulations.

(2) Each licensee shall maintain records of each inspection conducted by a local regulatory agency for at least one year. The inspection records shall be made available for review by the secretary, upon request.

(b) Design and safeguards.

(1) Each plan for a new swimming pool or RWF and for a swimming pool or RWF undergoing major renovation, including installation of a diving board, slide, or other similar recreational devices, shall be designed by a licensed engineer, architect, or other qualified professional and shall be submitted to the secretary before the start of construction. Submission of documentation of plan approval by the local regulatory agency shall meet the requirements of this paragraph.

(2) Each grate over a main drain in each swimming pool or RWF shall be intact, firmly affixed at all times, and designed to prevent swimmer entanglement, entrapment, or injury. Other methods to prevent swimmer entanglement, entrapment, or injury may include multiple main drains, antivortex drain covers, or any similar device approved by the secretary.

(3) The depth of water in each swimming pool or RWF shall be plainly marked with at least four-inch high numbers of a color that contrasts with the color of the pool decking or vertical pool wall.

(A) Water depth markings for an inground swimming pool shall be clearly marked on the edge of the deck and visible at all times. In addition, water depth markings may be placed above the water surface on the vertical pool walls and shall be visible at all times.

(B) Water depth markings for each aboveground swimming pool or RWF shall be on the edge of the deck and shall be visible to persons entering the swimming pool. If water depth markings cannot be placed on the edge of the deck, another means shall be used so that the water depth is visible to persons entering the swimming pool.

(C) The water depth markings in each swimming pool or RWF shall be located in the following areas:

(i) At the maximum and minimum depths. Intermediate increments of depth may be used in addition to the required maximum and minimum depths; and

(ii) the transition point between the shallow end, which shall be five feet or less, and the deep end, which shall be more than five feet. This transition point shall be marked by a line on the floor and the walls of the swimming pool or RWF or by a safety rope equipped with buoys.

(4) Each lighting and electrical system for a swimming pool, RWF, or hot tub shall be kept in good repair at all times. The following requirements shall be met:

(A) Artificial lighting shall be provided at each swimming pool, RWF, or hot tub if used at night and for each indoor swimming pool, RWF, or hot tub. The lighting shall illuminate all portions of each swimming pool, RWF, or hot tub.

(B) All artificial lighting located in the water shall be designed and maintained to prevent electrical shock hazards to guests.

(5) Each outdoor swimming pool and RWF shall be protected by a fence, wall, building, or other enclosure that is at least four feet in height.

(A) Each enclosure shall be made of durable material and kept in good repair.

(B) Each gate shall have self-closing and self-latching mechanisms. The self-latching mechanism shall be installed at least four feet from the bottom of the gate.

(C) A hedge shall not be an acceptable protective enclosure.

(6) Each door leading into an indoor or enclosed swimming pool or RWF area shall have self-closing and self-latching mechanisms. The self-closing mechanism shall be at least four feet from the bottom of the door.

(c) Lifesaving and safety equipment.

(1) Each swimming pool or RWF shall have lifesaving equipment, consisting of at least one U.S. coast guard-approved flotation device that can be thrown into the water and at least one reaching device.

(A) The flotation device shall be attached to a rope that is at least as long as one and one-half times the maximum width of the swimming pool or RWF. If a lifeguard is on duty, life-saving rescue equipment, including rescue tubes, may also be used.

(B) The reaching device shall be a life pole or a shepherd's crook-type of pole, with a minimum length of 12 feet.

(C) Each lifesaving device shall be located in a conspicuous place and shall be accessible. The lifeguard personnel shall keep their rescue equipment close for immediate use.

(D) Each lifesaving device shall be kept in good repair.

(2) A first-aid kit shall be accessible to the lodging employees.

(3) No glass containers shall be permitted in the swimming pool, RWF, or hot tub area.

(4) Each swimming pool, RWF, and hot tub and each deck shall be kept clean of sediment, floating debris, visible dirt, mold and algae and shall be maintained free of cracks, peeling paint, and tripping hazards.

(5) Each swimming pool, RWF, and hot tub shall be refinished or relined if the bottom or wall surfaces cannot be maintained in a safe and sanitary condition.

(6) If handrails are not present, all steps leading into the swimming pool or RWF shall be marked in a color contrasting with the color of the interior of the swimming pool and RWF so that the steps are visible from the swimming pool or RWF deck.

(7) All steps, ladders, and stairs shall be easily cleanable, in good repair, and equipped with non-slip treads. Handrails and ladders, if present, shall be provided with a handhold and securely attached.

(8) The rules of operation and safety signs for each swimming pool, RWF, and hot tub shall be

posted in a conspicuous place at the swimming pool, RWF, or hot tub. Each swimming pool and RWF without a lifeguard shall have posted the following sign: "Warning — No Lifeguard On Duty." The sign shall be legible, with letters at least four inches in height.

(9) If chlorinating equipment is located indoors, the chlorinating equipment shall be housed in a separate room, which shall be vented to the outside or to another room that is vented to the outside. If chlorinating equipment is located outdoors and within an enclosed structure, the structure shall be vented to the outside.

(d) Water quality and sanitation. Each licensee shall ensure that all of the following requirements are met:

(1) Each swimming pool, RWF, and hot tub shall be maintained to provide for continuous disinfection of the water with a chemical process. This process shall use a disinfectant that leaves a measurable residual in the water.

(A) If chlorine or bromine is used to disinfect the water of any swimming pool or RWF, the water shall have a disinfectant residual level of at least 1.0 part per million (ppm) and not more than 5.0 ppm.

(B) If chlorine or bromine is used to disinfect the water of any hot tub, the water shall have a disinfectant residual level of at least 2.0 ppm and not more than 5.0 ppm.

(C) Each means of disinfection other than those specified in paragraphs (d)(1)(A) and (B) shall be used only if the licensee has demonstrated that the alternate means provides a level of disinfection equivalent to that resulting from the residual level specified in paragraph (d)(1)(A) or (B).

(2) The pH of the water in each swimming pool, RWF, and hot tub shall be maintained at not less than 7.0 and not more than 8.0.

(3) Each licensee shall use a chemical test kit or a testing device approved by the secretary. Each testing kit or device shall be appropriate for the disinfecting chemical used and capable of accurately measuring disinfectant residual levels of 0.5 ppm to 20.0 ppm. In addition, a chemical test kit or testing device for measuring the pH of the water shall be used and capable of accurately measuring the pH of water in 0.2 increments.

(4) The water in each swimming pool, RWF, and hot tub shall have sufficient clarity at all times so that one of the following conditions is met:

(A) A black disc with a diameter of six inches is clearly visible in the deepest portion of the swimming pool or RWF.

(B) The bottom drain at the deepest point of the swimming pool or RWF is clearly visible, and the bottom of the hot tub is clearly visible.

(5) The water in each swimming pool, RWF, and hot tub shall be free of scum and floating debris. The bottom and walls shall be free of dirt, algae, and any other foreign material.

(6) No chemical shall be added manually and directly to the water of any swimming pool, RWF, or hot tub while any individual is present in the water.

(7) The temperature of the water in each hot tub shall not exceed 104 degrees Fahrenheit.

(A) Each hot tub shall be operated in accordance with the manufacturer's specifications.

(B) Each hot tub shall have a thermometer or other device to accurately record the water temperature within plus or minus two degrees.

(e) Fecal accident in a swimming pool and RWF. If a fecal accident occurs in a swimming pool or RWF, the following requirements shall be met:

(1) In response to any accident involving formed feces, the following requirements shall be met:

(A) Direct the guests to leave the swimming pool or the RWF, and do not allow any individuals to reenter until the decontamination process has been completed. The closure times can vary since the decontamination process takes from 30 to 60 minutes;

(B) remove as much fecal material as possible using a net or scoop, and dispose of the material in a sanitary manner. Sanitize the net or scoop;

(C) raise the disinfectant level to 2.0 ppm and ensure that the water pH is between 7.2 and 7.8; and

(D) return the disinfectant level to the operating range specified in paragraph (d)(1)(A) before the swimming pool or RWF is reopened to guests.

(2) In response to any accident involving diarrhea, the following requirements shall be met:

(A) Direct guests to leave the swimming pool or the RWF, and do not allow any individuals to reenter until the decontamination process has been completed;

(B) remove as much fecal material as possible using a scoop, and dispose of the material in a sanitary manner. Sanitize the scoop. Vacuuming the fecal material shall be prohibited;

(C) raise the disinfectant level to 20.0 ppm and

maintain a water pH of at least 7.2 but not more than 7.8. This level of concentration shall be maintained at least eight hours to ensure inactivation of *Cryptosporidium*. A lower disinfectant level and a longer inactivation time may be used according to the following table:

Cryptosporidium inactivation for diarrheal accident

Disinfectant levels (ppm)	Disinfection time
1.0	6.5 days
10.0	16 hours
20.0	8 hours

(D) ensure that the filtration system is operating and maintaining the required disinfectant levels during the disinfection process. Backwash the filter. Do not return the backwashed water through the filter. Replace the filter medium, if necessary; and

(E) return the disinfectant level to the operating range specified in paragraph (d)(1)(A) before the swimming pool or RWF is reopened to guests.

(f) Vomiting accident in a swimming pool or RWF. If a vomiting accident occurs in a swimming pool or RWF, the procedures in paragraph (e)(1) shall be followed.

(g) Body fluid spills at a swimming pool or RWF. All body fluid spills that occur on swimming pool or RWF equipment or hard surfaces, including decking, shall be cleaned and chemically sanitized. Disposable gloves shall be available for employees' use during cleanup. The following cleanup method shall be used:

(1) Wipe up the spill using absorbent, disposable material. Paper towels may be used;

(2) use a bleach solution by combining one part bleach and 10 parts water. Pour the bleach solution onto the contaminated surface, leave the solution on the surface for at least 10 minutes, and rinse the surface with clean water;

(3) disinfect all nondisposable cleaning materials, including mops and scrub brushes, and allow to air-dry; and

(4) require each employee assisting with the cleanup to wash that employee's hands with warm water and soap after the cleanup is completed.

(h) Fecal or vomiting accident in a hot tub. If a fecal accident or vomiting occurs in a hot tub, all of the following requirements shall be met:

(1) All guests shall be required to leave the hot tub, and the water shall be completely drained.

(2) The hot tub shall be disinfected according to the manufacturer's specifications.

(3) The filtering system shall be disinfected or the filter medium shall be replaced with a clean filter medium before refilling the hot tub with clean water.

(i) Operation and maintenance of a swimming pool, RWF, or hot tub. Each licensee shall ensure that all of the following requirements for each swimming pool, RWF, and hot tub are met:

(1) Daily operational logs shall be maintained for at least one year at the lodging establishment and made available to the secretary, upon request. These logs shall include the date and time the information was collected and the name or initials of the person who collected the information. These logs shall also record the following information:

(A) The disinfectant residuals shall be recorded at least once daily when the swimming pool, RWF, or hot tub is available for guest use or more often, if necessary to maintain the water quality as specified in subsection (d).

(B) The pH test shall be recorded at least once daily when the swimming pool, RWF, or hot tub is available for guest use or more often, if necessary to maintain the water quality as specified in subsection (d).

(C) The temperature reading of each hot tub shall be recorded at least once daily when the hot tub is available for guest use.

(2) Each fecal and vomiting accident log shall include the time and date of the accident and the disinfection measures taken.

(3) Each indoor swimming pool area and chemical storage room shall be either vented directly to the exterior or vented to a room that is vented directly to the exterior.

(4) All chemicals applied to a swimming pool, RWF, or hot tub shall be used, handled, stored, and labeled in accordance with the manufacturer's specifications.

(5) All recreational equipment shall be kept sanitary. Recreational equipment shall include slides, diving boards, play equipment, water sports equipment, and accessory items available to guests, including floats, tubes, air mattresses, and pads for water slides.

(6) A cleaning system shall be used to remove dirt, algae, and any other foreign material from the bottom of the swimming pool or RWF.

(7) All surface skimmers, strainer baskets, and

perimeter overflow systems shall be kept clean and in good repair.

(8) The water in each swimming pool and each RWF shall be maintained at the manufacturer's recommended level so that the water will flow into each skimmer and strainer.

(9) The recirculation system serving each swimming pool, RWF, and hot tub shall operate continuously or in accordance with the manufacturer's specifications. The filtration and recirculation systems shall be maintained in accordance with the manufacturer's specifications. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-17. Water supply systems. Each licensee shall ensure that all of the following requirements are met: (a) Sufficient potable water to meet the needs of the lodging establishment shall be provided from a source constructed and operated pursuant to K.S.A. 65-161 et seq., and amendments thereto.

(b) No water supply system deemed unsafe by the secretary shall be used as a potable water supply.

(c)(1) Each nonpublic water supply system shall be constructed, maintained, and operated as specified in K.S.A. 65-161 et seq., and amendments thereto.

(2) All water from a nonpublic water supply system shall meet the state drinking water quality standards specified in K.S.A. 65-161 et seq., and amendments thereto. The most recent sample report for the nonpublic water supply system used by the lodging establishment shall be retained for at least 12 months at the lodging establishment and shall be made available to the secretary upon request.

(d) During any period when a boil-water order is in effect, including a precautionary boil-water notice or advisory issued by the secretary of the Kansas department of health and environment on a public or nonpublic water supply, the licensee shall meet the following requirements until the problem has been corrected:

(1) Notify each guest, verbally upon check-in and by written notice placed in each rented guest room, that the plumbed water is not potable and only potable water should be used for drinking and for brushing teeth;

(2) discard any ice that could have been made from or exposed to contaminated water; and

(3) obtain a temporary, alternate supply of potable water by using one of the following:

(A) A supply of commercially bottled drinking water;

(B) one or more closed, portable, bulk water containers;

(C) an enclosed vehicular water tank;

(D) an on-premises water storage tank; or

(E) any other alternative water source if approved by the secretary. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-18. Sewage systems. Each licensee shall ensure that all of the following requirements are met: (a) All sewage shall be disposed of through an approved facility, including one of the following:

(1) A public sewage treatment plant; or

(2) an individual sewage disposal system that is constructed, maintained, and operated according to K.S.A. 65-161 et seq., and amendments thereto, and meets all applicable sanitation requirements.

(b) A temporary sewage disposal facility shall be allowed only as approved by the secretary in response to a disaster.

(c) All condensate drainage, rainwater, and other nonsewage liquids shall be drained from the point of discharge to disposal pursuant to K.S.A. 65-161 et seq., and amendments thereto. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-19. Electrical systems. (a) Each licensee shall ensure that the electrical wiring is installed and maintained in accordance with all applicable local electrical codes. In the absence of local electrical codes, the electrical wiring shall be installed and maintained by a licensed electrician. Each licensee shall ensure that all of the following requirements are met:

(1)(A) Each newly constructed lodging establishment shall have a ground-fault circuit interrupter in each electrical outlet located within five feet of any water source, including a swimming pool and hot tub.

(B) Each existing lodging establishment in which major renovation or rewiring has occurred shall be required to have a ground-fault circuit

interrupter in each electrical outlet located within five feet of any water source, including a swimming pool and hot tub.

(C) Each licensee shall ensure that the lodging establishment has a ground-fault circuit interrupter in each electrical outlet located within five feet of any water source, including a swimming pool and hot tub.

(2) Each electrical switch and each outlet shall be covered by a faceplate. Each junction box shall have a junction box cover.

(3) All circuit breaker boxes, fuse boxes, and electrical panels shall be protected from physical damage and kept in good condition. All fuses and circuits shall be labeled to identify the circuit location.

The storage of any item that obstructs access to any circuit box shall be prohibited.

(4) All wire splices shall be located in covered junction boxes.

(5) Bare or frayed wiring shall be prohibited.

(6) All three-prong outlets shall be grounded. Each appliance shall be grounded in accordance with the manufacturer's specifications.

(b) All emergency lighting shall be kept in working condition.

(c) The permanent use of extension cords in guest rooms shall be prohibited.

Individual branch circuits, including multiple-plug outlet strips that contain fuse breakers and multiple-plug outlet adapters that do not exceed the amperage for which the outlets are rated, shall be permitted.

(d) The temporary use of extension cords shall be allowed for housekeeping and maintenance purposes if the extension cords are rated for industrial use.

(e) The wattage of light bulbs shall not exceed the wattage rating of the corresponding light fixtures.

Empty light sockets shall be prohibited. (Authorized by and implementing K.S.A. 2008 Supp. 36-506; effective June 4, 2010.)

4-27-20. Plumbing systems. (a) Each licensee shall ensure that all plumbing is installed and maintained in accordance with all applicable local plumbing codes. In the absence of local plumbing codes, all plumbing shall be installed and maintained by a licensed plumber.

(b) Each licensee shall ensure that all of the following requirements are met:

(1) Potable water under pressure shall be available at all times at each fixture designed to provide water. Hot water shall be provided to each fixture designed to use hot water.

(2) Each toilet room, bathing facility, and laundry area shall be provided with ventilation to minimize condensation and to prevent mold, algae, and odors.

Each newly constructed lodging establishment and each lodging establishment undergoing major renovation shall be required to have mechanical ventilation in each toilet room, bathing facility, and laundry area.

(3) Each fixture drain shall be plumbed with a P-trap.

(4) All openings for the passage of plumbing shall be verminproof.

(5) No fitting, connection, device, or method of installation of plumbing shall obstruct or retard the flow of water, wastes, sewage, or air in the drainage or venting system.

(c) All backflow devices shall meet the design specifications for their intended use. All potable water supplies shall be protected from sources of potential contamination. Each licensee shall ensure that all of the following requirements are met:

(1) If provided, each boiler unit, fire sprinkler system with chemical additives, lawn sprinkler with a means for injection of pesticides, herbicides, or other chemicals, and pumped or repressurized cooling or heating system shall be protected by a reduced-pressure-principle backflow prevention assembly.

(A) The backflow prevention assembly shall be tested at least annually.

(B) Documentation of each test shall be maintained at the lodging establishment for at least one year and shall be made available to the secretary upon request.

(2) If provided, each fire sprinkler system not using chemical additives and lawn sprinkler system without a means for injection of pesticides, herbicides, or other chemicals shall be protected by a double-check valve assembly.

(A) The double-check valve assembly shall be tested at least annually.

(B) Documentation of each test shall be maintained at the lodging establishment for at least one year and shall be made available to the secretary upon request.

(3) If provided, each threaded faucet to which a hose is connected, flush valve, and any similar device shall be protected by a vacuum breaker.

Each commercial dishwasher and each commercial laundry machine shall be protected by either a vacuum breaker or an air gap.

(4) If provided, each relief valve discharge line from a water heater, water-holding tank, cooling tower, or water softener, each discharge line from a commercial laundry machine, and each condensation line shall be protected by an air gap.

(5) Each swimming pool water supply line shall be protected by either an air gap or a double-check valve assembly.

(6) Fire sprinklers plumbed into a waterline over gas water heaters or furnaces, or both, shall not be required to have a backflow device unless required by local ordinance. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-21. Heating, ventilation, and air-conditioning (HVAC) systems. (a) Each licensee shall ensure that each guest room has heating, ventilation, and related heating and ventilation equipment.

(1) All equipment shall be installed according to the manufacturer's directions and shall be kept in operating condition.

(2) A means to control the temperature in the guest room shall be provided in each guest room that is furnished with a separate heating or air-conditioning unit.

(3) If the guest room has air-conditioning, the air-conditioning system shall meet the requirements specified in paragraphs (a)(1) and (2).

(b) Unvented fuel-fired heaters, unvented fireplaces, and similar devices and portable electrical space heaters shall be prohibited from use in all areas of the lodging establishment, unless designed by the manufacturer for commercial use and approved by the secretary. The following conditions shall be met:

(1) The unvented fuel-fired heater, unvented fireplace, or similar device or the portable electrical space heater is not the primary source of heat.

(2) The unvented fuel-fired heater, unvented fireplace, or similar device or the portable electric space heater is not used in a guest room.

(c) All gas and electric heating equipment shall be equipped with thermostatic controls.

(d) All gas water heaters, gas furnaces, and other gas heating appliances shall be vented to the outside.

(e) A gas shutoff valve shall be located next to each gas appliance, gas furnace, and gas water heater.

(f) Each furnace and each air-conditioning unit shall be equipped with an electrical fuse breaker to protect the unit from electrical overload.

(g) Each furnace room or room containing a gas water heater or any other fuel-fired appliance shall be provided with adequate air for circulation.

(h) Each filter shall be changed according to the manufacturer's specifications. (Authorized by and implementing K.S.A. 2011 Supp. 36-506, as amended by L. 2012, ch. 145, sec. 6; effective June 4, 2010; amended Feb. 8, 2013.)

4-27-22. Lodging establishment inspections by qualified individuals, private entities, or public entities. (a) "Supplemental inspection" shall mean an inspection of a lodging establishment conducted by a qualified person employed by a lodging business, lodging trade organization, or local governmental entity and not employed by the Kansas department of agriculture.

(b) Each person who wishes to conduct a supplemental inspection of a lodging establishment shall complete the following requirements:

(1) Submit to the secretary, or the secretary's designee, a written letter of application and statement describing the applicant's knowledge of lodging standards established pursuant to K.S.A. 36-506, and amendments thereto, acquired by education, training, and experience; and

(2) answer at least 80% of the questions correctly to pass a written examination administered by the secretary, or secretary's designee. The written examination shall test the applicant's knowledge of lodging standards established pursuant to K.S.A. 36-506, and amendments thereto.

(c) A supplemental inspection report on a lodging establishment shall be accepted by the secretary if all of the following conditions are met:

(1) The person conducting the supplemental inspection meets the requirements in subsection (b).

(2) The supplemental inspection is conducted to determine if the lodging establishment meets lodging standards established pursuant to K.S.A. 36-506, and amendments thereto.

(3) The supplemental inspection report is submitted to the secretary no later than 10 calendar days from the date the inspection occurred. If an "imminent health hazard," as defined in K.A.R. 4-

27-5, is discovered during the inspection, the person shall notify the secretary, or the secretary's designee, within 12 hours of the discovery, as required in K.A.R. 4-27-5.

(4) The supplemental inspection report thoroughly describes conditions in the lodging establishment at the time of the inspection. Each violation of a lodging establishment standard shall be described in detail and photographed. The supplemental inspection report shall describe any actions taken by the licensee to correct each violation.

(d) An inspection of the lodging establishment may be conducted by department lodging inspectors to determine the accuracy of a supplemental report. The inspection shall be conducted within five days after receipt of a supplemental inspection report.

(e) The secretary's acceptance of a supplemental inspection report shall not preclude the department from conducting an inspection to assess the lodging establishment's compliance with lodging establishment standards or determine the accuracy of the supplemental inspection report. The supplemental inspection report, if accepted, may be considered by the secretary when determining the inspection frequency of a lodging establishment. (Authorized by K.S.A. 2009 Supp. 36-506; implementing K.S.A. 2009 Supp. 36-519; effective June 4, 2010.)

Article 28.—FOOD SAFETY

4-28-1. Definition; specialized processing. "Specialized processing" shall mean any food preparation method having an increased risk of foodborne illness associated with improper implementation, including the following:

(a) Smoking food as a method of food preservation rather than as a method of flavor enhancement;

(b) curing food;

(c) canning food, except for fruit jams, jellies, and preserves;

(d) using food additives or adding components, which may include vinegar, for either of the following:

(1) A method of food preservation rather than flavor enhancement; or

(2) a method to render a food so that the food does not require time and temperature control for food safety;

(e) packaging food using a reduced-oxygen packaging method;

(f) sprouting seeds or beans;

(g) drying food, other than herbs, whole fruits, or whole vegetables;

(h) keeping molluscan shellfish in a life-support tank;

(i) custom-processing animals in a facility for personal use;

(j) processing and packaging juice;

(k) fermenting foods;

(l) producing cultured dairy products, including cheese, yogurt, and buttermilk; and

(m) using a noncontinuous cooking process. (Authorized by K.S.A. 2011 Supp. 65-688, as amended by L. 2012, ch. 145, sec. 23; implementing K.S.A. 2011 Supp. 65-689, as amended by L. 2012, ch. 145, sec. 24; effective, T-4-11-5-04, Nov. 5, 2004; effective Feb. 18, 2005; amended June 4, 2010; amended Feb. 8, 2013.)

4-28-2. Adoption by reference. (a) The following federal regulations are hereby adopted by reference, except as otherwise indicated in this subsection:

(1) 9 C.F.R. Parts 317, excluding 9 C.F.R. 317.2(a), 319, 381, and 424, as revised on January 1, 2011;

(2) 21 C.F.R. Parts 100 through 186, excluding 21 C.F.R. 100.1 and 100.2, as revised on April 1, 2011;

(3) 21 C.F.R. 1030.10, as revised on April 1, 2011; and

(4) 40 C.F.R. Part 180, as revised on July 1, 2011.

(b) Copies of the adopted material shall be available from the division of food safety and lodging of the Kansas department of agriculture, Topeka, Kansas. (Authorized by K.S.A. 2011 Supp. 65-688, as amended by L. 2012, ch. 145, sec. 23; implementing K.S.A. 2011 Supp. 65-688, as amended by L. 2012, ch. 145, sec. 23, and K.S.A. 2011 Supp. 74-581; effective, T-4-11-5-04, Nov. 5, 2004; effective Feb. 18, 2005; amended June 4, 2010; amended April 26, 2013.)

4-28-3. (Authorized by K.S.A. 2003 Supp. 36-503; implementing K.S.A. 2003 Supp. 36-503 and L. 2004, Ch. 192, Sec. 2; effective Feb. 18, 2005; revoked Oct. 26, 2012.)

4-28-4. (Authorized by K.S.A. 36-504; implementing K.S.A. 36-504 and L. 2004, Ch. 192,

Sec. 2; effective Feb. 18, 2005; revoked Oct. 26, 2012.)

4-28-5. Fees; food processing plant. Each food processing plant shall be licensed by the secretary. (a) Each person operating or intending to operate a food processing plant shall submit an application on a form supplied by the department with the following fees:

(1) An application fee of $100; and

(2) one of the following license fees based on the size and type of the plant, as applicable:

(A) For each food processing plant that only stores food, one of the following fees:

(i) Less than 1,000 square feet: $50;

(ii) 1,000 square feet through 5,000 square feet: $75;

(iii) 5,001 square feet through 10,000 square feet: $105;

(iv) 10,001 square feet through 50,000 square feet: $140; or

(v) more than 50,000 square feet: $180; and

(B) for each food processing plant not specified in paragraph (a)(2)(A), one of the following fees:

(i) Less than 1,000 square feet: $80;

(ii) 1,000 square feet through 5,000 square feet: $135;

(iii) 5,001 square feet through 10,000 square feet: $190;

(iv) 10,001 square feet through 50,000 square feet: $245; or

(v) more than 50,000 square feet: $300.

(b) For the purpose of this regulation, a facility that only stores food shall include any premises, establishment, building, room, area, facility, or place where food is stored, kept, or held for distribution, whether or not the food is temperature-controlled.

(c) For the purpose of this regulation, "food processing plant" shall not include either of the following:

(1) A facility in which fresh fruits and vegetables are harvested and washed, if the fruits and vegetables are not otherwise processed at the facility; or

(2) a storage facility used solely for the storage of grain or other raw agricultural commodities.

(d) Each license issued shall expire on March 31 each year.

(e) Each license shall require annual renewal by the licensee's submission of an application for renewal, on a form supplied by the department, and the payment of the applicable license fee specified in subsection (a). (Authorized by K.S.A. 2011 Supp. 74-581 and K.S.A. 2011 Supp. 65-688, as amended by L. 2012, ch. 145, sec. 23; implementing K.S.A. 2011 Supp. 65-688, as amended by L. 2012, ch. 145, sec. 23; effective Feb. 18, 2005; amended Dec. 5, 2008; amended Feb. 8, 2013.)

4-28-6. Fees; risk levels; food establishment. (a) Each food establishment required to be licensed shall be assessed by the secretary for classification by risk level according to this regulation. The following classifications shall be used to determine licensing fees and inspection frequency at food establishments:

(1) A "category I facility" shall mean a food establishment that presents a high relative risk of causing food-borne illness based upon the usage of food-handling processes associated with food-borne illness outbreaks. Factors considered in classifying a food establishment as a category I facility shall include whether the food establishment meets any of the following conditions:

(A) Cooks, cools, or reheats food that requires time and temperature control for safety;

(B) uses freezing as a means to achieve parasite destruction;

(C) handles raw, in-shell molluscan shellfish ingredients;

(D) uses specialized processing;

(E) has a required hazard analysis critical control point plan; or

(F) offers for consumption without further preparation any food containing raw or undercooked eggs, meat, poultry, fish, or shellfish.

(2) A "category II facility" shall mean a food establishment that presents a moderate relative risk of causing food-borne illness based upon the usage of a limited number of food-handling processes associated with food-borne illness outbreaks. Factors considered in classifying a food establishment as a category II facility shall include whether the food establishment meets any of the following conditions:

(A) Prepares baked products;

(B) repackages foods from a licensed food processor in smaller quantities for distribution;

(C) heats only foods from a licensed food processor; or

(D) handles, cuts, grinds, or slices only raw animal foods or ready-to-eat meats and cheeses.

(3) A "category III facility" shall mean a food establishment that presents a low relative risk of

causing food-borne illness based upon the usage of few or no food-handling processes associated with food-borne illness outbreaks. Factors considered in classifying a food establishment as a category III facility shall include whether the food establishment meets any of the following conditions:

(A) Offers self-service beverages;

(B) offers prepackaged food and beverages, including those prepackaged foods and beverages that are required to be held at a temperature of 41°F or below for food safety; or

(C) offers unpackaged food that does not require time and temperature control for safety, including mixed drinks.

(b) Each food establishment with operations in multiple categories shall be placed in the highest risk-level category. A history of a food establishment's noncompliance with applicable statutes and regulations may be considered and may warrant placement of the food establishment in a higher risk-level category. The risk level assigned to a food establishment may be changed if the secretary determines that the change is warranted based upon the degree of risk of a health hazard and protection of the public health and safety.

(c) Each person operating or intending to operate a food establishment shall submit an application on a form prescribed by the secretary with the following fees, as applicable:

(1) Category I facilities.

(A) Application fee. Each person shall submit a onetime application fee based on the size of the food establishment as follows:

(i) Less than 5,000 square feet: $225;

(ii) 5,000 through 10,000 square feet: $300;

(iii) 10,001 through 50,000 square feet: $325; and

(iv) more than 50,000 square feet: $350.

(B) License fee. Each person shall submit a license fee based on the size of the food establishment as follows:

(i) Less than 5,000 square feet: $225;

(ii) 5,000 through 10,000 square feet: $295;

(iii) 10,001 through 50,000 square feet: $450; and

(iv) more than 50,000 square feet: $625.

(2) Category II facilities.

(A) Application fee. Each person shall submit a onetime application fee of $200.

(B) License fee. Each person shall submit a license fee of $160.

(3) Category III facilities.

(A) Application fee. Each person shall submit a onetime application fee of $175.

(B) License fee. Each person shall submit a license fee of $110.

(d)(1) Each category I facility shall be inspected at least once every 12 months.

(2) Each category II facility shall be inspected at least once every 15 months.

(3) Each category III facility shall be inspected at least once every 18 months.

(e) Each license shall expire on the first March 31 following the date of issuance.

(f) Each license shall require annual renewal by the licensee's submission of an application for renewal, on a form prescribed by the secretary, and payment of the applicable license fee specified in subsection (c). (Authorized by and implementing K.S.A. 2012 Supp. 65-688; effective Feb. 18, 2005; amended, T-4-6-28-12, July 1, 2012; amended Oct. 26, 2012; amended May 31, 2013.)

4-28-7. (Authorized by K.S.A. 2010 Supp. 36-503; implementing K.S.A. 2010 Supp. 36-503 and K.S.A. 2010 Supp. 74-582; effective Feb. 18, 2005; amended, T-4-6-30-11, July 1, 2011; amended Oct. 28, 2011; revoked Oct. 26, 2012.)

4-28-8. Adoption of Kansas food code. The document titled "Kansas food code," dated July 1, 2012 and published by the division of food safety and lodging of the Kansas department of agriculture, is hereby adopted by reference. (Authorized by and implementing K.S.A. 2011 Supp. 65-688, as amended by L. 2012, ch. 145, sec. 23, and K.S.A. 2011 Supp. 74-581; effective Feb. 29, 2008; amended June 4, 2010; amended April 26, 2013.)

4-28-9 and 4-28-10. (Authorized by and implementing K.S.A. 36-507, K.S.A. 65-626, and K.S.A. 2007 Supp. 74-582; effective Feb. 29, 2008; revoked April 26, 2013.)

4-28-11 and 4-28-12. (Authorized by and implementing K.S.A. 2008 Supp. 36-507, K.S.A. 65-626, and K.S.A. 2008 Supp. 74-581; effective Feb. 29, 2008; amended June 4, 2010; revoked April 26, 2013.)

4-28-13 and 4-28-14. (Authorized by and implementing K.S.A. 36-507, K.S.A. 65-626, and K.S.A. 2007 Supp. 74-582; effective Feb. 29, 2008; revoked April 26, 2013.)

4-28-15. (Authorized by K.S.A. 36-507 and 65-626 and K.S.A. 2007 Supp. 65-673 and 74-582;

implementing K.S.A. 36-503, 36-507, 65-626, and 65-662 and K.S.A. 2007 Supp. 65-673; effective Feb. 29, 2008; revoked April 26, 2013.)

4-28-16. (Authorized by K.S.A. 36-507 and 65-626; implementing K.S.A. 36-507 and 65-626 and K.S.A. 2006 Supp. 74-581; effective Feb. 29, 2008; revoked April 26, 2013.)

4-28-18. (Authorized by K.S.A. 65-673 and K.S.A. 2008 Supp. 74-581; implementing K.S.A. 65-659; effective June 4, 2010; revoked Feb. 8, 2013.)

4-28-19 through 4-28-22. (Authorized by K.S.A. 65-663, K.S.A. 2008 Supp. 65-673, and K.S.A. 2008 Supp. 74-581; implementing K.S.A. 65-663; effective June 4, 2010; revoked Feb. 8, 2013.)

4-28-23. Sidewalk or street display of food products; prohibitions. (a) The sidewalk or street display or sale of fresh meat and meat products, fresh seafood and fish, fresh poultry, and any other foods that require time and temperature control for safety shall be prohibited.

(b) Any food product, other than those products listed in subsection (a), that ordinarily is washed, peeled, pared, or cooked in the course of preparation for consumption may be displayed in street and sidewalk displays if the product is in containers that are at least six inches above the surface of the sidewalk or street.

(c) The street or sidewalk display of all food products not specified in this regulation shall be prohibited unless the products are enclosed to protect the products from flying insects, dust, and other contamination. (Authorized by K.S.A. 2011 Supp. 65-688, as amended by L. 2012, ch. 145, sec. 23, and K.S.A. 2011 Supp. 74-581; implementing K.S.A. 2011 Supp. 65-688, as amended by L. 2012, ch. 145, sec. 23; effective June 4, 2010; amended Feb. 8, 2013.)

4-28-24 through 4-28-30. (Authorized by K.S.A. 65-626, K.S.A. 2008 Supp. 74-581; implementing K.S.A. 65-625 and 65-626; effective June 4, 2010; revoked Feb. 8, 2013.)

4-28-31. Fees; education facility with a school lunch program or satellite school lunch program. Each education facility with a school lunch program or satellite school lunch program subject to the national school lunch act, 42 U.S.C. §1751 et seq., shall be licensed by the secretary.

(a) Each of the following terms, as used in this regulation, shall have the meaning specified in this subsection:

(1) "Education facility with a school lunch program" means any school, institution, or other organization providing meals to children through the national school lunch program of the division of food and nutrition services, United States department of agriculture.

(2) "Satellite school lunch program" means any program offered through an education facility with a school lunch program that is operated at a different location as designated by the education facility. A satellite school lunch program does not have on-site food preparation, except portioning food for service.

(b) Each person operating or wanting to operate an education facility with a school lunch program or satellite school lunch program shall submit an application on forms provided by the department with the following fees, as applicable:

(1) Application fee: $200; and

(2)(A) License fee for an education facility with a school lunch program: $415; or

(B) license fee for an education facility with a satellite school lunch program: $340.

(c) Each license shall expire on the first March 31 following the date of issuance.

(d) Any licensee may renew a license before the expiration date of the license by submitting an application for renewal on a form supplied by the department and the applicable license fee specified in paragraph (b)(2).

(e)(1) Each license renewal application received within 30 days after the license expiration date shall require annual renewal by the licensee's submission of an application for renewal on a form supplied by the department, the applicable license fee specified in paragraph (b)(2), and a late fee of $25, pursuant to 2012 Sen. Sub. for HB 2730, sec. 1 and amendments thereto.

(2) License renewal applications received by the department on or after May 1 shall not be approved before the licensee submits the fees prescribed in paragraphs (b)(1) and (b)(2) and the licensee's food establishment is inspected pursuant to K.S.A. 65-689, and amendments thereto.

(f) For an education facility with a school lunch program or satellite school lunch program licensed before July 1, 2012, the difference between the original license fee paid and the current license fee shall be paid for the license year ending March 31, 2013. In subsequent years, the full

license fee shall be paid. (Authorized by and implementing K.S.A. 2011 Supp. 65-688, as amended by 2012 Sen. Sub. for HB 2730, sec. 23; effective, T-4-6-28-12, July 1, 2012; effective Oct. 26, 2012.)

4-28-32. Vehicles used in transportation. Each vehicle used in the transportation of food shall be kept in a condition by which food cannot become adulterated. During transport, the food shall be protected from physical, chemical, and microbial contamination and degradation by the use of the following:

(a) Clean and sanitary transportation vehicles and containers; and

(b) temperature-control measures meeting the department's requirements. (Authorized by K.S.A. 2011 Supp. 65-688, as amended by L. 2012, ch. 145, sec. 23; implementing K.S.A. 2011 Supp. 65-688, as amended by L. 2012, ch. 145, sec. 23, and K.S.A. 2011 Supp. 74-581; effective Feb. 8, 2013.)

4-28-33. Sanitation and hygiene requirements for exempt food establishments. Each food establishment exempted from licensure in K.S.A. 65-689, and amendments thereto, shall meet the following requirements: (a) Food preparation areas shall be protected from environmental contamination, including rain, dust, and pests.

(b) Food contact surfaces, including cutting boards, utensils, and dishes, shall be cleaned, rinsed, and sanitized before food-handling activities begin and also as necessary. Hot, potable water and a dishwashing detergent shall be used for cleaning operations. Clean, hot, potable water shall be used for rinsing. Sanitizing shall be accomplished by immersing each item in a chlorine bleach solution of 50 to 100 parts per million for 10 seconds and allowing the item to air-dry. A sanitizer labeled for use on food contact surfaces may be used instead of chlorine bleach. Warewashing activities shall be conducted in easily cleanable sinks or food-grade tubs large enough to accommodate immersion of the largest items.

(c) Animals shall not be permitted in food preparation areas.

(d) Food and utensils shall be protected from contamination.

(e) A potable water supply shall be provided. Commercially bottled water or water from a private system may be used.

(1) If water is supplied from a private system, including a well or spring, the private system shall meet the local water system test requirements. If local requirements do not exist, the water shall meet the following standards, with testing obtained by the operator of the food establishment at least annually:

(A) Nitrates shall be less than 20 milligrams per kilogram.

(B) Total coliforms shall be zero colony-forming units.

(C) Fecal coliforms shall be zero colony-forming units.

The current copy of the testing shall be made available upon request.

(2) Each mobile or portable establishment shall ensure that the water is maintained in a potable state by use of appropriate containers, hoses, or other water-handling systems.

(f) Adequate sewage disposal shall be provided. Each septic system shall be approved by the Kansas department of health and environment or the county sanitarian. The current copy of the approval shall be made available upon request. Each mobile or portable establishment shall have adequate on-site sewage storage and shall dispose of sewage in a sanitary sewer or septic system.

(g) Bare-hand contact shall not be permitted with ready-to-eat foods.

(h) Each person working with food shall wash that person's hands before working with food or food contact surfaces and after the hands are contaminated, or could have become contaminated, including after handling raw eggs, raw meat, or raw poultry or after touching the face or hair. The following procedure shall be used:

(1) Wet hands using warm, running potable water;

(2) apply soap and rub hands together vigorously for at least 10 seconds;

(3) rinse hands; and

(4) dry hands with a clean paper towel.

(i) No person with any of the following symptoms or conditions shall work with food:

(1) Vomiting;

(2) diarrhea;

(3) jaundice;

(4) sore throat with fever;

(5) any lesion, boil, or infected wound that contains pus, is open or draining, and is located on any of the following:

(A) The hands or wrists, unless an impermeable cover that may include a finger cot or stall protects the affected site and a single-use glove is worn over the impermeable cover;

(B) exposed portions of the arms, unless the affected site is protected by an impermeable cover; or

(C) other parts of the body, unless the affected site is covered by a dry, durable, tight-fitting bandage; or

(6) an illness due to any of the following:

(A) Norovirus;

(B) hepatitis A virus;

(C) shigella;

(D) enterohemorrhagic or shiga toxin-producing *Escherichia coli*; or

(E) salmonella typhi. (Authorized by K.S.A. 2012 Supp. 65-688; implementing K.S.A. 2012 Supp. 65-688 and 65-689; effective May 31, 2013.)

4-28-34. Exemption from licensure; definitions. (a) Each person who is exempt under K.S.A. 65-689(d)(7), and amendments thereto, from licensure for operating a food establishment shall post at the point of sale a placard or sign that states, in letters at least one-quarter inch high and in contrasting color to the background, that the food establishment is not subject to routine inspection by the Kansas department of agriculture.

(b) As used in K.S.A. 65-689(d)(7) and amendments thereto, each of the following terms shall have the meaning specified in this subsection:

(1) "Community or humanitarian purposes" shall mean purposes for the common good, including building or refurbishing playgrounds or parks, preserving historic public buildings, religious organization fundraising, promoting human welfare including disaster relief, providing food to the food-insecure, providing shelter for humans, and similar activities.

(2) "Educational or youth activities" shall mean activities associated with an early childhood, elementary, secondary, or postsecondary school or activities for persons less than 21 years of age that engage these persons in recreational, educational, or social activities, including sports teams, summer camps, music programs, arts programs, and similar activities.

(c) Funds raised in food establishments exempt from licensure under K.S.A. 65-689(d)(7), and amendments thereto, shall not be used for wages or other compensation of volunteers or employees, except for providing complimentary food to volunteer staff.

(d) Nothing in this regulation shall prohibit a person who is exempt from licensure for operating a food establishment from applying for a food establishment license from the secretary. Upon the secretary's review of the application, a license may be issued by the secretary pursuant to K.S.A. 65-689(b), and amendments thereto. (Authorized by K.S.A. 2012 Supp. 65-688; implementing K.S.A. 2012 Supp. 65-688 and 65-689; effective May 31, 2013.)